

Uttarakhand High Court

Smt. Suman Lata Panwar vs Sri Ajay Singh on 15 November, 2018

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

First Appeal No. 77 of 2013

Smt. Suman Lata Panwar

..... Appellant.

Versus

Sri Ajay Singh

..... Respondent.

Present:

Mr. Ghanshyam Joshi, Advocate for the appellant. Mr. B. S.

Adhikari, Advocate for respondent.

JUDGMENT

Coram: Hon'ble Sudhanshu Dhulia, J.

Hon'ble Sharad Kumar Sharma, J.

Judgment reserved : 6th September, 2018 Judgment Delivered : 15th November, 2018 PER :-
SHARAD KUMAR SHARMA, J.

The present First Appeal has been preferred by the plaintiff/appellant, invoking Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') read with Section 19 of the Family Courts Act, 1984, whereby, she has questioned the judgment and decree dated 9th April, 2013 rendered by the Family Court, Haridwar in Original Suit No. 325 of 2007, Smt. Suman Lata Vs. Ajay Singh, by virtue of which, the plaintiff/appellant's suit as preferred by her by invoking Section 13 (1), 25 and 27 of the Act has been dismissed. The Family Court, after considering the rival contentions and the evidence which were brought on record by the rival parties, had dismissed the suit wherein prayer was made by the plaintiff/appellant for dissolution of marriage as well as for grant of permanent alimony under Section 25 of the Act. Consequently, the present First Appeal.

2. After the appeal was filed on 07.05.2013, it was mostly adjourned by the appellant, until admitted on 12.02.2014.

Thereafter, 14.02.2014 till 15.03.2015, most of the time, appeal was adjourned and no effective proceeding was held.

3. The order sheet shows that this Court on a number of occasions i.e. on 17.04.2017 and 21.04.2017 had made efforts by calling upon the parties to appear before this Court and to make an effort for resolving the dispute by way of an amicable settlement through mediation, but, it seems that despite of the best efforts made by the Court, the parties have failed to enter into any compromise / settlement, and all efforts of mediation had failed as a result thereto, this Court finds that there was no possibility of revival of the matrimony and thus this Court is of the view that it would be in the interest of both the parties that this Appeal itself is decided on its own merit.

4. Having heard Mr. Ghanshyam Joshi, learned counsel for the appellant and Mr. B.S. Adhikari, learned counsel for the respondent at length and, after considering the rival contention, this Appeal is being decided on the basis of the following reasoning :

5. The backdrop of the case is that the appellant had instituted a Suit, being Suit No. 325 of 2007 Suman Lata Panwar Vs. Ajay Singh on 21st November, 2007, seeking a decree for dissolution of marriage said to have been solemnized between the parties to the appeal on 3rd February, 2001. She has also prayed that all the stridhan which has been exchanged at the time of marriage may also be directed to be returned to her. She has further prayed for a permanent alimony for herself and for her child Hony @ Anamay. The amount, as claimed under Section 25 of the Act, was as a consolidated alimony, it was amounting to Rs. 10 lacs.

6. According to the plaint allegations, the case of the appellant is that after having been married with the respondent as per the Hindu rites and rituals at Awas Vikas Ranipur, Haridwar, on 3rd February, 2001. She resided with her husband in the matrimonial home and performed her matrimonial obligations. Her case is that after marriage, she realised that her husband had a bad habit of consuming liquor and often coming to home in an intoxicated condition. He used to misbehave with the appellant and used to inflict mental cruelty. Her case is that despite of said cruelty, she endured all the atrocities so as to maintain the harmony in the family and also to sustain the matrimonial life.

7. Another allegation which was leveled by the appellant was that the husband used to exert pressure on her to bring a sum of Rs.50,000/- from her parental home so as to enable him to go to Kuwait to join his duties. The wife's case is that on refusal on her part, to part with the said money as demanded, it further increased the misunderstanding between the parties to the appeal and the gravity of atrocities further increased. Her case is that immediately after 18 days' of marriage, respondent husband left the appellant at in-laws home and had gone to Kuwait. It is an admitted case of the appellant herself that on 24th January, 2002, she too had gone to Kuwait and started residing with the respondent / husband. It was due to this matrimonial relationship between them, she contends that she conceived while she was living at Kuwait, but she submits that despite of the fact that she was pregnant, the husband continued to exert atrocities and used to consistently misbehave with her. He never paid any attention towards her during her pregnancy, or by showing any concern by taking her to the doctors for regular treatment. She submits that in the stage of pregnancy, she returned back to India on her own on 13th October, 2002 and gave birth to a male child on 30th December, 2002. Summing up the atrocities, she submits that on account of persistent mental and physical cruelty, she contended that it would not be possible for her to continue with her matrimonial relationship with the respondent husband, hence, she sought a decree for dissolution of marriage.

8. Section 25 of the Hindu Marriage Act deals with the grant of permanent alimony and maintenance. Grant of permanent alimony and maintenance is subject to filing of an application made with regard thereto either by the wife or husband as the case may be whenever in either circumstances there is no independent subsistence available to the party to the matrimony. Once Section 25 of the Act contemplates filing of an application by the claimant, it means that the person

applying for maintenance under Section 25 of the Act will have to assign the reasons, justify the claim for the grant of permanent alimony and the factors necessary for its consideration. When the permanent alimony is claimed by a party to the litigation, the application is mandatory. Admittedly, as reflected from the records placed before this Court, there is no independent application filed by appellant for the claim of alimony under Section 25 of the Act and the reasons to justify the claim. Even so much so, the plaint also lacks any averment or pleading for justifying the claim under Section 25 of the Act by the appellants. The claim of permanent alimony only finds place in the relief Clause of the suit where the wife herself has quantified the amount of permanent alimony as to be consolidated sum of Rs.10 lacs.

9. In response to the plaint, when notices were issued, the proceedings were contested by the husband by filing the written statements and making a denial of the plaint averments pertaining to the cruelty both physical and mental and further denying that the wife was not entitled to have any alimony under Section 25 of the Act because there was failure on her part in discharge of matrimonial obligations.

10. In defence, he submitted that he is a man of religious nature and he never consumed any liquor and the allegation of mis-behaviour in an intoxicated stage is deliberately pleaded just to give a persuasive blend to the pleadings before the Family Court. Thus, the allegations are fictitious and without any basis. He further denied that he had ever asked or forced upon the appellant to bring Rs.50,000/- so as to enable him to go to Kuwait to join his services.

11. In additional plea, he has taken a defence that in Kuwait, he is working as a Salesman in a small shop which deals in various small articles. He earns only a sum of Rs.25,000/-, if computed in the Indian currency. He submitted that the amount thus earned is not sufficient enough to meet his own expenses, besides this, from it, a part of that limited resources, he has to maintain his aged parents and brother and other family members who are dependent upon him. He has submitted that often now and then, when he used to return from Kuwait after availing leave, he used to take care of the appellant and shower all love and affection on her as his wife. Thus, in the additional plea, he prayed for that the allegations as leveled by the wife in the complaint since being false, fictitious and concocted, thus the plaint may be rejected.

12. There were other intricacies and complicated bundle of facts, which at this stage, considering the changed situation are not relevant to be considered in its depth.

13. After exchange of pleadings, the learned Family Court had framed the following issues vide its orders dated 25th April, 2008, 15th July, 2008 and 14th March, 2013 :-

"1. Whether the defendant has done cruel conduct with the plaintiff ? As described in the plaint.

2. Whether the plaintiff is entitled for permanent alimony for herself and her child ?

3. Whether the plaintiff is entitled to procure the articles described in the list attached with the plaint ?

4. If yes, then the plaintiff is entitled to procure which relief ?

5. Whether the defendant is entitled to procure custody and possession of Master Ashutosh whose date of birth is 30-12-2002 ?

6. Whether the defendant has deserted the plaintiff from more than two years period on the date of presenting the petition ? If yes, then effect."

14. The plaintiff has examined herself in support of her statement in oral evidence as P.W.-1 and examined her witnesses Shobhan Singh as P.W.2 and Annu Agrwal as P.W.-3. The appellant presented photo copies of the formats in context of family Visa list 74C to 75C/1 connected 75C/4. The defendant examined himself in support of his statements in oral evidence as DW1; his witnesses Arvind Kumar as D.W.2 and Smt Usha Devii as D.W.3. The defendant filed list 18 to 19C/1 copy of bank draft, 19/2 photo copy of receipt of parcel, 19/3 photo copy of migration certificate of Sumanlata, 20B/1 to 20B/3 hand written letter of plaintiff, 21C2 /1 to 21C2/26 photographs, 21C2/27 to 21C2/45 receipts and bills of treatment and paper no. 20B/1 to 20B/3 given exhibit-1.

15. For the purposes of considering the proceedings under Section 13 of the Act, in the instant case, it would be relevant to consider the findings which have been recorded on issue No.1 pertaining to the cruelty which is the foundation of the proceedings of appellant. The learned Family Court has recorded the findings that there was no cruelty in fact nor the same was established by the appellant. Primarily, the issue with which, we are concerned at this stage, is issue No. 1 only which is to the effect as to whether the cruelty was actually exercised by the husband on the wife as alleged by her so as to entitle the wife to seek divorce from her husband and as to whether the nature of cruelty pleaded will fall to be a cruelty within the purview of cruelty under Section 13 (1) (i-a) of the Act.

16. To prove the respective cases, the parties led their evidence both oral and documentary. The learned Trial Court, while dealing with the issue No. 1 has held that the pleading of the appellant/plaintiff with regard to the husband consuming liquor, misbehaving and physically assaulting the appellant, it is being recorded that the defendant in the written statement has not specifically denied the said facts which in civil proceedings amounts to be an admission which is best evidence. The Court has held that in the cross examination of the witnesses, i.e. DW2 Arvind Kumar and DW3 Usha Devi, there was no such question put by the plaintiff pertaining to establishment of the the alleged action of cruelty pleaded by her in the plaint.

17. To deal with the issue No.1, the Court has assigned the reason that since after the marriage, the husband and wife had gone to Mussoorie, Vashno Devi and Mumbai and treating the same as to be signifying the fact as if that would amount that there was no cruelty exercised by the husband is not a correct reasoning which has been given by the Family Court. It is a normal experience that at the initial stage of marriage, the couple do venture out to various places to increase their understanding for one another but that in itself cannot be taken as a proof that there was no cruelty merely because

they have gone out after marriage. The learned Trial Court while dealing with paper Nos. 20-B/1, 20-B/2 and exhibit-1, which are the letters written by the appellant to the husband, the Court interpreted the contents of those letters as if in those letters the wife has never expressed that the husband used to misbehave after consuming the liquor and, hence, inferred that husband and wife were having cordial relationship would amount to be a misreading of the evidence on record as too preposterous interpretation of a document because the contents of the letters would always depend upon the intention of the inscriber of the letter as to under what circumstances and under what physiological framework those letters were written. Its strict interpretation by reading the same in evidence cannot be culled out and would not be a safe mode to infer that there was no cruelty exercised by the husband. Just drawing an inference from those letters that there was no cruelty exercised would not be an appropriate analogical and judicial inference rendered by the Court.

18. The another reason which has been assigned by the Family Court is that the appellant had gone to Kuwait on 24th January, 2002 and the documents prepared thereof for undertaking the journey to Kuwait since were prepared by the wife herself, has led to an inference that there was no cruelty, is not a logical inference. As preparation of documents for undertaking a foreign journey is yet again a routine process, having no impact regarding commission and non commission of cruelty under Section 13 of the Act.

19. Another view which has been taken by the Family Court while deciding issue No. 1 relating to the cruelty that there was no cruelty exerted by the husband merely because of the fact that the family members of the husband had gone to the Airport to receive her when she had returned from Kuwait in a stage of pregnancy and then drawing a conclusion that this in itself will amount that even the family members were having a cordial relationship and thus there was no cruelty. In fact, the act of cruelty is an act between husband and wife and it cannot for the purpose of Section 13 be derived from the act and action of the family members of either party to the proceedings due to their welcoming gesture. It may not be a very safe mode of determining so, particularly, in a proceeding under Section 13 of the Act where the wife raises an allegation that husband was making an attempt to have unnatural sexual relationship (sodomy). Mere pleading of the said action is sufficient because this is an act which cannot be proved by any evidence and, more particularly, when the wife asserts that the husband was forcing for sodomy. It will amount to be a cruelty, the reason being that no wife will ever in defence plead such an act to determine cruelty. Thus, the view which has been assigned by the learned Family Court holding thereof that there was no cruelty exercised by the husband is contrary to the evidence on record. Since the act of cruelty stands established by act and action tacitly admitted by respondent and in view of the reasoning and evidence which has been brought on record by the wife, this appeal deserves to be allowed on this count itself. Accordingly, all the other issues pertaining to the maintenance for the wife and child pertaining to Section 27 of the Act, return of stridhan has been decided against the appellant.

20. Since having held that as per the pleadings of the wife and evidence led by her, the fact of cruelty stands established because there have been misreading of evidences on part of the Family Court, coupled with the desertion she suffered as he often used to stay at Kuwait without giving due and proper attention to appellant and also because of the fact that he has not specifically denied in his pleading in written statement regarding the act of misbehaving in an intoxicated condition, a decree

of divorce deserves to be granted to the appellant herein, as under given circumstances, continuing of such of a shattered relationship would amount to forcing a party to spend life under compulsion, which could never be the object of the Act.

21. Accordingly, the marriage between appellant and respondent as solemnized on 3rd February, 2001 is hereby dissolved by the decree of divorce. The Suit No. 325 of 2007, Smt. Suman Lata Panwar Vs. Ajay Singh would stand decreed. As far as alimony under Section 25 of the Act is concerned, looking to the relief No. 2 which has been claimed by the appellant in the plaint, she has sought for a alimony of Rs.10 lacs consolidated amount, this Court is of the view that the litigation which has been carried upto the first appellate stage before this Court after 11 years of litigation, the agreed alimony of Rs. 12.5 lacs would be sufficient to meet the intention and objective of Section 25 of the Hindu Marriage Act. The respondent husband agreed to pay the said amount of Rs.12.5 lacs to the appellant wife which is voluntarily accepted by her. The total amount of Rs.12.5 lacs would be allocated in the following manner :-

1. Rs. 7.5 lacs would be disbursed to the wife.
2. Rs. 3 lacs would be invested in the fixed deposit in faovur of the son, till he attains the age of majority.
3. Rs. 2 lacs remaining amount thereof would be utilized by the appellant for taking care of the child.

22. Subject to the above observations, the Frist Appeal stands allowed. The Suit under Section 13 of the Act stands partly decreed so far it relates to Section 13 (1) (i-a) and Section 25 of the Act, however, Section 27 of the Act for return of the stridhan would stand rejected.

(Sharad Kumar Sharma, J.)
15. 11. 2018

(Sudhanshu Dhulia, J.)
15. 11. 2018

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