

*

HIGH COURT OF DELHI AT NEW DELHI

+

MAT. APPL. NO.61 OF 2007

Decided on : 26th February, 2013

RAM AVTAR BAIRWA Appellant
Through: Mr. Akhilesh Singh, Adv.

Versus

SUNITA DEVI @ SANTRA Respondent
Through: Mr. Satish K.Sansi, Adv.

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellant against the judgment dated 03.4.2007 passed by the learned ADJ, Delhi thereby granting a decree of restitution of conjugal rights in favour of the petitioner /respondent and against the appellant.
2. Briefly stated the facts of the case are that the appellant /husband got married to the respondent according to Hindu rites and ceremonies on 30.10.1990 at Rajasthan. After the marriage, the parties lived together and cohabited as husband and wife and were blessed with two daughters. It was alleged by the respondent/wife

in the petition that the appellant/husband had been subjecting her to harassment and mental torture and humiliation on the ground of her having brought less dowry at the time of marriage. It was alleged in the petition that in the month of October, 1999 that is almost after 9 years from the date of the marriage when they had two daughters, the appellant left the petitioner/respondent and her two daughters at Dausa, parental home of the petitioner/respondent and thereafter, he did not come to take them back to the matrimonial home. Since the appellant did not take the petitioner/respondent back to the matrimonial home on one pretext or the other, the patience of the respondent weaned out. Ultimately, the petitioner/respondent on 18.9.2001 approached the appellant but he refused to take the respondent back and resume cohabitation. This necessitated the filing of the petition for restitution of conjugal rights by the petitioner/respondent.

3. The appellant filed the written statement and raised preliminary objections regarding the maintainability of the petition on the ground of suppression of material facts. It was alleged by him that the respondent herself had deserted the matrimonial home

voluntarily without any reasonable cause and despite the appellant having approached the respondent immediately after the desertion, the later refused to join him in the matrimonial home. On the contrary, she is alleged to have lodged a report against the present appellant on 1.6.2001 with the Crime against Women Cell. On 28th June, 2001, the respondent was alleged to have categorically refused to join the appellant at the matrimonial home. On merits, it was alleged that the brother of the respondent had demanded a sum of ₹20,000/- from the appellant and he had threatened that in case the aforesaid amount was not paid, he would spoil the matrimonial life of the appellant. The appellant stated that under compulsion, he paid ₹15,000/- but these demands of the brother of the respondent did not come to an end.

4. After completion of pleadings, the following issues were framed:-

“a) Whether the respondent has withdrawn from the matrimonial society of the petitioner without any sufficient cause? OPP

b) Whether the petition filed by the petitioner is not maintainable in view of the preliminary objections taken by the respondent in the W.S.? OPD

c) Relief.”

5. The petitioner/respondent in support of her case filed an affidavit Ex.PW1/A and reiterated the averments made in the petition.
6. So far as the appellant is concerned, he also tendered his affidavit Ex.RW1/1 and produced certain documents such as document dated 31.12.1999 whereby office of the appellant was approached by the petitioner/respondent for settlement of family dispute, the application of the respondent dated 28.6.2001 before Crime against Women Cell, Nanakpura marked as X-1, photocopy of the order dated 1.11.2001 marked X-2 and fee slips of the children Ex.RW1/2(1-4) to RW1/3(1-3). The appellant was also subjected to extensive cross examination.
7. The trial court after hearing arguments decided the issue no.1 in favour of the respondent/wife holding that the appellant/husband had withdrawn from the conjugal company of the respondent without any reasonable cause and justification and accordingly, a decree for restitution of conjugal rights was passed in favour of the respondent/wife.

8. The appellant feeling dissatisfied has chosen to file the present appeal against the said decree of restitution of conjugal rights.
9. I have heard the learned counsel for the appellant. The main contention of the learned counsel for the appellant is that the trial court has not appreciated evidence correctly and has erroneously granted a decree of restitution of conjugal rights in favour of the respondent/wife. It was contended that as a matter of fact, the respondent/wife had herself deserted the matrimonial home in the absence of the appellant. Further, it was contended that despite her having been approached by the appellant after a week or so from the date of desertion, she refused to join the matrimonial home and consequently, in such a contingency, the only irresistible conclusion which one could have drawn was that it was the respondent/wife herself who had withdrawn from the society of the appellant without any reason and therefore, she could not be permitted to take advantage of her own wrong and the decree of restitution of conjugal rights could not have been granted in her favour.

10. The learned counsel for the respondent has vehemently contested the same.
11. It has been stated by him that the trial court has rightly granted the decree of restitution of conjugal rights in favour of the respondent /wife. It has been further stated that despite the fact that the decree for restitution of conjugal rights has been granted in April, 2007 and there has been no stay against the said judgment and decree till date, the appellant has not resumed the cohabitation and given company to the respondent which clearly shows that the appellant himself was responsible for abandoning the respondent.
12. I have carefully considered the submissions and gone through the record including the evidence. Section 9 of the Hindu Marriage Act, 1955 lays down as under:-

“9. Restitution of conjugal rights.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.”

13. A perusal of the said Section 9 would clearly show that a decree for restitution of conjugal rights can be passed against either of the spouse who has without any reasonable excuse withdrawn from the society of the other and before passing this decree, the Court must be satisfied regarding the truthfulness of the statements made in such petition and also that there is no legal ground why the application should not be granted. Explanation to Section 9 further lays down that where the question arises that as to whether a spouse has withdrawn from the society on account of some reasonable excuse then the burden of proving such an excuse is on the person who has withdrawn from the society.
14. In the instant case, it is not the case of the appellant that he has withdrawn from the society of the respondent, on the contrary, his defence has been that it is the respondent herself who has deserted the matrimonial home and therefore, in the instant case, the explanation does not come into play at all. The only question to be decided is as to “whether the version which has been put forth by the respondent is truthful or not?” or as to “whether the defence which has been taken by the appellant is truthful or not?”; meaning

thereby, out of the two rival stories, which one seems to be more plausible.

15. The respondent has taken a plea that the appellant had left the respondent with her two minor children in the month of October, 1999 at her parents Village at Dausa and thereafter, he never came to take her back. She has also stated on oath that after marriage, she was subjected to humiliation and harassment on account of having brought inadequate dowry. She had also lodged a report with the Crime against Women Cell in this regard. The respondent has been cross examined but, the appellant has not given any suggestion to the respondent that she had herself deserted the matrimonial home. She has been only asked that she left the matrimonial home on a specific date i.e. 1.6.2001 while as in the written statement this date has not been mentioned. What is the significance of this date, I am unable to fathom? Moreover, during the course of pendency of the petition, he was asked whether he would like to take the respondent back to the matrimonial home, to which he had categorically refused. This clearly shows that if the respondent would have deserted the matrimonial home and the

appellant was keen to take her back, he would have grabbed this opportunity to take the respondent back to home. On the contrary, it has come on record that during the pendency of the petition, a resolution was brought about between the parties because of which both the parties agreed to join each other on 22.8.2006 and they started living together at matrimonial home but the appellant left the said home and started residing separately in a rented accommodation at J-61, Saurabh Vihar. The appellant after having given the company to the respondent abandoned the respondent afresh which clearly shows that the appellant himself was not keen to continue the relationship with the respondent.

16. Moreover, the appellant in his cross examination has stated that the brother of the respondent approached him and demanded a sum of ₹20,000/- failing which he threatened to spoil the matrimonial life of the appellant. It is very unlikely that a brother would like to spoil the matrimonial life of his sister for such a petty amount. Therefore, if one sees the evidence by way of an affidavit of the respondent and the cross examination to which she has withstood, there is certain amount of consistency and truthfulness ex facie

appearing on the face of it, in comparison to the flip-flop in the defence of the appellant and also in his cross examination.

17. The trial court has commented on this flip-flop and analysed the statement of the appellant in extenso. Section 9, essentially casts a duty on the trial court to see the truthfulness of the statements made in the petition which exercise has been done by it. Therefore, I feel that the trial court was absolutely correct in passing a decree of restitution of conjugal rights in favour of the respondent and against the appellant.
18. Admittedly, the respondent and the appellant have been blessed with two daughters. It seems since the respondent belonged to the State of Rajasthan and the respondent was being harassed to have brought inadequate dowry, the birth of two female children must have further aggravated the situation. Some people with feudalistic state of mind are obsessed with the male child. This could have acted as a precipitative factor to leave the respondent at her parents' home in Dausa. Therefore, the trial court was perfectly right in passing a decree of restitution of conjugal rights in favour

of the respondent and against the appellant. I accordingly, dismiss the appeal.

19. I have been informed that the appellant has also filed a petition for grant of divorce which also takes the cat out of the bag that it is the appellant himself who is interested in breaking the relationship with the respondent by obtaining a divorce.
20. For the reasons mentioned above, I feel that there is no merit in the appeal, hence the same is dismissed.

V.K. SHALI, J.

FEBRUARY 26, 2013
RN