

Court No. - 39

Case :- FIRST APPEAL No. - 519 of 2019

Appellant :- Anant Kumar

Respondent :- Santoshi Devi

Counsel for Appellant :- Shri Prakash Dwivedi

Counsel for Respondent :- Anil Kumar Mishra

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Shri Prakash Dwivedi, learned counsel for the appellant and Sri Anil Kumar Mishra, learned counsel for respondent.

2. Present appeal has been filed under Section 19 of the Family Courts, 1984 Act against the order dated 12.04.2019 passed by learned Principal Judge, Family Court, Sonbhadra in Original Suit No. 274 of 2018 (Anant Kumar Vs. Santoshi Devi). By that ex-parte order, the learned court below has dismissed the divorce case proceedings instituted by the present appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act')

3. Having heard learned counsel for the parties and having perused the record, it is undisputed between the parties that earlier the appellant had instituted proceeding under Section 9 of the Act seeking restitution of the conjugal rights. That case proceeding no. 13 of 2016 was decreed in favour of the appellant on 11.04.2018. Perusal of the plaint in Case No. 274 of 2018 reveals that the same was instituted in July, 2018 itself i.e. within four months of grant of decree of restitution of conjugal rights.

4. Section 13(1)A of the Act allows for presentation of a petition for dissolution of a marriage if there has been no resumption of

cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights. Plainly, that is an additional ground for relief of divorce made available to a person involved in a estranged relationship.

5. In view of the facts noted above, that ground has not become available to the appellant for reason of the divorce petition having been filed within one year from 11.4.2018. In fact, that petition was filed within four months from grant of decree for restitution of conjugal rights.

6. As to the other grounds that may have been available to the appellant under Section 13(1) of the Act, no case of cruelty or desertion or adultery etc. was made out.

7. The learned court below has considered the evidence adduced by the appellant and found that the same did not make out any ground for dissolution of a hindu marriage in terms of the provisions of the Act.

8. We find no error in the approach of the learned court below. Unless clear cut grounds, as illuminated under Section 13 the Act are made out, it may not be open to a party to seek dissolution of his marriage.

9. Also, we find no case of deliverable break down of the marriage was made out.

10. Appeal lacks merits and is accordingly dismissed.

Order Date :- 17.11.2023

Abhishek Singh

(Shiv Shanker Prasad,J.) (Saumitra Dayal Singh,J.)