

Court No. - 39

Case :- FIRST APPEAL No. - 859 of 2022

Appellant :- Abhinav Yadav

Respondent :- Garima Yadav

Counsel for Appellant :- Avijit Saxena, Awadhesh Kumar Saxena

Counsel for Respondent :- Pankaj Kumar Gupta

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Avijit Saxena, learned counsel for the appellant and Sri Amresh Tripathi, Advocate holding brief of Sri Pankaj Kumar Gupta, learned counsel appearing for the respondent.

2. Present appeal has been filed under Section 19 of Family Courts Act, 1984 arising from the judgment and order dated 22.08.2022 passed by the Principal Judge, Family Court, Etawah in Case No. 358 of 2020 (Abinav Yadav Vs. Garima Yadav). By that order the learned Court below has dismissed divorce case proceeding instituted by the present appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act').

3. Upon hearing the counsel for the parties, it is seen that the learned Court below has recorded one finding in favour of the appellant namely that there was cruelty practiced by the respondent. At the same time, instead of granting decree of divorce, the learned Court below has also taken note of the other proven facts and circumstances. Thus, the learned Court below has noted that the marriage between the parties was recent i.e. less than 7 years. They had cohabited for less than 18 months. There was a child born out of the marriage, who was about one year old.

4. Considering the above circumstances instead of granting the decree of divorce, the learned Court below chose to grant the alternative relief of judicial separation under Section 13A of the Act.

5. While Sri Saxena would submit that there were other acts of cruelty practiced by the respondent by instituting false and frivolous criminal cases against the appellant and his family members and in any case in view of the proven cruelty, the learned Court below ought to have granted the decree of divorce as there survived no hope of reconciliation, we are not inclined to accept the submission so advanced keeping in mind the approach adopted by the learned Court below.

6. In the first place, by way of principle it cannot be denied that the statute incorporates the principle allowing the Family Courts to grant alternative relief of judicial separation in cases where relief of divorce may have been sought.

7. The guiding principle to be applied by the Family Courts in considering the grant of such alternative relief is also provided by the statute being were the Court "considers it just so to do having regard to the circumstances of the cases".

8. Thus, wide discretion has been vested to the Family Court to grant such alternative relief on just consideration arising from the circumstances of each case.

9. In the present case, just consideration has arisen with the learned Court below in the better interest of the parties and especially the innocent child born to them. Also, as to the circumstances the learned Court below has further taken note of the facts that the

parties were still young and they had cohabited for more than one and half year. On such submission advanced by Sri Saxena, we find that though the plea of false and frivolous criminal cases lodged against the appellant may have been raised in the divorce petition that fact may not have been proven before the learned Court below. Thus, we are unable to accept the submission advanced by Sri Saxena as to cruelty arising from false and frivolous case lodged by the respondent, in absence of evidence led.

10. Seen in that light, we find no error on the part of the learned Court below in granting the alternative relief of judicial separation.

11. As to the present status, Sri Saxena has made a statement that there has been no resumption of cohabitation between the parties for more than a year, since the decree of judicial separation was moved. At present, it also appears that the respondent did not file any appeal against the impugned judgment and order.

12. Thus the decree of judicial separation has remained in force. The statutory period of one year has also expired. Therefore, leaving it open to the appellant to apply for divorce under Section 13(1A)(i) of the Act which proceedings when instituted may be dealt with and decided expeditiously, on its own merit, the present appeal stands **disposed of**.

Order Date :- 3.11.2023
SK Srivastava

(Shiv Shanker Prasad,J.) . . . (S.D. Singh,J.)