

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1597 OF 2008

ASHOK KUMAR SINHA

.....APPELLAN

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VERSUS

JAYA SINHA

.....RESPONDEN

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O R D E R

The appellant is a husband who has sought divorce from the respondent-wife on the ground of cruelty. The contention raised at the hands of the appellant-husband was firstly, that the respondent-wife had willfully refused to have sexual cohabitation with him, and secondly, that she had been abusing, ill-treating and quarreling with the appellant, as well as, with his parents and brothers.

The Family Court which adjudicated upon the claim raised by the appellant declined to grant the appellant a decree of divorce. The legal position remained unaltered even at the stage of the High Court which, by the impugned order dated 12.12.2003, rejected the prayer of the appellant for divorce.

During the course of consideration before this Court, in the first instance, we examined the submissions advanced by the
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Satish Kumar Yadav
Date: 2014.06.03

learned counsel for the appellant, on the alleged willful refusal
14:24:29 IST
Reason:

by the respondent-wife, of sexual cohabitation with him.

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as the instant aspect of the matter is concerned, the High Court

relying on the submissions of the respondent-wife recorded the following observations in the impugned order:

".....The respondent-wife in her evidence has deposed that it is not a fact that she did not intend to lead conjugal life with her appellant-husband and she had refused sexual cohabitation with him. She has further deposed that she is still willing and ready to lead conjugal life with her appellant-husband. She has also denied the allegation in her evidence on oath to have asked her appellant-husband to have separate residence. The sexual cohabitation between the spouses is the most important aspect of the conjugal life and it is within their domain. Therefore, the case of the appellant in respect thereof has no leg to stand.....

.....The respondent-wife in her evidence has specifically stated that she has never asked her appellant-husband to have his separate residence. In para-15 of her evidence she has specifically deposed that her appellant-husband has never told him regarding his salary and the mode of its expenditure even on her query and it is not a fact that there had been differences between her and his appellant-husband in respect of his salary during her stay in her matrimonial home and there was also no quarrel. She has further deposed that there was a happy conjugal relationship between them during first fifteen days of their marriage and thereafter demands of a car and cash was made and for the fulfillment of the said demand, she was assaulted and she was also denied proper food. She has also deposed that the said demand could not be fulfilled by her father due to his inability and inspite of persuasion by her relatives there was no change in respect of the said demand and she returned to her parent's house in the company of her father with the consent of her appellant-husband. She has further deposed that when she again came to her matrimonial home in the month of May, 1988 she had to face the same cruelty perpetrated on her and on getting information in respect thereof her father came and she returned to her parent's house. She has also deposed that she was ousted from her matrimonial home on 14.7.1980 and on that occasion also she had gone to her parent's house with their tacit consent. In para-25 of her evidence she has

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deposed that she was assaulted in presence of her appellant-husband who was a passive spectator in respect thereof....."

Since the above factual position is not disputed and the statement of the respondent has not been placed on the record of this case, we have no doubt about the authenticity of the factual position expressed by the High Court in the impugned order. In view of the above factual position, it is not possible for us to

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accept, that the respondent-wife had willfully refused the appellant of sexual cohabitation.

Insofar as the second contention is concerned, namely, that the respondent-wife had abused, ill-treated and quarreled with the appellant as well as his parents and brothers, the High Court while dealing with the instant issue in paragraph 10 of the impugned order, categorically recorded a finding, that there was no pleading in the plaint filed by the appellant seeking divorce on the basis of the above factual position. In the absence of pleading, it was wholly impermissible for the Courts below to record any finding on the instant aspect of the matter in favour of the appellant. During the course of hearing, before us, learned counsel for the appellant could not invite our attention to the pleadings filed by the appellant to dispute the aforesaid factual conclusion. Accordingly, keeping in view the facts and circumstances of the instant case, we are constrained to concur with the above view recorded by the High Court.

Finding himself in a predicament, learned counsel then vehemently contended, that this Court, keeping in view that the
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parties had lived apart for the last about 25 years, should dissolve their marriage on the ground of irretrievable breakdown of marriage. It was suggested that it was open to this Court to allow the above relief in exercise of this Court's jurisdiction under Article 142 of the Constitution of India.

Having given our thoughtful consideration to the contention advanced by the learned counsel, as has been noticed in the foregoing paragraph, we are of the view, that the above relief cannot be granted to the appellant in the background of the recent judgment rendered by this Court in Darshan Gupta vs. Radhika Gupta (Civil Appeal Nos.6332-6333 of 2009, decided on 01.07.2013, cited in (2013) 9 SCC 1).

For the reasons recorded hereinabove, we find no merit in the appeal and the same is accordingly dismissed.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(C. NAGAPPAN)

NEW DELHI;
MAY 29, 2014.

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ITEM NO.108
XVII

COURT NO.3

SECTION

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 1597 OF 2008

ASHOK KUMAR SINHA
Appellant (s)

VERSUS

JAYA SINHA
Respondent(s)

(With appln(s) for directions and prayer for interim
relief and office report)

Date: 29/05/2014 This Appeal was called on for hearing
today.

CORAM :
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s)
Mr. Ugra Shankar Prasad, Adv.

For Respondent(s)

UPON hearing counsel the Court made the
following

O R D E R

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(Satish K. Yadav)
(Renuka Sadana)
Court Master Court
Master