

CASE NO.:
Appeal (civil) 3414 of 2003

PETITIONER:
Perminder Charan Singh

RESPONDENT:
Harjit Kaur

DATE OF JUDGMENT: 14/04/2003

BENCH:
K.G. BALAKRISHNAN & P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

(Arising out of SLP(Civil) No. 493/2002)

With

Civil Appeal No. _____ of 2003
(Arising out of SLP(Civil) Nos. 501-502/2002)

K.G. BALAKRISHNAN, J.

Leave granted.

These two appeals arise out of the Judgments passed by the Division Bench of the Punjab & Haryana High Court at Chandigarh. The appellant herein filed an application under Section 12 of the Hindu Marriage Act for annulment of his marriage with the respondent, Harjit Kaur. This application was rejected by the Trial Court and the order was confirmed by the learned Single Judge of the High Court. Aggrieved by the same, the appellant filed a Letters Patent Appeal before the Division Bench and the same was dismissed. Civil Appeal arising out of Special Leave Petition (Civil) No. 493 of 2002 is filed against that Judgment.

The appellant had also filed an application under Section 13 of the Hindu Marriage Act for divorce on two grounds, viz., that the respondent deserted him and that she had committed cruelty against him. The Trial Court held that the respondent was responsible for causing cruelty to the appellant and hence the appellant was held entitled to get divorce; however, the plea of desertion was rejected. Aggrieved by the same, both the appellant and the respondent filed separate appeals and by a common Judgment, the learned Single Judge allowed the appeal preferred by the respondent and dismissed the appeal preferred by the appellant herein. Thus, the learned Single Judge held that the appellant failed to prove that there was either desertion or cruelty on the part of the respondent. Aggrieved by the same, the appellant preferred an LPA before the Division Bench and by Judgment dated 19th July, 2001, the High Court dismissed the LPA filed by the appellant. Aggrieved by the same, Civil Appeals arising out of Special Leave Petition (Civil) Nos. 501-502 of 2002 have been filed.

We heard the appellant who appeared in person and also the learned Counsel for the respondent. We explored the possibility of settlement and granted time to both the sides to have a settlement between the parties. As the appellant was working as a Doctor in Germany, we granted short adjournment so that the matter may be settled amicably, but the parties could not come to any settlement. The appellant submitted that both the Judgments are erroneous and, therefore, the appeals ought to be allowed.

We shall first take up the matter relating to annulment of marriage sought for by the appellant. The marriage between the appellant and the respondent

took place on 28.1.1990 and the same was registered on 30.1.1990. According to the appellant, after the marriage, the appellant went to Germany in February 1990 where he had been working as a Doctor since past several years. The respondent joined the appellant in Germany in March 1990. She spent some months there and came back to India in June 1990 and returned to Germany in September 1990. According to the appellant, about 3 to 4 months thereafter, the respondent showed her true colours and tried to pick up quarrel with the appellant. It was alleged that the respondent wanted to grab money from the appellant. In July 1991, the mother of the respondent had also come to Germany and started staying with the appellant. A son was born to the couple on 14.7.1991. The appellant alleged that in February 1992, respondent along with her child left Germany without the knowledge and consent of the appellant. The appellant came to know that she had been staying with her parents in India and his efforts to bring her back failed. By October 1992, the appellant came to know that the respondent at the time of her marriage was a divorcee, and she had earlier married one Sanjit Singh of Meerut. The appellant made inquiries through his relatives and got confirmation of this fact. According to the appellant, the respondent had suppressed this fact and the appellant was under the impression that she was an unmarried woman and, therefore, the respondent and her family members committed fraud and misrepresentation and on these grounds, the appellant sought annulment of the marriage.

The respondent filed a counter-statement and denied the allegations made by the appellant. The respondent alleged that the marriage between the appellant and the respondent was initiated pursuant to an advertisement made by the appellant in the matrimonial columns of "The Hindustan Times" newspaper dated 14.5.1989. The respondent's father wrote a letter on 14.5.1989 giving the bio-data of the respondent and mentioned her status as 'legally divorced'. It was also alleged by the respondent that the mother of the appellant replied on 27.5.1989 and in that letter, the appellant's mother had written that the appellant was also legally divorced. Respondent alleged that the negotiations between the parties continued for about 8 months and the appellant and his family members made inquiries about the marital status of the respondent and that the appellant was informed of all details and he consented to the marriage out of his own free will and without any force, fraud and coercion. The respondent also alleged that the appellant in his advertisement had not disclosed the fact that he was a legally divorced person.

The Trial Court after elaborately considering the matter held that there was no fraud or misrepresentation on the part of respondent. This finding was approved by the learned Single Judge and the decision was confirmed by the Division Bench. One document on which the appellant relied was Exh. PW 6/1 application for registration of marriage and the other was Exh. PW 6/2, an affidavit of respondent filed for the said purpose. In these two documents, the status of the respondent was shown as 'unmarried' whereas the status of the appellant was shown as a divorcee. Based on this, it was contended that the fact of her previous marriage was suppressed by the respondent and her parents. The respondent alleged that these documents were prepared by the appellant herein and the respondent was only made to sign these documents. This fact was admitted by the appellant when he was examined as PW-1. Moreover, this by itself does not prove that either the respondent or her parents had made any fraudulent misstatement.

There are documents to show that the appellant was aware of the marital status of the respondent at the time of marriage. Exh. PW 3/R-3 was the letter written by the mother of the appellant. In that letter, she had made reference to the letter dated 14.5.1989 alleged to have been sent by Surinder Singh, the father of the respondent, and mentioned that the appellant was 'also' legally divorced person. The Trial Judge and the learned Single Judge held that the word 'also' used in the letter indicates that the appellant's mother was aware of the fact that the respondent was a divorcee. In our view, the inference drawn by the trial Judge as well as the learned Single Judge was correct. It is also pertinent to note that the appellant's mother, though made a reference about the letter written by the respondent's father on 14.5.1989, the said letter was not produced by the appellant and it was submitted that the letter was not traceable.

Another important fact also to be noted is that in July 1989, i.e., much prior to the marriage between the appellant and the respondent, the father of the respondent had given a matrimonial advertisement inviting a match for the respondent. In that advertisement, the status of the respondent had been shown as "legally divorced". This fact would clearly indicate that the respondent's parents were not suppressing the fact that she had been previously married to another person. There is no satisfactory evidence to prove that the respondent and her parents made any suppression of facts or committed any fraud or misrepresentation in bringing about the marriage between the appellant and the respondent. The plea of the appellant that marriage between himself and the respondent was liable to be annulled on the above ground has been rightly rejected by the courts. We see no merit in the appeal arising out of S.L.P. (Civil) No. 493 of 2002.

Coming to the question of divorce sought for by the appellant on the ground of cruelty and desertion, the Trial Judge considered the question and held that there was cruelty on the part of the respondent. The appellant alleged various facts to support his claim that the respondent was behaving cruelly towards him. He alleged that the respondent was greedy for money and tried all means to get money from him. The appellant alleged that the respondent was not doing any household work and used to hurl abusive words against him and even resorted to physical violence. The appellant alleged that the respondent insulted the appellant even in the presence of his friends and acquaintances. The appellant alleged that after the respondent gave birth to a child, she became more violent and used to slip off the house without appellant's knowledge and would come late at home. All these allegations were not accepted by the Trial Court and based on two or three instances, it was held that the respondent behaved cruelly towards the appellant. It was found by the Trial Court that the respondent went to the clinic where the appellant was working and shouted slogans alleging that the appellant was a man of loose character. The Trial Court observed that there was no cross-examination on this point and this act of the respondent was not certainly an act of dutiful, obedient and tolerant wife and, secondly, though the appellant requested the respondent to join as a party to a document whereby the appellant wanted to purchase a house, for which the respondent had not contributed anything, she refused to be a party to the document and left Germany in February, 1993. It was held by the Trial Court that the father of the respondent had written Exh. P4 and P5 letters to the superior officers of Col. R.I. Singh, brother-in-law of the appellant. These letters contained defamatory statements about the said R.I. Singh. On these premises, the Trial Court held that the respondent was not a dutiful and obedient wife. Unfortunately, the Court did not enter a specific finding that there was cruelty on the part of respondent. Despite the absence of this finding, the Trial Court granted divorce to the appellant and the same has rightly been set aside by the learned Single Judge.

The learned Single Judge elaborately considered the matter and held that there was no cruelty on the part of the respondent. It is important to note that the appellant did not lead any evidence before the Trial Court. Many of the incidents alleged by the appellant happened in Germany and there was no direct evidence to support these facts. Thus, there was practically no evidence to support the grounds alleged by the appellant for divorce. There is no direct evidence of fact that the respondent went to the clinic of the appellant and shouted slogans against the appellant. In fact, the appellant did not enter the witness box. It was only the mother of the appellant who had no personal knowledge that gave evidence. The learned Single Judge has also rightly found that the refusal of the respondent not to sign the document with regard to the purchase of the property by the appellant is not an act from which any cruelty could be inferred. The learned Single Judge found that the various allegations made in the petitions were not satisfactorily proved and the conduct of the appellant was not certainly above board. The evidence disclosed that in February 1993, the respondent had to go to an orphanage along with her child and that indicated that the respondent was driven out of the house of the appellant. As regards the question of desertion also, the Trial Court as well as the learned Single Judge found that the appellant miserably failed to prove this ground. We do not find any reason to interfere with the concurrent finding of this fact.

The two courts have rightly rejected the petition filed by the appellant for divorce. Therefore, the civil appeals arising out of Special Leave Petition Nos. 501-502 of 2002, filed against the Judgment of the High Court in LPA No. 1480-1482/2001 are also devoid of merits. All the appeals are dismissed, however, without costs.

JUDIS