

Delhi High Court

Veena Handa vs Avinash Handa on 2 August, 1983

Equivalent citations: AIR 1984 Delhi 445, 1984 RLR 410

Author: M Jain

Bench: M Jain

JUDGMENT M.L. Jain, J.

(1) This order will dispose of Fao (M) 240/82 and Fao 275/82.

(2) The parties were married on 5.12.77. A daughter was born to them on 23.1.79. Wife filed a petition for restitution of conjugal rights that she had been ill treated and turned out on 15.4.79. The husband opposed but his defense was struck out on 1.8.80. She applied for permanent alimony on 4.8.80. A decree of restitution of conjugal rights in her favor was granted on 4.8.80. The husband filed a petition for divorce on 25.8.81 u/s 23(1A)(ii) of the Hindu Marriage Act, 1955 [the Act], on the ground that there has been no restitution of conjugal rights for a period of one year and over. That was opposed.

(3) On 13.8.82 the learned District Judge directed the husband to pay permanent alimony at Rs. 350.00 p.m. to the wife and Rs. 150.00 p.m. to the daughter. The husband's appeal against that order is Fao 275/82. It was filed on 22.9.82.

(4) On 13.8.82, by a separate order, he granted a decree of divorce in favor of the husband. The wife's appeal is Fao (M) 246/82. It was filed on 13.9.82. The husband married again on 27.11.82.

(5) I will first take up the husband's appeal against maintenance. His case was that he had been running a business in the name of Avinash Handa & Co. in parental premises A-731, Prem Nagar. Since he was suffering losses he sold it to his brother Subhash for Rs. 2000.00 on 28.5.80, but the deed of transfer shows Rs. 5500.00. He joined the service with M/s. Naveen Industries, a firm owned by his brother Subhash at Rs. 300.00 p.m. They both were living at A-732, Prem Nagar. But he has deposed against his written statement that Brij Mohan Sethi was the sole proprietor of that firm. Naveen Industries manufactures cash boxes and safes. He produced Brij Mohan Sethi (RW 7) who deposed that he was the owner of Naveen Industries and he had employed Avinash Handa on Rs. 300.00 p.m. raised now to Rs. 350.00 p.m. His job is to sell and purchase seeds, but he does not say which seeds. He is yet maintaining a telephone which he got in the category of special workers. Now, if we believe him, then apparently he could not maintain a phone in his meagre salary. It shows that he earns much more. He had a scooter which he sold to his brother-in-law for Rs. 5000.00. He had a refrigerator which he sold to his sister for Rs. 1500.00. All this evidence shows that he had sold out everything to show that he no more has any disposable income. He denied that he had a television set, tape-recorder, etc. The wife alleged that he had an insurance of Rs. 50,000.00 which was not denied by the husband.

(6) The family has extensive properties in Paharganj, Now Rajinder Nagar and Ashok Vihar. The wife alleged that her husband had a share in all of them, but the husband denied it all. The learned trial judge doubted the husband and remarked that there was truth in the allegations of the wife.

Considering all the evidence, he fixed the income of the husband at Rs. 2000.00 p.m. Upon a survey of the evidence, one is struck with the amount of lies which the husband has spoken. In order to defeat the claim of the wife for maintenance of herself & the child, he has taken care to divest himself of all his possession in favor his close relatives. His whole case stands demolished because he has recently contracted a second marriage which he would not have done if he were just earning what he says he does. All his evidence is phony and the amount of income fixed by the Judge is rather on the low side and extremely moderate. I, therefore, see no reason to dislodge the findings of the learned Additional District judge. I find no force in appeal No. 275/82 and dismiss the same with costs.

(7) In the other appeal of the wife, she must succeed. Her case is two-fold. Firstly, she has lived with her husband for a night On 24.6.1981 and had discharged her spousal obligation. This had come about because she had two meetings with him earlier in cinema houses and restaurants. She was taken to the husband's house by his sister upon the authority of her family. But the learned Additional District judge disbelieved her. She had alleged that she was sent back on the assurance that the whole thing will end amicably when they will meet in the court on 3.7.81. But in her deposition she said that the husband, turned her out as he had married some other girl. This was a material departure. She had not pleaded any of these versions in her reply. He also noticed discrepancies in the statement of her witnesses. He also expected her to have made an application in the court in this regard but she failed to do so. I have considered this matter and I find that the case of the wife should not have been rejected. The reasons given by the learned judge have failed to convince me. The conduct of the husband displayed in the maintenance application leads me to feel that he is capable of cheating the girl by taking her home and then send her away in order to defeat her claim for maintenance. It is incorrect to say that the wife concocted this false story in order to create a break in the statutory period so that the husband may not be able to ask for divorce. As a matter of fact, what seems true is that he having got disinterested in her, made her quit. If the girl wanted a divorce she would have straight-way, asked for it and not for restitution. I am therefore, inclined to hold that restitution had taken place within one year.

(8) Secondly, that she had pleaded that the husband was taking advantage of his own wrong. By ill and cruel treatment he turned her out of the home with a child in the wide world, opposed their maintenance on the basis of naked lies and silly devices to show that he had become indigent and then to ask for severance of the nuptial ties. The conduct of the husband clearly disentitles him to a relief of his choice. No sooner he got the decree, he hastened to marry again though the appeal of the wife was pending. It was in clear violation of Section 15 of the Act. It was a conduct of serious nature and should be taken note of. The learned trial judge thought that under the amended provisions, the husband can ask for a divorce, where there is no restitution for over a year. The learned judge failed to appreciate the correct position of law. The question in such a case is where the wife has obtained a decree for restitution of conjugal rights or judicial separation and the husband asks for divorce because there has been no restitution or cohabitation for over one year, can he be refuse divorce u/s 23(1)(a) on the ground that he cannot be permitted to take advantage of his own wrong or disability ? He cannot be refused was the answer given in *Ramkali v. Gopal Dass*, 2nd (1971) 1 Delhi and *Gajna Davi v. Purshotam Giri*, ; *Smt. Bimla Devi v. Singh Raj*, where the wrong alleged was committed before the passing of the decree of restitution or separation. In order to attract section 23(1)(a) the

advantage of wrong or disability should be an advantage of a wrong or disability foundation of which was laid after the decree for restitution of conjugal rights was passed. This was because the law had moved from considerations of fault to considerations of break down. But the Supreme Court, in *Dharmendra Kumar v. Usha Kumar* Air 1977 Sc 2210, has observed that dissolution can be refused to a spouse u/s 23(1)(a) where the wrong complained of is more than a disinclination to agree to an offer of reunion. It must be a misconduct, grave or serious enough to justify a denial of relief to which the petitioner is otherwise entitled to. And an adulterous conduct continued subsequent to the passing of the decree was held to be a wrong justifying refusal of divorce to a husband in *Soundarammal v. Sundara Mahalinga Nadar*. In *Bai Mani v. Jayantilal Dahyabhai*, it was held that such a continuous conduct was not a new fact or circumstance amounting to a wrong which will stand as an obstacle in the way of the husband. It seems to me that a proper course to adopt is to follow the rule laid down by the Supreme Court. In this case an appeal against the decree of divorce was filed on 13.8.82, and yet the husband in violation of section 15 of the Act contracted a new marriage. Though this is a serious misconduct not only subsequent to the passing of the decree of restitution of conjugal rights but also after the decree of divorce was granted and before the matter was finally adjudicated in appeal. Even earlier, as stated above, I have found him guilty of cheating the girl by calling her to his house for a night and then by duping her to quit, and by opposing her application for maintenance on total falsehood. In view of all what I have found on facts and on law, I am inclined to hold that the husband by his wrongful misconduct has disabled himself to ask for a decree of divorce, even if the letter of law allowed him such a course. Wife's appeal allowed.