Supreme Court of India
Smt. Saroj Rani vs Sudarshan Kumar Chadha on 8 August, 1984
Equivalent citations: 1984 AIR 1562, 1985 SCR (1) 303
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
SMT. SAROJ RANI

Vs.

RESPONDENT:
SUDARSHAN KUMAR CHADHA

DATE OF JUDGMENT08/08/1984

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
FAZALALI, SYED MURTAZA

CITATION:
1984 AIR 1562 1985 SCR (1) 303
1984 SCC (4) 90 1984 SCALE (2)118

ACT:
Constitution of India 1950, Articles 13,14 and 21.
Remedy of resitution of conjugal rights-Section 9, Hindu Marriage Act 1955-Whether violates human dignity, right to privacy and personal liberty- And whether valid and constitutional.
Hindu Marriage Act 1955, Sections 9, 13 and 23(1) (a).
Petition by wife for restitution of conjugal rights-Husband consenting to the passing of a decree-Decree passed-Husband after one year filing petition under section 13 for divorce-Husband whether entitled to a decree of divorce.
Code of Civil Procedure 1908, Order 21, Rule 32-Decree for restitution of conjugal rights-Execution of.

HEADNOTE:
The wife-appellant filed a suit against the husband-respondent under Section 9 of the Hindu Marriage Act 1955, for restitution of conjugal rights. Though the respondent contested the petition contending that he had neither turned the appellant out from his house nor withdrawn from her society later as he made a statement in the Court that the application under Section 9 be granted; a consent decree was passed by the Sub-Judge for the restitution of conjugal rights between the parties.

After a lapse of a year, the respondent-husband filed a petition under Section 13 of the Act against the appellant for divorce on the ground that though one year had lapsed from the date of passing the decree for restitution of conjugal rights no actual co-habitation had taken place between the parties. The appellant filed her reply contending that she was taken to the house of the husband by her parents one month after the decree and that the husband kept her in the house for two days and then she was again turned out. It was further alleged that an application under Section 28A filed in the Subordinate Court was pending.
304

The District Judge after considering the evidence of the civil and criminal proceedings pending between the parties, came to the conclusion that there had been no resumption of cohabitation between the parties and that in view of the provisions of Section 23 and in view of the fact that the previous decree was a consent decree and that at the time of the passing of the said decree, as there was no provision like Section 13B i.e. divorce by mutual consent'; held that as the decree for restitution of conjugal rights was passed by the consent of the parties, the husband was not entitled to a decree for divorce.

The respondent filed an appeal. A Single Judge of the High Court following the decision of this Court in Dharmendra Kumar v. Usha Kumari [1978] 1 SCR 315, held that it could not be said that the husband was taking advantage of his 'wrongs', but however expressed the view that the decree for restitution of conjugal rights could not be passed with the consent of the parties, and therefore being a collusive one disentitled the husband to a decree for divorce, and referred the matter to the Chief Justice for constitution of a Division Bench for consideration of the question.

The Division Bench held following Joginder Singh v. Smt. Pushpa, AIR 1969 Punjab and Haryana page 397 that a consent decree could not be termed to be a collusive, decree so as to disentitle the petitioner to a decree for restitution of conjugal rights, and that in view of the language of Section 23 if the Court had tried to make conciliation between the parties and conciliation had been ordered, the husband was not disentitled to get a decree. The appeal was allowed, and the husband granted a decree of divorce.

In the appeal to this Court it was contended on behalf of the wife appellant that : (a) in view of the expression 'wrong' in section 23(1) (a) of the Act, the husband was disentitled to get a decree for divorce, and (b) Section 9 of the Act was arbitrary and void as offending Article 14 of the Constitution.

Dismissing the Appeal,

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HELD: (1) In India conjugal rights i.e. right of the

husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself. There are sufficient safeguards in Section 9 of the Hindu Marriage Act to prevent it from being a tyranny. [314 D-E]
305

2. Section 9 is only a codification of pre-existing law. Rule 32 of Order 21 of the Code of Civil Procedure deals with decree for specific performance for restitution of conjugal rights or for an injunction. [314 H]

3. Section 9 of the Act is not violative of Article 14 or Article 21 of the Constitution if the purpose of the decree for restitution of conjugal rights in the said Act is understood in its proper perspective and if the method of execution in cases of disobedience is kept in view. [315 G]

T. Sareetha v. Venkata Subbaiah, A.I.R. 1983 Andhra Pradesh page 356, over-ruled.

Smt. Harvinder kaur v. Harmander Singh Choudhry, A.I.R. 1984 Delhi, page 66, approved.

4. It is significant that unlike a decree of specific performance of contract; a decree for restitution of conjugal rights, where the disobedience to such a decree is willful i.e. is deliberate, might be enforced by attachment of property. Where the disobedience follows as a result of a willful conduct i.e. where conditions are there for a wife or a husband to obey the decree for restitution of conjugal rights but disobeys the same in spite of such conditions, then only the properties have to be attached, is provided for. This is so to enable the Court in appropriate cases when the Court has decreed restitution for conjugal rights to offer inducement for the husband or wife to live together and to settle up the matter amicably. It serves a social purpose, as an aid to the prevention of break-up of marriage.[315 C-F]

5. (i) Even after the final decree of divorce the husband would continue to pay maintenance to the wife until she remarries and would maintain the one living daughter of the marriage. Separate maintenance should be paid for the wife and the living daughter. Wife would be entitled to such maintenance only until she remarries and the daughter to her maintenance until she is married. [316 C; E]

(ii) Until altered by appropriate order on application or proper materials, such maintenance should be Rs. 200 per month for the wife, and Rs. 300 per month for the daughter. [316 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 187 of 1983.

From the Judgment and Order dated the 17th August, 1982 of the Punjab and Haryana High Court in First Appeal From Order No. 199-M of 1979.

R. K. Garg, Mrs. Meera Aggarwal and R. C. Misra for the appellant.

E.C. Agarwala, Mrs. H. Wahi and Rajiv Sharma for the respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. The parties herein were married at Jullundur City according to Hindu Vedic rites on or about 24th January, 1975. The first daughter of the marriage Menka was born on 4th January, 1976. On 28th February, 1977 second daughter Guddi was born. It is alleged that 16th May, 1977 was the last day of cohabitation by the parties. It is further alleged that on 16th May, 1977, the respondent- husband turned the appellant out of his house and withdrew himself from her society. The second daughter unfortunately expired in the house of the respondent/father on 6th August, 1977. On 17th October, 1977, the wife-appellant filed a suit against the husband/respondent herein under Section 9 of the Hindu Marriage Act, 1955 hereinafter referred to as the said Act for restitution of conjugal rights.

In view of the argument now sought to be advanced, it is necessary to refer to the said petition. In the said petition, the wife had set out the history of the marriage as hereinbefore briefly mentioned and alleged several maltreatments both by the husband as well as by her in-laws and thereafter claimed decree for restitution of conjugal rights. On 21st March, 1978, the learned Sub-Judge Ist Class passed an order granting Rs. 185 per month as maintenance pendente lite and Rs. 300 as the litigation expenses. On 28th March, 1978, a consent decree was passed by the learned Sub-Judge Ist Class for restitution of conjugal rights. It may be mentioned that on the petition of the wife for restitution of conjugal rights, the husband-respondent appeared and filed his written statement admitting therein the factum of marriage between the parties but denied the fact that the respondent had ever made any demand from the petitioner as alleged or had ever disliked her or had withdrawn from her society or turned her out from his house as alleged by the wife petitioner in her petition for restitution of conjugal rights. The respondent thereafter made a statement in the court that the application of the petitioner under Section 9 of the said Act be granted and decree thereof be passed. Accordingly the learned Sub-Judge Ist Class on 28th March 1978 passed the decree for the restitution of conjugal rights between the parties. It was alleged by the petitioner-wife that the appellant had gone to the house of the respondent and lived with him for two days as husband and wife. This fact has been disbelieved by all the courts. The courts have come to the conclusion and that conclusion is not challenged before us that there has been no cohabitation after the passing of the decree for restitution of conjugal rights.

On 19th April, 1979, the respondent/husband filed a petition under Section 13 of the said Act against the appellant for divorce on the ground that one year had passed from the date of the decree for restitution of confugal rights, but no actual cohabitation had taken place between the parties. The appellant filed her reply to the said petition. The categorical case in reply of the appellant was that it was incorrect that after passing of the decree, there had been no restitution of conjugal rights between the parties, positive case of the appellant was that after passing of the decree, the wife was taken to the house of the husband by the parents of the wife after one month of the decree and that

the husband kept the wife in his house for two days and she was again turned out. It was further alleged that the wife had filed an application under Section 28A of the said Act in the court of Sub-Judge, 1st Class, Jullundur on 22nd January, 1979 with the request that the husband should be directed to comply with the decree passed against him under Section 9 of the said Act and the application was pending at the time when the reply was filed by the wife to the petition for divorce.

The learned District Judge on 15th October, 1979 dismissed the petition of the husband for divorce. The learned Judge framed two issues, one was whether there has been no restitution of conjugal rights after the passing of the decree for the restitution of conjugal rights, and secondly to what relief was the husband entitled to ? After considering the evidence of civil and criminal proceedings pending between the parties, the learned Judge came to the conclusion that there has been no resumption of cohabitation between the parties after 28th March, 1978 and decided the issue in favour of the husband but on the question of relief the learned Judge was of the view that in view of the provisions of Section 23 of the said Act and in view of the fact that the previous decree was a consent decree and at that time there was no provision like provision of Section 13B of the said Act i.e. 'divorce by mutual consent', the learned Judge was of the view that as the decree for restitution of conjugal rights was passed by the consent of the parties, the husband was not entitled to a decree for divorce.

Being aggrieved by the said decision, there was an appeal before the High Court of Punjab and Haryana. So far as last mentioned ground was concerned, the High Court held that in view of the decision of this Court in the case of Dharmendra Kumar v. Usha Kumari, this contention was not open to the wife. The court was of the opinion that in view of the said decision of this Court, it could not be said that the husband was taking advantage of his 'wrongs'. In the said decision this Court noted that it would not be reasonable to hold that the relief which was available to the spouse against whom a decree for restitution of conjugal rights had been passed should be denied to the one who does not comply with the decree passed against him or her. The expression "in order to be a 'wrong' within the meaning of Section 23 (1) (a) the conduct alleged has to be something more than mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled to. So, therefore, Section 23 (1) (a) provides as follows:-

> "23. (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-
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> (a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause
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> (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief and").

In that view of the matter, the High Court rejected the contention. So far as the other aspect was concerned, the learned Judge expressed the view that the decree for restitution of conjugal rights could not be passed with the consent of the parties and therefore being a collusive one disentitled

the husband to a decree for divorce. This view was taken by the learned trial judge relying on a previous decision of the High Court. Mr. Justice Goyal of the High Court felt that this view required reconsideration and he therefore referred the matter to the Chief Justice for constitution of a Division Bench of the High Court for the consideration of this question.

The matter thereafter came up before a Division Bench of Punjab and Haryana High Court and Chief Justice Sandhawalia for the said court on consideration of different authorities came to the conclusion that a consent decree could not be termed to be a collusive decree so as to disentitle the petitioner to decree for restitution of conjugal rights. It may be mentioned that before the Division Bench of behalf of the appellant-wife, counsel did not assail the factual finding of the Trial Court that there was no co-habitation after the decree for restitution of conjugal rights nor did he press the first ground of defence namely that the appellant could not take advantage of his 'wrong' because of having refused cohabitation in execution of the decree. However, the ground that the decree for restitution of conjugal rights was in a sense collusive decree was pressed before the Division Bench. In view of the Full Bench decision of the Punjab and Haryana High Court in the case of Joginder Singh v. Smt. Pushpa wherein the majority of the Judges of the Full Bench held that a consent decree in all cases could not be said to be a collusive decree and where the parties had agreed to passing of a decree after attempts had been made to settle the matter, in view of the language of Section 23 of the court had tried to make conciliation between the parties and conciliation had been ordered, the husband was not disentitled to get a decree.

Section 23 sub-section (2) provides as follows:- "(2)-Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavor to bring about a reconciliation between the parties:

Provided that nothing contained in this sub- section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13." In this case from the facts on record it appears that there was no collusion between the parties. The wife petitioned against the husband on certain allegations, the husband denied these allegations. He stated that he was willing to take the wife back. A decree on that basis was passed. It is difficult to find any collusion as such in the instant case. Apart from that we are in agreement with the majority of the learned judges of the Division Bench of Punjab and Haryana High Court in the case of Joginder Singh v. Smt. Pushpa (supra) that all cases of consent decrees cannot be said to be collusive. Consent decrees per se in matrimonial matters are not collusive. As would be evident from legislative intent of Section 13B that divorce by mutual consent is no longer foreign to Indian law of divorce but of course this is a subsequent amendment and was not applicable at the time when the decree in question was passed. In the premises we accept the majority view of the Division Bench of Punjab and Haryana High Court on this point.

In this appeal before this Court, counsel for the wife did not challenge the finding of the Division Bench that the consent decree as such was not bad or collusive. What he tried to urge before us was that in view of the expression 'wrong' in Section 23(1) (a) of the Act, the husband was disentitled in this case to get a decree for divorce. It was sought to be urged that from the very beginning the

husband wanted that decree for divorce should be passed. He therefore did not deliberately oppose the decree for restitution of conjugal rights. It was submitted on the other hand that the respondent/husband had with the intention of ultimately having divorce allowed the wife a decree for the restitution of conjugal rights knowing fully well that this decree he would not honour and thereby he misled the wife and the Court and thereafter refused to cohabitate with the wife and now, it was submitted, cannot be allowed to take advantage of his 'wrong'. There is, however, no whisper of these allegations in the pleading. As usual, on this being pointed out, the counsel prayed that he should be given an opportunity of amending his pleadings and, the parties, with usual plea, should not suffer for the mistake of the lawyers. In this case, however, there are insurmountable difficulties. Firstly there was no pleading, secondly this ground was not urged before any of the courts below which is a question of fact, thirdly the facts pleaded and the allegations made by the wife in the trial court and before the Division Bench were contrary to the facts now sought to be urged in support to her appeal. The definite case of the wife was that after the decree for restitution of conjugal rights, the husband and wife cohabitated for two days. The ground now sought to be urged is that the husband wanted the wife to have a decree for judicial separation by some kind of a trap and then not to cohabitate with her and thereafter obtain this decree for divorce. This would be opposed to the facts alleged in the defence by the wife. Therefore quite apart from the fact that there was no pleading which is a serious and fatal mistake, there is no scope of giving any opportunity of amending the pleadings at this stage permitting the wife to make an inconsistent case. Counsel for the appellant sought to urge that the expression 'taking advantage of his or her own wrongs' in clause (a) of sub- section 23 must be construed in such a manner as would not make the Indian wives suffer at the hands of cunning and dishonest husbands. Firstly even if there is any scope for accepting this broad argument, it has no factual application to this case and secondly if that is so then it requires a legislation to that effect. We are therefore unable to accept the contention of counsel for the appellant that the conduct of the husband sought to be urged against him could possibly come within the expression 'his own wrongs' in section 23(1) (a) of the Act so as to disentitle him to a decree for divorce to which he is otherwise entitled to as held by the courts below. Further more we reach this conclusion without any mental compunction because it is evident that for whatever be the reasons this marriage has broken down and the parties can no longer live together as husband and wife, if such is the situation it is better to close the chapter.

Our attention, however, was drawn to a decision of a learned single judge of the Andhra Pradesh High Court in the case of T. Sareetha v. Venkata Subbaiah. In the said decision the learned judge had observed that the remedy of restitution of conjugal rights provided for by Section 9 of the said Act was a savage and barbarous remedy violating the right to privacy and human dignity guaranteed by Article 21 of the Constitution. Hence, according to the learned judge, Section 9 was constitutionally void. Any statutory provision that abridged the rights guaranteed by Part III of the Constitution would have to be declared void in terms of Article 13 of the Constitution. According to the said learned judge, Article 21 guaranteed right to life and personal liberty against the State action. Formulated in simple negative terms, its range of operation positively forbidding the State from depriving any person of his life or personal liberty except according to the procedure established by law was of far-reaching dimensions and of overwhelming constitutional significance. Learned judge observed that a decree for restitution of conjugal rights constituted the grossest form of violation of any individual right to privacy. According to the learned judge, it denied the woman

her free choice whether, when and how her body was to become the vehicle for the procreation of another human being. A decree for restitution of conjugal rights deprived, according to the learned judge, a woman of control over her choice as and when and by whom the various parts of her body should be allowed to be sensed. The woman loses her control over her most intimate decisions. The learned judge therefore was of the view that the right to privacy guaranteed by Article 21 was flagrantly violated by a decree for restitution of conjugal rights. The learned judge was of the view that a wife who was keeping away from her husband because of permanent or even temporary estrangement cannot be forced, without violating her right to privacy to bear a child by her husband. During a time when she was probably contemplating an action for divorce, the use and enforcement of Section 9 of the said Act against the estranged wife could irretrievably alter her position by bringing about forcible conception permanently ruining her mind, body and life and everything connected with it. The learned judge was therefore clearly of the view that Section 9 of the said Act violated Article 21 of the Constitution. He referred to the Scarman Commission's report in England recommending its abolition. The learned judge was also of the view that Section 9 of the said Act, promoted no legitimate public purpose based on any conception of the general good. It did not therefore subserve any social good. Section 9 of the said Act was, therefore, held to be arbitrary and void as offending Article 14 of the Constitution. Learned judge further observed that though Section 9 of the said Act did not in form offend the classification test, inasmuch as it made no discrimination between a husband and wife, on the other hand, by making the remedy of restitution of conjugal rights equally available both to wife and husband, it apparently satisfied the equality test. But bare equality of treatment regardless of the inequality of realities was neither justice nor homage to the constitutional principles. He relied on the decision of this Court in the case of Murthy Match Works, Etc. Etc. v. The Assistant Collector of Central Excise Etc. The learned judge, however, was of the opinion based on how this remedy was found used almost exclusively by the husband and was rarely resorted to by the wife.

The learned judge noticed and that is a very significant point that decree for restitution of conjugal rights can only be enforced under Order 21 Rule 32 of Code of Civil Procedure. He also referred to certain trend in the American law and came to the conclusion that Section 9 of the said Act was null and void. The above view of the learned single judge of Andhra Pradesh was dissented from in a decision of the learned single judge of the Delhi High Court in the case of Smt. Harvinder Kaur v. Harmander Singh Choudhry. In the said decision, the learned judge of the Delhi High Court expressed the view that Section 9 of the said Act was not violative of Articles 14 and 21 of the Constitution. The learned judge noted that the object of restitution decree was to bring about cohabitation between the estranged parties so that they could live together in the matrimonial home in amity. The leading idea of Section 9 was to preserve the marriage. From the definition of cohabitation and consortium, it appeared to the learned judge that sexual intercourse was one of the elements that went to make up the marriage, but that was not the summum bonum. The courts do not and can not enforce sexual intercourse. Sexual relations constituted an important element in the conception of marriage, but it was also true that these did not constitute its whole content nor could the remaining aspects of matrimonial consortium be said to be wholly unsubstantial or of trivial character. The remedy of restitution aimed at cohabitation and consortium and not merely at sexual intercourse. The learned judge expressed the view that the restitution decree did not enforce sexual intercourse. It was a fallacy to hold that the restitution of conjugal rights constituted "the starkest

form of governmental invasion" of "marital privacy".

This point namely validity of Section 9 of the said Act was not canvassed in the instant case in the courts below counsel for the appellant, however, sought to urge this point before us as a legal proposition. We have allowed him to do so.

Having considered the views of the learned single judge of the Andhra Pradesh High Court and that of learned single judge of Delhi High Court, we prefer to accept on this aspect namely on the validity of Section 9 of the said Act the views of the learned single judge of the Delhi High Court. It may be mentioned that conjugal rights may be viewed in its proper perspective by keeping in mind the dictionary meaning of the expression "Conjugal". Shorter Oxford English Dictionary, 3rd Edn. Vol. I page 371 notes the meaning of 'conjugal' as "of or pertaining to marriage or to husband and wife in their relations to each other". In the Dictionary of English Law, 1959 Edn. at page 453, Earl Jowitt defines 'conjugal rights' thus:

> "The right which husband and wife have to each other's society and marital intercourse. The suit for restitution of conjugal rights is a matrimonial suit, cognizable in the Divorce Court, which is brought whenever either the husband or the wife lives separate from the other without any sufficient reason, in which case the court will decree restitution of conjugal rights (Matrimonial Causes Act, 1950, s. 15), but will not enforce it by attachment, substituting however for attachment, if the wife be the petitioner, an order for periodical payments by the husband to the wife (s.22). Conjugal rights cannot be enforced by the act of either party, and a husband cannot seize and detain his wife by force (R.V. Jackson [1891] 1 Q.B. 671)".

In India it may be borne in mind that conjugal rights i.e. right of the husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself. See in this connection Mulla's Hindu Law-15th Edn. p. 567-Para 443. There are sufficient safeguards in Section 9 to prevent it from being a tyranny. The importance of the concept of conjugal rights can be viewed in the light of Law Commission-71st Report on the Hindu Marriage Act, 1955- "Irretrievable Breakdown of Marriage as a Ground of Divorce, Para 6.5 where it is stated thus:-

> "Moreover, the essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life, an experience of the joy that comes from enjoying, in common, things of the matter and of the spirit and from showering love and affection on one's offspring. Living together is a symbol of such sharing in all its aspects. Living apart is a symbol indicating the negation of such sharing. It is indicative of a disruption of the essence of marriage-"breakdown" and if it continues for a fairly long period, it would indicate destruction of the essence of marriage- "irretrievable breakdown".
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> Section 9 only is a codification of pre-existing law.

Rule 32 of Order 21 of the Code of Civil Procedure deals with decree for specific performance for restitution of conjugal rights or for an injuction. Sub-rule (1) of Rule 32 is in these terms:

> "Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injuction by his detention in the civil prison, or by the attachment of his property, or by both."

It is significant to note that unlike a decree of specific performance of contract, for restitution of conjugal rights the sanction is provided by court where the disobedience to such a decree is willful i.e. is deliberate, in spite of the opportunities and there are no other impediments, might be enforced by attachment of property. So the only sanction is by attachment of property against disobedience of a decree for restitution of conjugal rights where the disobedience follows as a result of a willful conduct i.e. where conditions are there for a wife or a husband to obey the decree for restitution of conjugal rights but disobeys the same in spite of such conditions, then only financial sanction, provided he or she has properties to be attached, is provided for. This is so as an inducement by the court in appropriate case when the court has decreed restitution for conjugal rights and that the court can only decree if there is no just reason for not passing decree for restitution of conjugal rights to offer inducement for the husband or wife to live together in order to give them an opportunity to settle up the matter amicably. It serves a social purpose as an aid to the prevention of break-up of marriage. It cannot be viewed in the manner the learned single judge of Andhra Pradesh High Court has viewed it and we are therefore unable to accept the position that Section 9 of the said Act is violative of Article 14 or Article 21 of the Constitution if the purpose of the decree for restitution of conjugal rights in the said Act is understood in its proper perspective and if the method of its execution in cases of disobedience is kept in view.

Another decision to which our attention was drawn is also a Bench decision of the Andhra Pradesh High Court in the case of Geeta Laxmi v. G.V.R.K. Sarveswara Rao. There on the admitted misconduct of the husband is not only in not complying with the decree for restitution of conjugal rights but ill- treating the wife and finally driving her away from the house, it was held that the husband was not entitled to a decree under Section 13(1A) of the said Act in view of the wrong as contemplated under Section 23(1) (a) of the Act. The facts of that case were entirely different from the facts of the instant case before us. There is no such allegation or proof of any ill-treatment by the husband or any evidence of the husband driving the wife out of the house. In that view of the matter, this decision cannot be of any assistance to the appellant in the instant case.

Counsel for the appellant, however, contended before us that in the social reality of the Indian society, a divorced wife would be materially at a great disadvantage. He is right in this submission. In view, however, of the position in law, we would direct that even after the final decree of divorce, the husband would continue to pay maintenance to the wife until she remarries and would maintain the one living daughter of the marriage. Separate maintenance should be paid for the wife and the

living daughter. Until altered by appropriate order on application on proper materials such maintenance should be Rs. 200 per month for the wife appellant and Rs. 300 per month for the daughter Menka. Wife would be entitled to such maintenance only until she re- marries and the daughter Menka to her maintenance until she is married. Parties will be at liberty to ask for variation of the amounts by proper application on proper materials made before Sub-judge Ist Class Jullunder. The respondent would pay costs of this appeal to appellant assessed at Rs. 1500.

The appeal is dismissed with the aforesaid directions. N.V.K. Appeal dismissed.