

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.1499/2012

INDRAWATI DEVI

APPELLANT(S)

VERSUS

SATYA PRAKASH

RESPONDENT(S)

WITH

CONMT.PET.(C) No.874/2017

IN

C.A. No.1499/2012

O R D E R

The respondent sought a decree of divorce against the appellant both on the grounds of desertion and cruelty under Section 13 of the Hindu Marriage Act, 1955 (in short "the said Act"). The appellant filed a counter claim for restitution of conjugal rights. The Trial Court dismissed the petition of the respondent-husband while allowing the petition of the appellant-wife by an order dated 05.2.2004. An appeal was preferred against the said judgment under Section 28 of the said Act before the District Judge Banda which was transferred to the Court of Additional District Judge. The judgment of the Trial Court was reversed on both accounts by a judgment dated 26.5.2009 granting a decree of divorce to the respondent.

The appellant aggrieved by the same preferred a second appeal before the High Court of Allahabad where for the first time a plea was sought to be raised that the first appellate court did not have jurisdiction to hear the matter. The High Court found that this plea was not even raised before the Appellate Court and rejected the plea based on lack of jurisdiction.

On the issue of grant of decree for divorce the Court found that without going into the issue for cruelty, the ground of desertion was made out and accordingly passed the impugned judgment dated 15.10.2009.

The appellant aggrieved by the same preferred the special leave petition in which notice was issue and subsequently leave was granted. Interim maintenance was fixed at the rate of Rs.10,000/- per month from the Month of January, 2012.

There has been defaults on part of the respondent in payment of that amount and the endeavor of the respondent to seek verification on the same did not succeed. The appellant also filed a Contempt Petition (C) No.874/2017 which was however directed to be listed along with the appeal.

We have heard learned counsel for the parties.

We are unable to persuade ourselves to disagree on the findings of the High Court. We may also notice that the parties have been living apart for the last three decades since 1991 and there is one progeny from the marriage of the parties being a son born on 07.12.1990. Period of separation

gives rise to a conclusion of irretrievable breakdown of marriage.

The synopsis of the respondent seeks to state that the respondent is employed as Junior Engineer, Gorakhpur Development Authority in Gorakhpur with annual emoluments of Rs.60,000/- and will be demitting office on 05.7.2023 and would not be entitled to pension. The funds stated to be available with him are of the tune of about Rs.12 lakhs apart from the amount in the savings account of Rs.2 lakhs. The respondent claims that he has spent a sum of Rs.9,72,000/- on the education of the son from 2012 to 2017 who is stated to be living with the appellant and is qualified as a B.Tech Civil Engineer. Insofar as maintenance, it has been stated that the total payment due up to the end of September, 2021 will be Rs.11,62,000/- while only a sum of Rs.2,33,000/- has been paid. Thus, a balance of Rs.9,27,000/- is stated to be due.

In our view though we are not inclined to interfere with the impugned order, that cannot absolve the respondent of the liability to pay maintenance as fixed by the Court. We are not inclined to accept the fact that out of the maintenance payable, what is spent on education of the son should be deducted. There is some controversy sought to be raised about the extent of the amount paid but to put a quietus to the issue, we consider it appropriate to fix an amount to be paid by the respondent to the appellant in full and final satisfaction of the claim of the respondent including arrears

of maintenance. We thus fix the said amount at Rs.10,00,000/- (Rupees ten lakhs only).

The result of the aforesaid is that the appeal is dismissed and the decree of divorce will operate only after the amount of Rs.10,00,000/- is paid by the respondent to the appellant for which a period of three months is granted.

Contempt petition (C) No.874/2017 also stands disposed of.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M. M. SUNDRESH]

NEW DELHI;
10th November, 2021

ITEM NO.103

COURT NO.6

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.1499/2012

INDRAWATI DEVI

Appellant(s)

VERSUS

SATYA PRAKASH

Respondent(s)

WITH

CONMT.PET.(C) No. 874/2017 In C.A. No. 1499/2012 (III-A)

Date : 10-11-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. S. P. Singh, Sr. Adv.
Mr. K. Indira, Adv.
Mr. Ravindra S. Garia, AOR

For Respondent(s) Mr. Mahabir Singh, Sr. Adv.
Mr. Sudhir Kumar Gupta, AOR
Mr. Manish Gupta, Adv.
Mr. Virendra Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil appeal is dismissed and contempt petition is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER

(signed order is placed on the file)