

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 1st OF JULY, 2024

FIRST APPEAL No. 434 of 2024

(SMT. TRAPTI

Vs

ANIL KUMAR)

Appearance:

*(SHRI VIVEK KUMAR MISHRA - LEARNED COUNSEL FOR THE
APPELLANT).*

JUDGMENT

Per: RAJENDRA KUMAR VANI, J.

This first appeal under Section 28 of the Hindu Marriage Act has been filed by the appellant-wife being aggrieved by the judgment dated 5.1.2024 passed by the Additional District Judge, Lahar to the Court of District Judge, Lahar, Bhind, in RCS HM-44/2023 whereby petition under Section 9 of the Hindu Marriage Act filed by the respondent/plaintiff has been allowed.

2. Brief facts of the case are that a petition under Section 9 of the Hindu Marriage Act has been filed by the respondent/husband before the trial Court stating therein that his marriage was solemnized with the appellant on 11.6.2022 as per Hindu rites. After marriage appellant came to her matrimonial home thrice and during this period she behaved well with the plaintiff and his family members. Thereafter on 20.11.2022 appellant along with her brother Gaurav and sister Reena taking gold & silver ornaments and cash of Rs.15,000/- went to her parental home and despite various efforts did not return to her matrimonial home. It is further stated that appellant has deserted the plaintiff without any

sufficient cause and she is not performing her conjugal duties.

3.The appellant/wife denied the aforesaid averments in her reply and pleaded that plaintiff subjected her to cruelty and therefore she has filed various cases in different Courts at Jalaun, Orai. The plaintiff by suppressing this fact has filed the petition under Section 9 of the Hindu Marriage Act.

4.The trial Court on the basis of the pleadings of the parties, framed following issues :-

"(1)Whether the appellant has withdrawn herself from the company of plaintiff without any sufficient cause ?

(2) Relief and cost."

5.After appreciating the evidence on record, learned trial Court allowed the petition under Section 9 of the Hindu Marriage Act and passed the decree of restitution of conjugal rights in favour of the plaintiff/husband. Therefore, this first appeal has been filed by the appellant/wife.

6.Heard learned counsel for the appellant and perused the record.

7.This first appeal has been filed mainly on the ground that appellant/wife has proved her case thoroughly by cogent evidence, but learned trial court has ignored the same. Cruelty on the part of plaintiff/respondent was also proved by the appellant and that is the reason for her living separately from the respondent.

8.Perusal of the record shows that at the initial stage the trial Court has tried for settlement between the parties. Both the parties have urged before the trial Court that there is no possibility of compromise between them and they cannot discharge their conjugal duties towards each other. Thereafter plaintiff's evidence has been taken and case was fixed for defendant's evidence. On 4.1.2024 defendant/appellant along with her witnesses remained absent before

the trial Court without showing any reason for their absence, therefore, trial Court closed her evidence. Aforesaid order dated 4.1.2024 has not been challenged by the appellant by filing any application for permitting her to adduce evidence at later stage, rather on 5.1.2024 learned counsel for the appellant has submitted final arguments before the Court and thereafter the impugned judgment has been passed.

9. Perusal of the order-sheets of the trial Court shows that no rebuttal evidence has been adduced by the appellant before the trial Court. Plaintiff Anil Kumar examined himself as PW-1 along with other witnesses Ramjilal (PW-2), father of the plaintiff, and Babulal Tagore (PW-3), cousin brother of the plaintiff. All the plaintiff witnesses have supported the case of plaintiff in *toto* and reiterated the fact that after six months of marriage appellant has left the house of appellant and despite various efforts, she did not come to the plaintiff for living jointly. Without any sufficient cause she is living separately.

10. The learned counsel for the appellant submits that appellant has averred in her reply before the trial Court that at the instance of appellant criminal case under Sections 498-A, 323, 504 and 506 of IPC read with Sections 3/4 of the Dowry Prohibition Act is pending before JMFC, Jalaun as criminal case No.203/23 as well as other cases are also pending under Section 125 of Cr.P.C. before the Family Court Jalaun as case No.514/23 and a case under Section under Section 12 of the Domestic Violence Act before the Civil Judge Jalaun as case No.69/2023 and this fact has been admitted by the plaintiff/respondent in his cross-examination which shows that there is sufficient, adequate and proper reason for the appellant to live separately from the plaintiff. It is also submitted that plaintiff has suppressed the fact of first marriage with another lady.

11. The perusal of cross-examination plaintiff Anil Kumar (PW-1) shows that he admitted that he has appeared in the cases which are filed by the appellant against him and his family members. The admission is reproduced as follows :-

“यह सही है कि तृप्ति ने हम लोगों के खिलाफ जो प्रकरण पेश किये हैं उनमें हम प्रस्तुत हो गये हैं।”

12. It is neither clear from such admission that what nature of cases were filed by the appellant against him and his family members nor any available documentary evidence in the form of copy of complaint/FIR etc. has been filed on behalf of appellant/wife. In this circumstances, such admission being not clear and unambiguous, does not support the contention of appellant. Similarly, plaintiff Anil Kumar (PW-1) has admitted in para 7 of his cross-examination that he got married with appellant as second marriage, his first wife was Bharti. He, however, denied the suggestion given by the appellant that he has suppressed the fact of first marriage at the time of second marriage with the appellant. He also denied the suggestion that in order to solemnize further marriage, he himself has deserted his wife/the appellant. Such admission also does not support the case of appellant as it is not clear from such admission that first wife of the plaintiff Bharti was alive or not at the time of his marriage with appellant and whether the second marriage is void or voidable on the ground of suppression of such fact. After dissolution of first marriage if the plaintiff has solemnized second marriage, then it cannot be said that such second marriage is *void ab initio* unless and until otherwise is proved by the appellant.

13. Though it is submitted by learned counsel for the appellant that appellant has proved her case thoroughly by cogent evidence, but no evidence has been adduced by the appellant before the trial Court and the fact of

committing cruelty with the appellant is also not found proved in the light of aforesaid discussion. Therefore, the findings given by the trial Court on the issues do not warrant any interference.

14.Consequently, this first appeal being bereft of merit deserves to be and is hereby **dismissed**.

(VIVEK RUSIA)
JUDGE

ms/-

(RAJENDRA KUMAR VANI)
JUDGE

