

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

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 19th OF SEPTEMBER, 2023

FIRST APPEAL NO.1003 OF 2019

BETWEEN:-

**DHARMENDRA KUMAR S/O BABULAL
JAIN, AGED ABOUT 39 YEARS, R/O
VIHARIJI WARD, KHURAI, TAHSIL
KHURAI, DISTRICT (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI ASHOK KUMAR JAIN - ADVOCATE)

AND

**SMT. VISHWAROOPA W/O
DHARMENDRA KUMAR, D/O LATE
MAHESH CHAND, AGED ABOUT 35
YEARS, R/O VIHARIJI WARD, KHURAI,
TAHSIL KHURAI, DISTRICT (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI ALOK VAGRECHA - ADVOCATE)

AND

FIRST APPEAL NO.1405 OF 2019**BETWEEN:-**

**VISHWARUPA JAIN W/O DHARMENDER
KUMAR JAIN, D/O LT. MAHESH CHAND
JAIN, AGED 35 YEARS, R/O BIHARIJI
WARD, KHURAI TEHSIL KHURAI,
DISTRICT SAGAR (MADHYA PRADESH)
PRESENTLY R/O ARIHANT MOBILE
NEAR HANUMAN MANDIR GOPAL
GOPAL GANJ, SAGAR (MADHYA
PRADESH)**

.....APPELLANT**(BY SHRI ALOK VAGRECHA - ADVOCATE)****AND**

**DHARMENDER KUMAR AJIN S/O
BABULAL JAIN AGED 39 YEARS, R/O
BIHARIJI WARD, KHURAI, TEHSIL
KHURAI, DISTRICT SAGAR (MADHYA
PRADESH)**

.....RESPONDENT**(BY SHRI ASHOK KUMAR JAIN - ADVOCATE)**

*These appeals coming on for orders this day, Justice Amar Nath
(Kesharwani) passed the following:*

JUDGMENT

This common judgment shall govern the disposal of F.A.No.1003/2019 filed by husband and F.A.No.1405/2019 filed by wife as both the appeals are arising out of same impugned judgment.

2. F.A.No.1003/2019 & F.A.No.1405/2019 have been filed under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred as “the Act of 1955”) being aggrieved with the judgment dated 05/04/2019 passed by II Additional District Judge, Khurai, District Sagar (M.P.) in RCS HM No.100060A/2015 (Dharmendra Kumar-husband Vs. Smt. Vishwaroopa-wife).

3. Appellant-husband in F.A.No.1003/2019 filed a petition under Section 10 of the Act of 1955 for judicial separation on the ground of cruelty. Respondent-wife was summoned in the said case and reply of petition was filed on behalf of respondent-wife before the trial Court. After considering the pleadings of the rival parties, learned trial Court framed the issues and recorded the statements adduced by the rival parties in their supports and after considering the evidence on record, learned trial Court passed the impugned judgment directing the parties to reside separately for a period of seven years from the date of judgment i.e. 05/04/2019. It was also directed that appellant-husband shall pay a sum of Rs.12,000/- per month as maintenance to wife and Rs.10,000/- per month as maintenance of their son for seven years. Being aggrieved with the impugned judgment abovementioned appeals have been filed by the husband as well as wife.

4. Appellant – husband has assailed the impugned judgment on the ground that the learned trial Court has erred in law in passing the decree of judicial separation for a period of seven years, since Section 10 of the Act of 1955 does not give jurisdiction to the Court to pass a decree for judicial separation for a particular period. Second ground in the appeal is that the trial Court erred in law in fixing a sum of

Rs.22,000/- per month for the maintenance of wife and son. The order regarding maintenance is without jurisdiction, because neither respondent-wife moved any application for permanent alimony, nor she filed any application for maintenance before passing of the decree or at any time subsequent thereto. Thus trial Court could not fix the period for judicial separation and could not grant permanent alimony or maintenance without application, therefore, impugned judgment is without jurisdiction and not as per law. Hence the impugned order deserves to be set aside or modified.

5. Wife by way of filing F.A.No.1405/2019 assailed the impugned judgment on the ground that the learned trial Court has erred in marshalling the evidence on record to hold that husband is entitled for a decree of judicial separation. Learned trial Court has failed to appreciate that the wife has specifically stated that she wants to live with her husband, then it was not correct on the part of trial Court to allow the petition under Section 10 of the Act of 1955.

6. Learned counsel for the wife in F.A.No.1405/2019 submits that the finding of the trial Court regarding judicial separation is perverse and deserves to be set aside. However, she supports that part of the decree which relates to payment of maintenance and submits that written application for grant of permanent alimony or maintenance is not necessary. In that regard learned counsel for the wife placed reliance on the judgment passed by Mumbai High Court in the case of **Sadanand Sahadeo Rawool Vs. Sulochana Sadanand Rawool, 1989 Mh.L.J. 337**, an order passed by Madras High Court in the case of **Umarani Vs. D. Vivekannandan, 2000 (II) CTC 449** and also an

order passed by the Co-ordinate Bench of this Court in the case of **Surajmal Vs. Rukminibai, AIR 2000 MP 48.**

7. We have considered the arguments advanced by the learned counsel for the parties, gone through the record and perused the citations upon which reliance is placed by the learned counsel for wife.

8. Appellant-husband has examined himself as AW-1 and witnesses Babulal (AW-2) and Ashish (AW-3) in support of his pleadings. Non-applicant/respondent-wife has examined herself as NAW-1 and Gyaneshwar Bharil (NAW-2) in support of her pleadings.

9. Non-applicant/respondent-wife (NAW-1) has admitted in her cross-examination that the appellant-husband is the sole son of his parents and she is the sole daughter-in-law at her matrimonial house. She has admitted in Para-9 of her cross-examination that her husband has filed a petition under Section 9 of Hindu Marriage Act and after a compromise in that petition they started to live together. It is also admitted in Para-15 of her cross-examination that the appellant-husband has not filed any case against her under Section 13 of the Hindu Marriage Act for divorce. NAW-1 has also admitted in Para-16 of her cross-examination that after filing of this petition, she lodged a report for demand of dowry against the appellant and his parents. It reveals from the record of HMA Case No.60-A/2015 that petition under Section 10 of the Hindu Marriage Act was filed on 09/12/2015 and certified copy of FIR (Ex.P-2) reveals that based on written complaint of respondent-wife, FIR was registered at Crime No.56/2016 against appellant-husband and his parents for the offence punishable under Section 498-A/34 of the IPC. Respondent-wife (NAW-1) has

also admitted in her cross-examination that she had not made any complaint before filing of this petition.

10. After considering the evidence on record, specially as mentioned above, we are of the opinion that appellant-husband has proved his case for grant of decree of judicial separation on the ground of cruelty which was done by the respondent-wife against appellant-husband. Thus, learned trial Court did not commit any illegality or mistake in passing the decree of judicial separation in favour of appellant-husband.

11. However, learned trial Court erred in law in directing the parties of the case to reside separately for a period of seven years from the date of judgment because there is no provision under Section 10 of the Act of 1955 in that regard.

12. Section 10 of the Act of 1955, which relates for judicial separation, is reproduced as below :-

- 10. Judicial separation.** — (1) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.
- (2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

13. Hence, the part of impugned judgment, which relates to the period of seven years of judicial separation, is hereby set aside.

14. So far as part of decree, which relates to the payment of maintenance to the wife and son is concerned, we are of the opinion that since marriage between the parties subsists till today, hence it is the moral duty of the husband to maintain his wife and son. During arguments learned counsel for the parties submits that husband has filed divorce petition before the Family Court, which is still pending. Hence, appeal filed by the wife (F.A.No.1405/2019) is disposed of with liberty to wife to raise all the grounds available to her in law for interim maintenance as well as permanent alimony before the trial Court in divorce petition by way of filing an application within a period of 30 days from the date of receipt of certified copy of this order. Family Court is directed to decide the said application within a period of one month from the date of its filing. Till then maintenance as directed by the trial Court by impugned judgment shall remain in existence.

15. Accordingly, both the appeals stands disposed of.

No order as to costs.

(SHEEL NAGU)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

as.