under the Punjab Tenancy Act does not come to an end with the passing of the eviction order under section 14-A of the Act as all other proceedings pending in a Court or before any other authority would automatically lapse in view of the provisions of sub-section (3) of section 10 of the Act. In other words, but for the suit filed by a tenant under the Punjab Tenancy Act, 1887 for compensation and acquisition of occupancy rights, all other proceedings between the parties pending in any Court or before any authority relating to the matter in controversy between a landlord and a tenant under section 14-A of the Act shall come to an end with the passing of the order of eviction under that section. Otherwise also it is difficult to imagine how a person who has ceased to be a tenant or whose tenancy has lawfully been terminated with the passing of an order of eviction against him, can be said to continue to be a tenant under the landlord for the purposes of the suit for compensation and acquisition of occupancy rights under the Punjab Tenancy Act. It is beyond dispute that unless the plaintiff can be styled as a tenant under the landlord, he cannot maintain such a suit. No judgment has been brought to my notice by the learned counsel for the respondents in support of his contention that notwithstanding the order of eviction passed against the respondent-tenants on October 27, 1966, they continued to be tenants under the petitioner on October 31, 1966.

(6) In the light of the above, I find that the impugned judgment and decree are wholly unsustainable and are thus set aside. The necessary consequence of this is that the suit of the respondent-tenants stands dismissed. However, I pass no order as to costs.

N. K. S.

Before S. S. Sandhawalia, C.J. & S. P. Goyal, J.

SUDARSHAN KUMAR CHADHA,—*Appellant.*

versus

SMT. SAROJ RANI,—*Respondent.*

First Appeal from Order No. 199-*M of* 1979.

August 27, 1982.

Hindu Marriage Act (*XXV of* 1955)—*Sections* 9 *and* 13—*Decree for restitution of conjugal rights obtained by consent of*

the parties—Whether, a nullity—Such decree—Whether could form a basis for divorce proceedings under section 13.

Held, that if a consent decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act ,1955 is passed, it will not be a nullity. If it is not challenged in appeal or by way of other remedy available under the law and becomes final, it cannot be ignored and can form the basis of divorce proceedings under section 13 of the Act.

1969 Punjab 397 (F.B.) is in no way whittled down by later-S.C. judgments.

(Para 7).

Mahesh Chander Sehgal *vs.* Krishna Kumari, 1971, Current Law Journal—778.

OVERRULED

First Appeal from the Order of the Court of Shri J. S. Chadha, District Judge, Jullundur, dated the 15th day of October, 1979 dismissing the petition of the petitioner-husband for divorce.

H .L. Sibal, Sr. Advocate with S. C. Sibal, Advocate, *for the Appellant.*

Sant Ram Chopra, Advocate with Satya Parkash Jain, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C. J.

1. We take the view that this matrimonial first appeal referred for decision by the Division Bench is substantially concluded by the exhaustive judgment of the Full Bench in *Joginder Singh* versus *Smt. Pushpa* (1). It, therefore, suffices to advert to the facts somewhat briefly.

2. The respondent-wife Smt. Saroj Rani had earlier preferred a petition for restitution of conjugal rights in the Court of Mr. M. R. Batra, Subordinate Judge, Jullundur. This was contested by the appellant-husband, but it would appear that during the pendency of the proceedings a compromise was apparently arrived at and a decree for restitution of conjugal rights was passed in favour of

(1) A.I.R. 1969 Punjab and Haryana, 397.

the respondent wife on the 29th of March, 1978. It is stated that despite the passing of the said decree there was no restitution of conjugal rights between the parties for more than one year. The appellant husband then brought the petition for divorce under section 13 of the Hindu Marriage Act giving rise to the present appeal.

3. Whilst contesting this petition for divorce the respondent-wife admitted the marriage betwixt the parties, the place of residence and the birth of two children out of the wedlock. It was, however, firmly pleaded that in pursuance of the earlier decree for restitution of conjugal rights there had been a resumption of co-habitation betwixt the parties and that she had lived with the husband for two days and had thereafter been expelled from the house. Significantly no plea whatsoever was taken on her behalf that the earlier decree for restitution of conjugal rights in her favour was either collusive or was a nullity on that score. An application under section 28-A of the Hindu Marriage Act, for compliance of the decree in fact was filed. On the aforesaid pleadings the trial Court framed the following two issues only:—

(1) Whether there has been no restitution of conjugal rights after the passing of a decree for the restitution of conjugal rights ?

(2) Relief.

On a consideration of the evidence led by the parties on the solitary issue on merits the trial Court concluded as under:—

> "... This act of the wife alone would show that her case of the parties living together for 2 days cannot be believed. Considering these circumstances I am of the opinion that the petitioner has succeeded in proving that there has been no resumption of co-habitation between the parties after 28th February, 1978. This issue is decided in favour of the petitioner."

However, despite the aforesaid findings in favour of the appellant on the solitary issue the trial Court whilst considering the grant of relief held that the earlier decree in favour of the respondent-wife was in contravention of section 23 and could not be recognised

for granting relief to the appellant. In the result it dismissed the petition for divorce.

4. This appeal first came up before my learned brother S. P. Goyal, J., sitting singly. He noticed that the two basic defences set up on behalf of the respondent-wife were firstly that the appellant having refused to resume co-habitation inspite of the execution of the decree was not entitled to claim divorce on this basis as it would amount to taking advantage of his own wrong. Secondly that the decree for restitution of conjugal rights being a consent decree was a collusive decree and a nullity in the eye of law.

5. Apprasing the aforesaid two grounds it was held that the first one is concluded against the respondent by judgment in *Dharmendra Kumar* vs. *Usha Kumari,* 1(A). As regards the second ground, a doubt was expressed with regard to the proposition that the consent decree in the matrimonial jurisdiction was a nullity in the eye of law and the matter was, therefore, referred to the larger Bench.

6. At the very outset we would notice that Mr. S. R. Chopra, learned counsel for the respondent, before us did not at all assail the factual finding of the trial Court on issue No. 1, nor did he press the first ground of defence namely that the appellant could not take advantage of his own wrong because of having refused to resume co-habitation in execution of the decree apparently in view of the binding precedent in *Dharmendra Kumar's case* (supra). However, the second ground that the decree for restitution of conjugal rights being a consent-decree was in essence a collusive decree and, therefore, a nullity in the eye of law was strenuously pressed.

7. It would appear that counsel for the parties were sorely remiss in not bringing to the notice of the learned Single Judge the exhaustive Full Bench judgment in *Joginder Singh's case* (supra). Therein the identical points raised herein were referred for decision by the Full Bench in the following terms :—

(1) "Can a consent decree for restitution of conjugal rights be passed under section 9 and, if passed, is such a decree a valid decree or is such a decree not a nullity ?

(2) If a consent decree for restitution of conjugal rights is made under section 9, whether it is valid or a nullity or not, if

1(A) A.I.R. 1977, S.C. 2218.

> it is not challenged in appeal or by way of other remedy available under the statute and becomes final, can its validity be questioned or can it be said to be a nullity in proceedings for divorce under section 13(1)(ix) of the Act ?"

By majority the answer to these two questions was rendered in categoric terms as under: —

> "In view of the majority decision, it is held that if a consent decree for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955, is passed, it will not be a nullity. If it is not challenged in appeal or by way of other remedy available under the law and becomes final, it cannot be ignored and can form the basis of divorce proceedings under section 13 of the Hindu Marriage Act, 1955".

It would be plain from the above that the solitary question in this appeal stands concluded in favour of the appellant by the aforesaid enunciation of law. This had to be fairly conceeded by Mr. S. R. Chopra, learned counsel for the respondent. However, the somewhat tenuous stand which he nevertheless pressed persistently was that the ratio of the Full Bench case in *Joginder Singh's case* (supra) no longer holds the field in view of the later Supreme Court judgments and the contrary view expressed in the other High Courts. Reference amongst others was made to *Smt. Alopbai w/o Ramphal and another* vs. *Ramphal Kunjilal and others* (2).

8. Basic reliance of Mr. Chopra has been on the judgments of the Final Court in *Ferozi Lal Jain* v. *Man Mal and another,* (3), *Smt. Kaushalya Devi and others* vs. *K. L. Bansal,* (4) and *Roshan Lal and another* v. *Madan Lal and others* (5).

9. On a close examination of the abovementioned judgments of the Final Court we find ourselves unable to subscribe to the view

(2) A.I.R. 1962 Madhya Pradesh 211.
(3) A.I.R. 1970 S.C. 794.
(4) A.I.R. 1970 S.C. 838.
(5) A.I.R. 1975 S.C. 2130.

that these would have the effect of over-ruling the Full Bench judgment in *Joginder Singh's case* (supra). It deserves highlighting that the Supreme Court judgments have been rendered under various rent jurisdictions. Though there might be some anology in the language used in the different rent laws, yet the same is not in *pari materia* with section 9 and 13 of the Hindu Marriage Act, which we are called upon to construe . Nor can it be said that the prescription laid in the said sections and the considerations which are applicable to the matrimonial jurisdiction are identical with what fell for consideration before their Lordships. It is also significant to remember that the Full Bench in *Joginder Singh's case* (supra) had expressly noticed and considered the *Alopbai's case* (supra), as also *K. L. Bansal* vs. *Kaushalya Devi and others* (6) from which the appeal in *Smt. Kaushalya Devi and others* vs. *K. L. Bansal* (supra) was taken and the judgment affirmed.

10. Lastly it is significant that in *Roshan Lal's case* (supra) on which reliance was placed, it has been pointedly observed as follows: —

> "... If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise."
>
> and
>
> "... If on the other, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith."

It is plain from the above that even in the rent jurisdiction no blanket rule has been laid that the consent decrees on the basis of a compromise are a nullity. We are firmly of the view that the ratio in *Joginder Singh's case* (supra) can in no way be said to have been obliterated by the aforesaid later Supreme Court judgments.

(6) 1962 P.L.J. 1091.

11. Sitting in the Division Bench we are bound by the ratio of *Joginder Singh's case*. It is, therefore, unnecessary to advert either in details or even to refer to some discordant notes by Single Benches and Division Bench judgments of the other High Court.

12. In fairness to the learned counsel for the respondent we must refer to his reliance on the Single Bench judgment of this Court in *Mahesh Chander Sehgal* vs. *Krishna Kumari*, (8). A perusal of the brief judgment therein would indicate that the matter does not seem to have at all been adequately canvassed before the Bench. Counsel failed to bring to the notice of the Court the binding precedent of the Full Bench in *Joginder Singh's case* (supra). The observations of the Single Bench therein plainly run contrary to the Full Bench which holds the field. Even otherwise the subsequent judgment in *Dharendra Kumar's case* (supra) has settled all controversies on the analogous points pressed. With the greatest respect to the Single Judge, *Mahesh Chander Sehgal's case* (supra) does not lay down the law correctly and is hereby over-ruled.

13. It seems to be plain that on the aforesaid finding alone the appellant is entitled to succeed. However, the added consideration which calls for notice is the fact that in defending the petition for divorce, the respondent in her written statement did not even remotely take up the plea that the earlier decree for restitution of the conjugal rights in her favour was a collusive one. Nor was it pleaded that on this ground, or otherwise, the same was a nullity. Far from it being so, in fact her own case was that there had been an execution of the earlier decree for resitution of conjugal rights. Indeed an application under section 28-A of the Hindu Marriage Act for compliance of the decree was also filed. As has already been noticed no issue was either claimed or struck that the earlier decree was either collusive or a nullity. It seems well settled from the following statement of the law that collusion is a question of fact which has to be alleged and proved, In the authoritative work of, Rayden on Divorce' it is stated as under: —

> "16. *Evidence where collusion charged.*—Collusion is a question of fact, and where a petitioner is charged with acting in collusion with the respondent to present a false case to the Court, he is entitled to show upon what material be acted in presenting a petition."

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(8) 1971 Cur-L.J., 778.

It seems to be thus manifest that the finding of the trial Court that the earlier decree for restitution of conjugal rights was collusive and consequently a nullity is unsustainable and has to be set aside.

14. In the result this appeal is allowed and the judgment of the trial Court is set aside. A decree of divorce under section 13 of the Hindu Marriage Act, 1955, is granted in favour of the appellant. There will be no order as to costs.

S. P. Goyal, J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

M/S ESCORTS LIMITED, FARIDABAD,—*Petitioner.*

versus

INDUSTRIAL TRIBUNAL, HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5653 *of* 1981.

August 30, 1982.

Industrial Disputes Act (XIV of 1947)—Sections 10(1) *and* 12(5)—*Industrial Employment (Standing Orders) Act (XIV of 1946)—Section 5—Industrial dispute raised by a workman—Government declining to refer the same for adjudication—Same dispute referred by the Government thereafter—Employer—Whether has a right to be heard when the reference is made—Rule of* audi alteram partem—*Whether attracted—Absence without leave for ten consecutive days deemed to be voluntary abandonment under the Standing Orders—'ten consecutive days'—Meaning of—Application for leave sent under certificate of posting when the Standing Orders required it to be sent by registered post—Such application—Whether of any consequence.*

Held, that though Section 10(1) of the Industrial Disputes Act, 1947 does not in terms prescribe for recording of reasons before rejecting a claim for reference with regard to an industrial dispute, yet it is now the settled law that an order of this nature must indicate the reasons for declining the reference. Though no detailed speaking order is necessary in this context yet it is