

of ejection passed by the Controller without giving an opportunity of being heard on the question of non payment of rent by the Controller has caused grave injustice to him and he has been deprived of the valuable rights accrued to him under the Act.

(59) In view of our discussion made above, we accept this revision-petition, set aside the orders dated 5th March, 1979 and 1st September, 1979, passed by the Rent Controller and the Appellate Authority, respectively, and dismiss the application of the landlords however, without any orders as to costs.

S.C.K.

Before Dr. (Mrs.) Sarojnei Saksena, J.

DHOULI—Appellant

versus

RAM NIWAS—Respondents

FAO No. 82 M of 92

19th May, 1997

Hindu Marriage Act, 1955—S. 28—Appeal filed against decree granting divorce on grounds of cruelty—Husband died before appellant could file appeal—Such appeal does not abate on account of death of husband where such death takes place prior to filing of appeal—Pending appeal.

Held, that despite the fact that the respondent-husband has died before the wife could file this appeal, the appeal does not abate as it not only determines her status as a widow/divorcee but also determines her social status and proprietary rights in the property of the deceased-husband.

(Para 8)

Hindu Marriage Act, 1955—S.13—Condonation of Cruelty—Cruelty alleged—Complaint lodged against husband and relations under section 406/498-A—Thereafter compromise arrived at between parties before Panchayat—Return of wife to matrimonial home—Deemed that husband condoned alleged acts of cruelty.

Held, that the appellant-wife has admitted that she has lodged a complaint against her husband and his relations under sections

406/498-A IPC, but not only she, even the respondent-husband has admitted in cross-examination that in connection with that criminal complaint when the husband was summoned by the police, a panchayat was convened and within four days a compromise was arrived at between the parties. In pursuance of that compromise, the appellant-wife went to her matrimonial home and lived there for few months. Thus, it is obvious that if at all she committed any act of cruelty earlier by entering into this compromise and rehabilitating the wife in his house the husband-respondent condoned the alleged acts of cruelty.

(Para 21)

U.D. Gour, Advocate with S. Sharma,
Advocate for the appellant.

None for the respondent

JUDGMENT

Dr. Sarojnei Saksena, J.

This is wife's appeal under section 28 of the Hindu Marriage Act, 1955 (in short, the Act) assailing the divorce decree in favour of the respondent-husband under section 13 of the Act on the ground of cruelty.

2. Adumbrated facts of the case are that the appellant-wife was married to respondent-husband on April 4, 1982, in village Talwandi Badashpur. Thereafter the couple lived at Hisar. Appellant gave birth to a daughter Saroj in this wedlock. Now the parties are living separately.

3. The respondent-husband filed divorce petition on August 2, 1989, alleging that from the very beginning of the marital life respondent's behaviour was not good towards him and his parents. She is a lady of quarrelsome nature and used to quarrel with him as well as with his parents on small matters. She also used to abuse him and his parents. Whenever he asked her to behave properly, she used to threaten him to commit suicide and to implicate him and his parents therein. She used to desert the respondent-husband off and on and finally in June 1987 she left the matrimonial home in his absence. Since then she is living in her parental home despite many efforts made by him to bring her back. Thus, the husband claimed divorce on the grounds of cruelty and desertion.

4. Appellant-wife denied the allegations of alleged cruelty and

desertion. According to her, she always performed her matrimonial duties as a loyal and legally wedded wife, but her husband and his parents were not satisfied. They used to tease and taunt her for bringing inadequate dowry. They demanded more cash and jewellery from her parents. Ultimately in April 1984 she was forced to bring Rs. 5,000 from her parents, which she brought and gave to the respondent-husband. Even thereafter respondent-husband used to maltreat her as she could not bring more dowry from her father. Sometimes she was kept hungry and locked in the matrimonial house. In August 1984 she was turned out of the matrimonial home. Her father convened a panchayat, but the respondent-husband was adamant. His father convened another panchayat in May 1985. At that time respondent-husband demanded T.V., Fridge, V.C.R. and Rs. 10,000 in cash. The third panchayat was convened on October 5, 1986, but to no effect. On February 20, 1987, she lodged a complaint against the respondent-husband and his relations under sections 406/498-A IPC in the Court of A.C.J.M. Hisar, whereupon the accused persons were summoned. On February 26, 1987, a compromise was arrived at between the parties in the Police Station and on his assurance she went back to her matrimonial home. After a short while, she was again tortured by the respondent-husband. In December, 1987 she gave birth to a female child, which further infuriated the respondent-husband and he started demanding Rs. one lac for the upbringing and marriage of the said daughter. On January 7, 1989, she was again turned out of the matrimonial home after being beaten. She got herself medically examined. The police summoned the respondent-husband. Panchayat was also convened. The husband assured that he would not maltreat the appellant-wife. Thereafter she again went back to her matrimonial home, but the husband again started treating her cruelly and asked her to bring Rs. 10,000 from her parents. She gave him Rs. 10,000 but ultimately on July 23, 1989, she was again turned out of the matrimonial home. Since then she is living in her parental house.

5. On these pleadings, issues were framed. The parties' evidence was recorded.

6. The matrimonial Court disbelieved the respondent-husband's evidence so far as the ground of desertion is concerned. It held that the appellant-wife treated the respondent-husband with cruelty. Her cruel acts as well as filing of the criminal complaint against him gave him mental torture as well. Hence on this count the divorce petition was allowed on May 7, 1992.

7. On May 29, 1992, appellant-wife filed this appeal but before that on May 20, 1992, respondent-husband died. Therefore, initially an objection was raised by the mother of the husband, who was summoned as a legal representative of the respondent-husband, that after the death of the husband, wife's appeal has abated.

8. No doubt, the decree of divorce was granted by the matrimonial Court on May 7, 1992, husband died on May 20, 1992, while the wife filed this appeal on May 29, 1992, but in *Smt. Yallawwa v. Smt. Shantavva* (1), the Apex Court has held that after a decree of divorce is obtained by the petitioning husband against his wife, she has a right to file an appeal and such appeal does not abate on account of the death of the husband where such death takes place prior to the filing of the appeal or pending the appeal. Hence I find that despite the fact that the respondent-husband has died before the wife could file this appeal, the appeal does not abate as it not only determines her status as a widow/divorcee but also determines her social status and proprietary rights in the property of the deceased-husband.

9. So far as the merits of the appeal are concerned, the appellant's learned counsel has contended that in the divorce petition only vague allegations are made that she is a lady of quarrelsome nature. Her behaviour was rough, rude and abnormal, she used to abuse him as well as his parents; she felt satisfied by lowering the prestige of the husband in the eyes of his friends and relations. By her insulting acts, she caused mental cruelty to the respondent-husband. She also threatened to commit suicide. In this petition specific instances are not pleaded when she abused or insulted her husband or his relations or how he suffered mental cruelty at the hands of the wife. Even the date, month etc. of the alleged threat to commit suicide are not pleaded.

10. Appellant's learned counsel further submitted that the respondent-husband examined his mother Shanti PW-1, Hanuman PW-2 and himself as PW-3. Shanti PW-1 has simply stated that the appellant-wife is a quarrelsome lady; she used to threaten them that she would commit suicide and put them all in trouble; she used to insult her husband as well as mother-in-law; whenever any person used to visit their house and her son used to ask her (wife) to prepare tea, she refused to prepare the same and insulted him. Even Shanti PW-1 has not given specific instances of misbehaviour or cruel behaviour. Hanuman PW-1 has testified that

once he went to respondent-husband's house; respondent asked her to bring a glass of water for him, but the appellant-wife refused. She not only rebuked her husband but also abused him in filthy language. He tried to pacify the appellant-wife and made her to understand and behave in a proper way. Hanuman also stated that after seven days he again went to the house of the respondent. At that time respondent-husband's mother asked the appellant-wife to prepare tea for Hanuman, but again she refused and repeated the same words which she had used on earlier occasions.

11. Appellant's learned counsel pointed out that this witness has admitted in cross-examination that only twice he visited the house of the respondent-husband. He does not know the name of the mother of the husband-respondent. He even does not know how many brothers and sisters the husband has or how many rooms are there in his house. He contended that from these answers it is evident that Hanuman is a got up witness. He never visited the house of the respondent-husband, otherwise he would have known all these facts.

12. The learned counsel also argued that even the respondent-husband's statement, so far as the plea of cruelty is concerned, is unreliable and untrustworthy. He has only stated that her behaviour towards him and his parents was rude; she is a lady of quarrelsome nature; whenever his friends used to visit him and he used to ask her to prepare tea, she always lowered him in the eyes of his friends and relatives. She used to abuse him and insult him. She also threatened to commit suicide and to implicate them all in criminal case. Thus, she caused mental torture to him. He also stated that she made false complaint before the Police and left his house in June 1987.

13. Learned counsel, assailing the statement of the husband-respondent, argued that the respondent-husband has not stated that when Hanuman visited his house twice and he asked her to prepare tea or to give water to Hanuman, she not only refused but abused and insulted him. He has not named Hanuman at all. Learned counsel also argued that in cross-examination respondent-husband has admitted that after the appellant filed complaint under Sections 406/498-A. IPC on February 23, 1987, a compromise was arrived at between the parties on February 26, 1987, and after that compromise the appellant-wife remained in the matrimonial home for 3/4 months. For some time again she went to her parental home and again she came back to reside with the respondent-

husband in the matrimonial home. Thus, according to him, if at all, any act of cruelty was committed by the appellant-wife before this compromise, by entering into this compromise and rehabilitating the appellant in the matrimonial home, the respondent-husband has condoned the alleged acts of cruelty. Learned counsel submitted that the matrimonial Court has utterly failed to consider this aspect of the case.

14. Learned counsel also submitted that even in the cross-examination the appellant-wife was not asked specifically that when Hanuman visited the place of her husband, she refused to prepare tea/give a glass of water to said Hanuman. She is only asked that she abused her husband and mother-in-law in the presence of Hanuman.

15. None appeared on behalf of the respondent-husband to assist the Court.

16. In my considered view, the appeal deserves to be allowed. The alleged acts of cruelty are acts of daily wear and tear of marital life.

17. The respondent-husband has tried to prove only three specific instances/acts of cruelty on the part of the appellant-wife. By examining Hanuman PW-2 he has tried to prove that twice when he came to his house, he/his mother asked the appellant-wife to prepare tea/give a glass of water to Hanuman, on both these occasions she not only declined to abide by the orders of the husband/mother-in-law but rebuked and insulted them. Another piece of evidence is that she threatened to commit suicide and to implicate all her in-laws in a criminal case. The last alleged act of cruelty is that she lodged a complaint against him and his relations under section 406/498-A IPC.

18. Wife is an honourable partner of life. She cannot be reduced to the status of a maid servant. If once or twice she declined to prepare tea or to give water to any visiting guest, though of course these alleged acts are not proved by reliable evidence, it cannot be said that she has treated her husband or his mother cruelly. There may be many factors for a wife on a particular occasion not to prepare tea or offer a glass of water to a visitor.

19. Even the husband-respondent has not stated so on oath in the Court. Wife has denied these allegations and has categorically stated that she does not even know Hanuman. There is no other evidence to lend corroboration to the statement of Hanuman so far

as these alleged cruel acts are concerned. Appellant's learned counsel has rightly pointed out that since this witness does not know as to how many rooms the respondent-husband has in his house, how many brothers and sisters he has, and what is the name of his mother, it appears that he is a got up witness and he never visited the house of the respondent-husband.

20. A vague allegation is made in the divorce petition as well as in the statements of PW-1 Shanti Devi and PW-3 respondent himself that the appellant-wife threatened them to commit suicide and to implicate them all in a criminal case. No specific date, month etc. are mentioned by these witnesses as to when such a threat was given by the appellant-wife. Such vague allegations can be made by any husband against his wife in any such petition when he is claiming divorce on such ground. Had it been true that she gave such a threat or the husband really felt that she is likely to act according to the oral threat, he would have rushed to the police and would have sought some assistance from them, but he never adopted that course of action. That only indicates that the allegation of alleged oral threat is nothing but an engineered plea to seek divorce on the ground of cruelty.

21. The appellant-wife has admitted that she has lodged a complaint against her husband and his relations under sections 406/498-A IPC, but not only she, even the respondent-husband has admitted in cross-examination that in connection with that criminal complaint when the husband was summoned by the police, a panchayat was convened and within four days a compromise was arrived at between the parties. In pursuance of that compromise, the appellant-wife went to her matrimonial home and lived there for few months. Thus, it is obvious that if at all she committed any act of cruelty earlier by entering into this compromise and rehabilitating the wife in his house the husband-respondent condoned the alleged acts of cruelty.

22. Thus, it is apparent that the respondent-husband has utterly failed to prove the ground of cruelty. Minor disputes do arise between the couple. But if the behaviour of one spouse is so cruel, that it becomes impossible for the other spouse to live harmoniously with the first spouse in the matrimonial home, then only it can be said that the first spouse has acted with cruelty and on that ground alone, the spouse is entitled to get a decree of divorce. In this case, it appears that on flimsy and imaginery grounds of cruelty divorce was sought by the respondent-husband

and the learned matrimonial Court has granted a decree of divorce on that ground simply relying on the testimony of the respondent and his witnesses.

23. These little thorns of alleged acts of cruelty are the essential concomitant, being part and parcel of blossomed rose of married life and are to be suffered/borne. No doubt, these tiny pin-pricks can cause little discomfort/uneasiness to the suffering spouse, but they cannot and are incapable of tearing off the vast all pervading canopy of marital life.

24. The trial Court has held that the respondent-husband has utterly failed to prove the ground of desertion. It has also come in evidence that the appellant-wife gave birth to a female child in her parental home. There is no evidence on record that after birth of this female child, the respondent-husband went to her parental home or sent any money for the maintenance of the child. The appellant-wife has categorically stated that thrice she was turned out of the matrimonial home. There after on first two occasions in pursuance of the compromise arrived at between them, she was rehabilitated by her husband. She was again turned out of the matrimonial home on July 23, 1989. Since then she is living in her parental house. She has also proved that the husband and his mother were not satisfied with the dowry given in her marriage. They always grudged that she had brought inadequate dowry. They demanded money and other dowry articles. She and her father have stated on oath that once Rs. 5000 and on another occasion Rs. 10,000 were given to the respondent-husband. From these facts the wife has tried to prove that she was treated cruelly by the husband and his relations.

25. Even from the statement of the respondent-husband, it is obvious that twice after reconciliation the appellant-wife was brought to the matrimonial home. This admission of the respondent-husband lends corroborator to the wife's testimony that she was turned out of the matrimonial home and at the intervention of the panchayat compromise was arrived at and she was brought back to the matrimonial home. If the husband entered into a compromise with the wife, rehabilitated her in his house, then unless there was some special reason for the wife to leave the matrimonial roof, which the husband has utterly failed to prove, it is obvious that when she was again treated cruelly and was turned out of the matrimonial home, she had to leave the matrimonial roof. Under section 23(1)(a) of the Act the husband

cannot take advantage of his own wrongs and claim decree of divorce on such grounds.

26. Admittedly, the appellant-wife has lodged a complaint against respondent-husband and his relations under sections 406/498-A IPC, which is not yet decided. Therefore, at the present moment it cannot be said/deduced that she has lodged a false complaint against the husband and has thus caused mental torture to him. This is also a fact that after this complaint, at the intervention of the panchayat the respondent-husband entered into a compromise with the appellant-wife and brought her back to his house.

27. In my considered view, the lower Court has utterly failed to scan the evidence minutely and to arrive at correct conclusion so far as decision on issue No. 1 is concerned. The finding recorded thereon is hereby set aside.

28. Resultantly, the appeal is allowed. The impugned decree of divorce is hereby set aside.

J.S.T.

Before V.S. Aggarwal, J

SULAKHAN SINGH—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

CrI. W.P. 229 of 95

19th May, 1997

Army Act, 1950 as amended by Act No. 37 of 1992—S.169-A—Indian Penal Code, 1860—S. 302—Code of Criminal procedure, 1973. S. 428—Army instructions dated 13th November, 1986—Army Headquarters letter No. 22548/RS1 dated 24th June, 1963—Life convict—Release of—Set off of period spent under pre-trial detention—Prisoners who were undergoing imprisonment when S. 169—A of the Army Act was enforced on 6th September, 1992 would be entitled to the benefit of set off of period spent in custody during investigation, inquiry and trial under the said Section—Case of the petitioner directed to be considered and reviewed accordingly.

Held that provisions of Section 169-A of the Army Act are by