APPELLATE CIVIL

Before D. K. Mahajan and A. D. Koshal, JJ.

AMRA VATI,—*Appellant*

versus

RAJ KUMAR RATTAN,—*Respondent*

First Appeal From Order No. 31-M of 1967

November 6, 1969

Hindu Marriage Act (XXV of 1955)—Section 13(1A)—Petition for restitution of conjugal rights allowed—Appeal therefrom dismissed—Application for divorce under section 13(1A) on the ground of non-restitution of conjugal rights within a period of two years—Such period of two years—Whether to be reckoned from the date of the decree of the trial Court.

Held, that a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights, can be filed within the said period from the date of decree of the trial Court and not from the date of the dismissal of the appeal against the decree for restitution of conjugal rights. The language of the statute is very clear and effect must be given to the letter of law untrammelled by any other considerations. The period cannot be reckoned from the date of the appellate decree, because there will be no uniformity so far as the period of limitation prescribed in the statute is concerned. It will vary from case to case, which does not appear to be the intention of the Legislature, otherwise a provision to that effect would have been made. (Paras 17 and 18)

Case referred by the Hon'ble Mr. Justice Prem Chand Pandit, on 15th April, 1969 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice A. D. Koshal decided the case finally on 6th November, 1969.

First Appeal from the order of the Court of Shri Narpinder Singh, Senior Sub-Judge, Ludhiana, dated 5th April, 1967 allowing the petition under section 13(9) of the Hindu Marriage Act, 1955 and passing a decree of divorce dissolving the marriage between the parties.

M. R. AGNIHOTRI, ADVOCATE, for the petitioner.

S. S. MAHAJAN, ADVOCATE, for the respondent.

REFERRING ORDER

P. C. PANDIT, J.—This is an appeal filed by Shrimati Amra Vati against the decision of the learned Senior Subordinate Judge, Ludhiana, granting the petition for the dissolution of marriage by a decree of divorce filed by her husband, Raj Kumar Rattan.

(2) The facts are not in dispute. A decree for restitution of conjugal rights was passed in the husband's favour by the learned District Judge, Ludhiana, on 26th of December, 1962. The wife filed an appeal against that decree which was dismissed by this Court on 23rd of February, 1966. Thereafter, on 18th/19th April, 1966, a petition was made by the husband under section 13(1)(a) of the Hindu Marriage Act, 1955, against his wife for the dissolution of the marriage by a decree of divorce on the ground that there had been no restitution of conjugal rights between the parties to the marriage for a period of two years after the passing of the decree for the restitution of conjugal rights. This petition was contested by the wife, who pleaded that she had complied with the said decree and had stayed with her husband performing her marital obligations with effect from 1st of April to 6th of April, 1966.

(3) On the pleadings of the parties, the following issue was framed in the case:—

> "Whether the respondent (wife) has failed to comply with the decree for restitution of conjugal rights for a period of 2 years or upwards after the passing of the decree ? If so, with what effect ?"

(4) Both the parties led evidence in support of their respective contentions. After discussing the entire evidence, the learned Senior Subordinate Judge came to the conclusion that the respondent had not lived or resumed cohabitation with the husband after the passing of the decree for restitution of conjugal rights against her. On these findings, the petition filed by the husband was allowed and a decree dissolving the marriage between the parties was passed. Against that decision, the present appeal has been filed by the wife.

(5) Learned counsel appearing for the appellant took me through the entire evidence produced in the case and then frankly admitted

that he could not urge with any plausibility that the finding recorded by the learned Senior Subordinate Judge, after the appraisal of the evidence, was in any way erroneous. He, however, raised a law point which does not seem to have been argued before the Court below. His submission was that the present petition by the husband was not entertainable in law on the short ground that he should have filed the same after two years of the date of the decision of this Court, viz., 23rd of February, 1966, when the appeal was dismissed and the decree for restitution of conjugal rights passed by the learned District Judge was confirmed. He contended that the wife could not have complied with the said decree before her appeal had been decided by this Court and the period of two years should be counted from the date of the decision of this Court.

(6) Since this was a pure law point and went to the root of the case I permitted the appellant to argue it, because the facts, which were necessary for the determination of this point, were not in dispute.

(7) The contention of the learned counsel for the respondent was that the period of two years has to be counted from the passing of a decree for restitution of conjugal rights. In the instant case, according to the learned counsel, admittedly a decree for restitution of conjugal rights had been passed by the learned District Judge on 26th of December, 1962, and the present petition under section 13 of the Hindu Marriage Act had been made by the husband after more than two years from that date. Under the law, it is not necessary that the period of two years has to be counted from the date of the decision of the appellate Court, if an appeal was filed against the original decree.

(8) The relevant part of section 13 of the Hindu Marriage Act reads as under:—

> (1A) "Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—
>
> (i) — — — —
>
> (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two

years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties."

(9) According to the language employed in the section, it would appear that the period of two years or upwards has to be counted from the passing of a decree for restitution of conjugal rights. Such a decree had undoubtedly been passed on 26th of December, 1962. When the wife filed an appeal against that decree, this Court rejected the said appeal on 23rd of February, 1966, and thus *confirmed* the decree of the trial Court. It could be argued that this Court did not pass any decree for restitution of conjugal rights, because that had already been done by the trial Court. The position would be different if the trial Court had rejected the application of the husband for the grant of a decree for restitution of conjugal rights and on appeal, this Court had set aside the judgment of the trial Court and granted such a decree. In that case, it could have been said that this Court had *passed* a decree for restitution of conjugal rights.

(10) On the other hand, learned counsel for the appellant also argued with a certain amount of justification that the wife could not have complied with the decree for restitution of conjugal rights so long as her appeal against the same was pending in this Court. Had she done that, her appeal would have become infructuous. It could not have been the intention of the Legislature that the right of appeal, which was given to her under the Statute, should, thus, become meaningless. If her appeal remained pending for a long time in this Court it was not her fault. If it had been decided earlier, that is, within the period of two years of the passing of the decree by the trial Court, she could have, it was so argued, complied with it.

(11) It was also submitted by the learned counsel for the respondent that the wife could have gone to the house of her husband within two years of the passing of the decree for restitution of conjugal rights and complied with it so that the latter could not then file a petition for divorce. By doing so, her appeal would not have been rendered infructuous, because therein it had to be determined whether the decision of the trial Court on the facts before it, was correct or not. The later conduct of the wife would not have been taken into consideration for determining that matter.

(12) The reply of the learned counsel for the appellant to this argument was that while hearing the appeal against the decree of restitution of conjugal rights, the subsequent conduct of the wife could have been brought to the notice of the learned Judge hearing the appeal and he could as well have dismissed it on that account.

(13) In the course of arguments, another situation was also visualised. During the pendency of the appeal filed by the wife against the decree for restitution of conjugal rights against her if two years had elapsed, the husband was entitled, if the contention of the respondent was correct, to file a petition for the dissolution of the marriage by a decree of divorce, when the wife had not complied with the decree for restitution of conjugal rights during that interval. The husband could legitimately ask for a decree of divorce, because, admittedly, the wife had not complied with it for two years since her appeal against the decree for restitution of conjugal rights was still pending. If the Court granted that decree of divorce, what would happen to the appeal filed by the wife? Would that become infructuous or not? A learned Judge of the Patna High Court in *Smt. Sudarshan* v. *Shree Prem Kumar Sarna*, (1), had observed that such an appeal would become infructuous.

(14) It may be mentioned that the leaned counsel for the parties referred to two rulings, namely, *Shirin Vishnu Kirpalani* v. *Vishnu Hiranand Kirpalani* (2), and *Shri Ishwar Chander Ahluwalia*, v. *Shrimati Promilla Ahluwalia* (3), but it was conceded that there was no direct authority on the point, viz., whether the period of two years has to be counted from the date of the passing of the decree by the trial Court or from the date of the judgment of the appellate Court if an appeal had been filed against the same.

(15) The point is of importance and is likely to affect a large number of cases. Under these circumstances, it is desirable that the same should be decided authoritatively by a larger Bench. I would, therefore, refer this case to a Division Bench, since this is the only point involved therein. Let the papers be placed before the learned Chief Justice for necessary orders in that behalf.

(1) A.I.R. 1967 Patna. 4.
(2) A.I.R. 1960 Bom. 447.
(3) 1962 P.L.R. 491.

JUDGMENT OF DIVISION BENCH

MAHAJAN, J.—After settling the question of fact, Pandit J., referred this case to a Division Bench for the settlement of the question of law.

(17) The detailed facts are narrated in the referring order and it is not necessary to restate them. We will only state the bare facts which are necessary for the determination of the question of law: The husband obtained a decree for restitution of conjugal rights from the trial Court on the 26th of December, 1962. An appeal against this decree was filed by the wife on the 9th of January, 1963. That appeal was ultimately dismissed on the 23rd of February, 1966; and on the 19th of April, 1966, the present petition for divorce was filed under section 13(1A)(ii) of the Hindu Marriage Act, 1955, which reads as under:—

> "13(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—
>
> (i) * * * * *.
>
> (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.
>
> (2) * * * * *".

This application was allowed by the trial Court. On appeal, the learned Single Judge held that the wife had failed to comply with the decree within the period of two years allowed by section 13(1A) (ii); and, therefore, would have confirmed the decision of the trial Court, but for the fact that it was debated before him that the period of two years should be reckoned from the date of the dismissal of the appeal against the decree for restitution of conjugal rights; in other words, from the 23rd of February, 1966. The argument in support of this is that if it is not so reckoned, the appeal would become infructuous.

(18) In our opinion, this argument is wholly fallacious. It is open to a wife, without filing the appeal, to pray that she would comply with the decree in case the appeal is decided against her; and, therefore, the appeal should be decided within the period of two years. In that eventuality, if the appeal is not decided within a period of two years, it is possible for the wife to take the plea that in her case, the period of two years should be reckoned from the date of the appellate decree, and, in any case, some reasonable time should be allowed to her to comply with the decree. But it is not necessary to go to that length because the language of the Statute itself is very clear; and we cannot read something more into it. If there is any lacuna, it is for the legislature to supply it. If it is held that the period is to be reckoned from the date of the appellate decree, there will be no uniformity so far as the period of limitation prescribed in the Statute is concerned. It will vary from case to case. If that was the intention of the Legislature, a provision to that effect would have been made. The language of the Statute admits of no ambiguity. Moreover, the matter is not *res integra*. The view, we have taken of the matter, was taken by the Rajasthan High Court in *Omasmat* v. *Banshi Lal*, (4) and this view finds further support from the decision of the Patna High Court in *Smt. Sudarshan* v. *Shree Prem Kumar Sarna*, A.I.R. 1967 Patna 4(1). It may be mentioned that the decision of this Court in *Shri Ishwar Chander Ahluwalia* v. *Smt. Pomilla Ahluwalia*, (3) was cited before the Rajasthan High Court and was distinguished. In our opinion also, the decision of this Court is clearly distinguishable and does not run counter to the view, we have taken of the matter. Effect must be given to the letter of the law untrammelled by any other considerations.

(4) For the reasons recorded above, this appeal fails and is dismissed; but there will be no order as to costs.

A. D. KOSHAL J. —I agree.

R. N. M.

(4) 1968 Raj. L.W. 167.