APPELLATE CIVIL

Before Harbans Singh, Chief Justice and Gurdev Singh, J.

KARAMBIR KAUR,—*Appellant.*

versus.

KANWAR VIJAY PAL SINGH, ETC.,—*Respondents.*

L.P.A. No. 80 of 1970.

January 12, 1971.

Hindu Marriage Act (XXV of 1955)—Section 13(1)(c)—Expression "is living in adultery"—Interpretation of—Petition for divorce by a spouse on the ground of adultery of the other spouse—Adulterous conduct of such other spouse—Whether must continue till the date of the petition or the decree.

Held that the expression "is living in adultery" occuring in section 13(1)(c) of Hindu Marriage Act, 1955, cannot possibly mean that the defaulting party must continue to live in adultery till the date of the decree of divorce. The word "is" in the expression appears to have been used to make sure that the adulterous conduct complained of had not been condoned, or related to such distant past as to indicate that the petitioner had forgiven or forgotten it and had no real grievance at the time he approached the Court for divorce. The Legislature while introducing monogamy among Hindus, and being conscious of the fact that Hindu marriage is not a contract between the husband and the wife but a solemn relationship having religious sanction, cannot have intended that a spouse indulging in adultery should continue to enjoy all the benefits of the marriage and defeat an application for divorce by the aggrieved spouse, on coming to know of the imminence of such proceedings, by temporary suspension of adulterous conduct. The proposition admits of no doubt that whereas a decree for judicial separation can be granted on proof of solitary act of adultery, in proceedings for divorce, the petitioner must prove not merely a single or isolated lapse from virtue but repitition of such act, indicating a course of conduct. This, however, does not mean that the adulterous conduct must be for a considerable period or continue right upto the date of the petition. It is impossible in the ordinary course of affairs for a petitioner, who seeks divorce on the ground of adultery, to prove that till the very date of the petition the guilty spouse had continuously led an adulterous life. All that is necessary to prove under section 13(1)(i) of the Act is that the guilty spouse had committed not an isolated act of adultery but has been induiging in adultery more often, constituting a course of immoral conduct, there being no indication that he had given up that life or returned to the path of rectitude. (Paras 8, 13 and 14).

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice Bal Raj Tuli dated 10th December, 1969 passed in F.A.O. No. 64 of 1968 modifying that of Shri Gurbachan Singh,

District Judge, Ludhiana, dated the 27th of March, 1968 (dismissing the petition of the petitioner) to the extent that the appellant is granted a decree for judicial separation under section 10(1)(f) of the Act against her husband Kanwar Vijay Pal Singh, respondent with costs throughout.

ATMA RAM, ADVOCATE, for the appellant.

NEMO, for the respondents.

JUDGMENT.

GURDEV SINGH, J.—(1) The short question for our consideration in this appeal under clause 10 of the Letters Patent relates to the interpretation of the expression "is living in adultery" occurring in section 13(1) (i) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act), and constituting one of the grounds on which a Hindu marriage can be dissolved.

(2) The appellant Smt. Karambir Kaur and the respondent Kanwar Vijay Pal Singh were married according to Sikh rites on 12th of March, 1959. After a short stay together differences arose between them. The wife, on being turned out of her husband's house, sought relief under section 488, Criminal Procedure Code, and she was granted maintainance on 28th of October, 1960. An attempt was made by the husband to nullify the effect of that order by seeking a decree for restitution of conjugal rights. He, however, did not succeed and while they were still living apart, on 21st of March, 1965, the husband Kanwar Vijay Pal Singh married the co-respondent Dr. Amarjit Kaur, who bore him a son on 8th February, 1966. This second marriage was contracted by Kanwar Vijay Pal Singh by keeping Dr. Amarjit Kaur and her parents, who were living in Uttar Pradesh at Lucknow, in the dark about his first marriage. It was on learning about this second marriage and after making the necessary enquiries that the appellant Smt. Karambir Kaur on 31st of July, 1967, approached the District Judge, Ludhiana, for divorce under section 13 of the Act, on the plea that her husband Kanwar Vijay Pal Singh had married the co-respondent Dr. Amarjit Kaur, from whose womb he had begot a son on 8th of February, 1966, and was still living in adultery with her.

(3) During the pendency of these proceedings for divorce the co-respondent Dr. Amarjit Kaur made a petition under section 11 of the Act to the Civil Judge, Malihabad at Lucknow (Uttar Pradesh)

and got a declaration that her marriage with Kanwar Vijay Pal Singh being void was a nullity. A certified copy of the judgment in that case was admitted by the learned Single Judge into evidence, and on consideration of the relevant material the learned Judge held it proved that the respondent Kanwar Vijay Pal Singh had married Dr. Amarjit Kaur on 21st of March, 1965, had been living in adultery with her and begot a son from her. He, however, refused to dissolve the appellant's marriage and granted her judicial separation, on the ground that the respondents were not continuously living together in adultery till the date the petition for divorce was instituted. The relevant part of the judgment runs thus :

> "From the copy of the judgment by the Civil Judge, Malihabad, referred to above, it is clear that Kanwar Vijay Pal Singh married Dr. Amarjit Kaur on March 21, 1965, at Lucknow during the subsistence of his marriage with the appellant, which marriage was a nullity as provided in section 11 of the Act. It is also clear from this judgment that a son was born out of the union of the respondents who was about 2 years and 5 months old when Dr. Amarjit Kaur gave her statement on July 25, 1968, in the petition by her against Kanwar Vijay Pal Singh. She had also stated before that Court that Kanwar Vijay Pal Singh was not seen by her after the month of July 1965. In view of this fact it cannot be said that on the date when the appellant filed her petition under section 13 of the Act, respondent Kanwar Vijay Pal Singh was living in adultery with Dr. Amarjit Kaur. The marriage between the respondents was a nullity and Kanwar Vijay Pal Singh could be said to be living in adultery with Dr. Amarjit Kaur only if they were living together on the date of the petition of the appellant or had continuously lived together till about that date. The words in section 13 of the Act are 'is living in adultery' which means that the respondent must be living in adultery at the time the petition on that ground is made by the petitioner."

(4) It may be observed here that in coming to the conclusion that Kanwar Vijay Pal Singh was not living in adultery till the date of the petition for divorce, the learned Single Judge has relied solely on a part of the judgment in the proceedings instituted by Dr. Amarjit Kaur for nullity of her marriage, wherein it has been observed

that Dr. Amarjit Kaur had stated in those proceedings that after July, 1965, she had neither seen her husband nor lived with him, I am afraid, this stray sentence from the statement of Dr. Amarjit Kaur recorded in another case cannot be taken as legal and sufficient evidence of the fact that Dr. Amarjit Kaur and Kanwar Vijay Pal Singh had parted company in July, 1965, and were no longer living and cohabiting when the petition for divorce was presented by the appellant. Even according to the facts found by the learned Single Judge, the proceedings for nullity of marriage were taken by Dr. Amarjit Kaur during the pendency of the divorce proceedings that had been instituted against Kanwar Vijay Pal Singh by his first wife and it was only on 25th July, 1968, that Dr. Amarjit Kaur obtained the decree nullifying her marriage. Once it is found that Kanwar Vijay Pal Singh had taken another wife and was living with his co-respondent Dr. Amarjit Kaur, who gave birth to a son from his loins the Court would be justified in presuming that they had continued their adulterous conduct in absence of any legal and cogent evidence to the country.

(5) In holding that it was necessary for the appellant to prove that her husband had continued to live in adultery till the very date of the petition, the learned Single Judge has placed reliance on a Single Bench decision of this Court in *Bhagwan Singh Sher Singh Arora* v. *Amar Kaur w/o Bhagwan Singh, and another*, (1), *Dr. H. T. Vira Reddi* v. *Kistamma*, (2), and certain observations in *Rajani Pradesh Lokur* v. *Prabhakar Raghavendra Lokur and another*, (3).

(6) The decision in *Bhagwan Singh's case* (supra) no doubt supports the view taken by the learned Single Judge. In fact, in that case Shamsher Bahadur, J., went further laying down that the adultery should continue even till the date of the decree, observing as follows :

> "It has been rightly argued by the counsel for the respondent that it must be shown right up to the date of petition and even till the date of the decree that the offending respondent is living in the matrimonial offence of adultery

(1) A.I.R. 1962 Pb. 144.
(2) A.I.R. 1969 Mad. 235.
(3) A.I.R. 1958 Bom. 264.

to entitle the aggrieved spouse to claim a decree for dissolution of marriage on this ground.

Apart from the fact that the language used in the section is clear and unambiguous, there is authority to support the proposition which has been advanced by Mr. Bindra, the learned counsel for the respondent-wife. In *Rajani Prabhakar* v. *Prabhakar Raghavendra,* (3). (Vyas and Miabhoy JJ.) it was held that "living in adultery" means a continuous course of adulterous life as distinguished from one or two lapses from virtue."

(7) Though in some of the cases decided by the various High Courts it has been held that to obtain divorce under section 13 (1) (i) of the Act the petitioner must prove that the other spouse has been living in adultery till the date of the petition, not a single case has come to our notice in which the extreme view that the adulterous conduct must continue even uptill the date of the decree has been taken and the language used in the expression 'is living in adultery' cannot be stretched so as to require a petitioner to prove that even after the institution of the proceedings for divorce and uptill the date of the decree the guilty party had continued his or her adulterous conduct. The observations in *Dr. H. T. Vira Reddi case* (2), from which support is sought, are these :

"In a proceedings under Section 13, for a decree of divorce, on the ground of adultery, it is necessary that the course of immoral conduct must be more or less continuous and isolated lapses and acts of immorality would not suffice. On the other hand, for the relief of judicial separation under Section 10 (1) (f), the party aggrieved will be entitled to that relief even if he proves one single act of infidelty on the part of the wife, she having had sexual intercourse with a stranger."

(8) There can be no quarrel with the proposition that whereas a decree for judicial separation can be granted on proof of solitary act of adultery, in proceedings for divorce the petitioner must prove not merely a single or isolated lapse from virtue but repetition of such act, indicating a course of conduct. This, however, does not mean that the adulterous conduct must be for a considerable period or continue right upto the date of the petition. In the cases in which

a contrary view has been taken, emphasis has been laid on the word 'is' occurring in the expression 'is living in adultery'. If this expression is construed in this light, it will lead to alarming results and defeat the very purpose of the legislation. This danger was pointed out long time back by a Division Bench of Bombay High Court in *Rajani Prabhakar Lokur* v. *Prabhakar Raghavendra Lokur and another*, (3), where interpreting the language of clause (i) of section 13(1) of the Act, Vyas J. observed as follows :

> "In our opinion, although grammatically the words "is living" cannot mean "was living", the Legislature intended that a reasonable construction as distinguished from a construction too narrow or too loose must be put upon them. Unless the Legislature intended so, cunning or watchful spouse, living a continuous life in adultery, might, on sensing the intention of the other party to file a petition under the Act, discontinue the adulterous life temporarily and thus frustrate the object of the Act. The Legislature could not have been unaware of the likelihood of such a thing happening and could not have intended to let it happen. In enacting clause (i) of sub-section (1) of Section 13, the intention of the Legislature was to relieve a spouse from being tied down to an object and agonising life with a partner who was living in adultery with another person and there could be no doubt that this intention, which in our view underlies clause (i) of sub-section (1) of Section 13, could be defeated if a spouse, proved to have been living in, adultery about the time the petition was filed, could successfully plead her temporary cessation from such life immediately prior to the petition as a ground for refusing a decree for divorce. It is a canon of construction that the words of a statute should be so construed as to further the object of the Act and not render impossible the relief inteded to be conferred by the statute. That being so, we are of the view that it would not be in consonance with the intention of the Legislature to put too narrow and too circumscribed a construction upon the words "is living" in clause (i) of sub-section (1) of Section 13. On the other hand, it is clear that too loose a construrction must also not be put on these words. For attracting the operation of these words, it could not

be enough if the spouse was living in adultery sometime in the past, but had seceded from such life for an appreciable duration extending to the filing of the petition. It would not be possible to lay down a hard and fast rule about it since the decision of each case must depend upon its own merits and turn upon its own circumstances. But it is clear, in our view, that for invoking the application of clause (i) of sub-section (1) of Section 13, it must be shown that the period during which the spouse was living an adulterous life was so related, from the point of proximity of time, to the filing of the petition that it could be reasonably inferred that the petitioner had a fair ground to believe that when the petition was filed, she was living in adultery."

(9) These observations obviously do not support the view taken by Shamsher Bahadur J., in *Bhagwan Singh's case* (1), or by the learned Single Judge in the case before us, and speaking with respect, we find that the legal position as propounded by the learned Judges of the Division Bench of the Bombay High Court appeals to reason and must be preferred over the view that the adulterous conduct must continue till the very date of the petition. This later view, if adopted, would, as pointed out by the learned Judges of the Bombay High Court, more often than not, result in defeating the intention of the Legislature and it would be open to the guilty spouse to nullify the proceedings initiated on the ground stated in clause (i) of sub-section (1) of section 13 of the Act. This aspect of the matter has not been considered in the various authorities in which undue emphasis on the word 'is' in the expression 'is living in adultery' has been insisted upon.

(10) It is no doubt true that if the words of the statutes are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, but it must be remembered, as stated by Maxwell in his celebrated work 'Interpretation of Statutes' (Tenth Edition) at page 2 "the object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly by the language used, so far as is necessary for determining whether the particular case or states of facts presented to the interpreter falls within it."

(11) Maxwell has dealt with the question of strict grammatical construction at page 52 of the same book thus:

> "The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. It is not because the words of a statute, or the words of any document, read in one sense will cover the case, that that is the right sense. Grammatically, they may cover it; but, whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied."

At page 81 of the book, Maxwell again says:

> "Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words. There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words), and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction in cases where it seems highly improbable that the words in their wide primary or grammatical meaning actually express the real intention of the legislature. It is regarded as more reasonable to hold that the legislature expressed its intention in a slovenly manner, than that a meaning should be given to them which could not have been intended."

(12) In fact, it has been recognised by various authorities that to meet the intention of the legislature even the language of the statute can be modified. This is how Maxwell has dealt with this matter at page 229 of the same book:

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense."

(13) In the case before us, as has been noticed earlier and pointed out by the learned Judge of the Bombay High Court in *Rajani Prabhakar Lokur's case* (3), (supra), undue emphasis on the word 'is' occurring in the expression 'is living in adultery' will result in defeating the very purpose of the legislature when it made living in adultery a ground for divorce. Reading this clause with other provisions in the Act, it becomes clear that whereas a single act of adultery is considered enough to entitle the aggrieved spouse to claim separation and defuse to live with the guilty partner, this is not consider sufficient for dissolution of marriage. It is only in cases where the adultery proved indicates a course of couduct that the relief of divorce can be given . All the same, it is unreasonable to suppose that the legislature intended that the aggrieved spouse should remain tied down to the other partner, who is not guilty merely of

an isolated act of adultery but, throwing the solenm vow of Hindu marriage to winds, frequently indulges in such act indicating a course of immoral couduct. It will be impossible in the ordinary course of affairs of a petitioner, who seeks divorce on the ground of adultery, to prove that till the very date of the petition the guilty spouse had continuously led an adulterous life. All that is necessary, in my opinion, to prove under section 13(1)(i) of the Act is that the guilty spouse had committed not an isolated act of adultery but has been indulging in adultery more often, constituting a course of immoral conduct, there being no indication that he has given up that life or returned to the path of rectitude.

(14) The word 'is' occurring in the expression 'is living in adultery' appears to have been used to make sure that the adulterous conduct complained of had not been condoned, or related to such distant past as to indicate that the petitioner had forgiven or forgotten it and had no real grievance at the time he approaches the Court for divorce. I am not prepared to believe that the Legislature while introducing monogamy among Hindus, and being conscious of the fact that Hindu marriage is not a contract between the husband and the wife but a solemn relationship having religious sanction, intended that a spouse indulging in adultery should continue to enjoy all the benefits of the marriage and defeat an application for divorce by the aggrieved spouse on coming to know of the imminence of such proceedings by temporary suspension of adulterous conduct.

(15) Even if somewhat narrower construction is insisted upon, the facts of this case, in my opinion, fully justify the grant of the decree prayed for to the appellant. As has been noticed earlier, it has been proved that during the subsistance of his marriage with the appellant the respondent Kanwar Vijay Pal Singh had contracted another marriage with his co-respondent Dr. Amarjit Kaur on the 21st of March, 1965, and a son was born out of that union on 8th of February, 1966. The petitioner under section 11 of the Act seeking a declaration that this second marriage was a nullity was brought by Dr. Amarjit Kaur as late as 27th of September, 1967, and that too after the appellant had initiated proceedings for divorce by a petition presented on 31st of August, 1967. It was only on the 25th of July, 1968, that this second marriage was declared null and void.

There is not a little of evidence on record to indicate, muchless to prove, that prior to 27th September, 1967, when Dr. Amarjit Kaur respondent came to the Court with a petition under section 11 of the Act, she and Kanwar Vijay Pal Singh had stopped living together. In coming to the conclusion that they were not living together on 31st of August, 1967, when the appellant applied for divorce, the learned Single Judge has relied solely on the observation of the Civil Judge, Malihabad, in his judgment in the petition under section 11 of the Act that Dr. Amarjit Kaur had deposed in that Court that the respondent Kanwar Vijay Pal Singh 'was not seen by her after the month of July, 1965'. This stray sentence occurring in the judgment in another proceeding does not constitute legal evidence. In any case, it could have no probative value against the present appellant, who was not even a party to those proceedings. Neither Dr. Amarjit Kaur nor Kanwar Vijay Pal Singh appeared in the proceedings out of which this appeal has arisen and there is nothing on the record to prove that they stopped living together in July, 1965, or that on 31st of August, 1967, when the present appellant instituted proceedings for divorce, they were not living as husband and wife, as they would ordinarily do because of their marriage on 21st of March, 1965, which had never been repudiated and was treated as subsisting till Dr. Amarjit Kaur sought decree for nullity on 27th September, 1967.

(16) The undisputed facts that the marriage between Kanwar Vijay Pal Singh and his co-respondent Dr. Amarjit Kaur took place on the 21st of March, 1965, that a son was born to them on 8th of February, 1966, and that the proceedings under section 11 of the Act, were instituted by Dr. Amarjit Kaur after the appellant Smt. Karambir Kaur had applied for divorce, lead to the irresistible conclusion that Kanwar Vijay Pal Singh and his co-respondent Dr. Amarjit Kaur, having married when Vijay Pal Singh's first marriage was subsisting, were still living as husband and wife on the day the appellant brought these proceedings for divorce. Since the second marriage was void, being in contravention of the provisions of the Hindu Marriage Act, it is obvious that Kanwar Vijay Pal Singh was living in adultery even on the day the proceedings, out of which this appeal has arisen, were instituted.

(17) In view of the above discussion, the judgment of the learned Single Judge cannot be sustained. I would, accordingly,

accept the appeal with costs and grant the appellant decree for dissolution of her marriage with the respondent Kanwar Vijay Pal Singh.

Harbans Singh, C. J.—(18) I entirely agree with my learned brother that the words "is living in adultery" cannot possibly mean that the defaulting party must continue to live in adultery till the date of the decree. It is enough if the petitioner can prove such acts of adultery of the other spouse as indicate a course of action rather than a stray act or two of infidelity. I would, therefore, prefer to base my agreement with the order proposed on this general ground, rather than on the peculiar facts of this case.

K.S.K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MESSRS EXPRESS DAIRY COMPANY LIMITED, CALCUTTA,—PETITION

versus.

THE ASSESSING AUTHORITY AND JTHERS,—*Respondents.*

Civil Writ No. 2326 of 1965.

January 14, 1971.

The Punjab General Sales Tax Act (XLVI of 1948)—Section 6 and Schdule B item 54—'Guar Giri' or 'Guar meal'—Whether comes within the description 'Guara and its flour' and taxable—Such item—Whether "fodder' and exempt from sales tax—Interpretation of statutes—Words used in taxing statutes—How to be construed—Primary use of an item—Whether determines taxability.

Held, that the 'Guar Giri' or 'Guar meal' cannot be termed as 'flour of Guara' as it is a pulverized substance, which is not in the fine powder form. It is a substance in the form of small crystals and is not produced as a result a grinding but as a result of the process which separates the outer portion from the inner one. It in really a by-product of the primary manufacturing process to which the whole grain is subjected for commercial purposes. For this reason, it cannot be termed as a 'Guar flour', nor can be taxed as such. (Para 6).

Held, that as the only use made of 'Guar Giri' or 'Guar meal' is as fodder for cattle or animals, the item squarely falls within the description