

Surinder Kaur *v.* Mohinder Singh (Narula, J.)

down by the Madras High Court in *S.A. Raju Chettiar and others v. Collector of Madras and another* (5).

For the foregoing reasons the question referred to us is answered in the affirmative, that is, in favour of the Assessee, but the parties are left to bear their own costs of the proceedings in this Court.

D. K. MAHAJAN, J.—I concur.

B.R.T.

LETTERS PATENT APPEAL

Before D. K. Mahajan and R. S. Narula, JJ.

SURINDER KAUR,—*Appellant*

versus

MOHINDER SINGH,—*Respondent*

Letters Patent Appeal No. 32 of 1963

July 13, 1967

Hindu Marriage Act (XXV of 1955)—S. 9(1)—“Reasonable excuse”—Husband not earning anything—Whether affords ‘reasonable’ excuse to wife to withdraw from the society of husband—No possibility of husband and wife living together in a state of happiness—Decree for restitution of conjugal rights—Whether must be refused—Letters Patent—Clause 10—Appeal under—Re-appraisal of evidence—Whether permissible—Discretion exercised by lower courts—Whether to be interfered with in Letters Patent appeal.

Held, that the mere fact that the husband is not earning anything does not furnish to the wife, a “reasonable excuse” within the meaning of sub-section (4) of section 9 of the Hindu Marriage Act, 1955, to withdraw from the society of her husband.

Held, that merely because there is no possibility of the parties living together in a state of happiness, a decree for restitution of conjugal rights cannot be refused irrespective of other considerations and evidence of the conduct of the

parties. A decree for restitution should, no doubt, be refused where the attitude of the husband amounts to legal cruelty even in the absence of evidence of actual beating.

Held, that it is not open to the Bench hearing an appeal under clause 10 of the Letters Patent to re-appraise the evidence in order to attempt to come to a different finding.

Held, that even when the conditions mentioned in sub-section (1) of section 9 of the Hindu Marriage Act are satisfied, it is in the discretion of the Court whether or not to pass a decree for the restitution of conjugal rights. Such a discretion having been exercised by the trial Court and not having been interfered with by the learned Single Judge of the High Court, it is too late in the day for the appellant to canvass that the petition of the husband should be dismissed at this stage merely because the husband has started trimming his beard or started smoking; particularly when it has not been shown that the discretion was exercised by the trial court in this case otherwise than in accordance with sound judicial principles.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice Shamsher Banadur passed in F.A.O. No. 66-M of 1961 on 9th November, 1962.

J. S. WASU AND BALDEV KAPUR, ADVOCATES, for the Petitioner.

BHAGWAN DASS MEHRA, ADVOCATE, for the Respondent.

JUDGMENT

The following judgment of the Court was delivered by Narula, J.—
This is a wife's appeal under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this court dismissing her first appeal against the order of the Senior Subordinate Judge, Hoshiarpur, granting a decree for restitution of conjugal rights against her at the instance of her husband Mohinder Singh. After a careful consideration of the entire record of the case and after appraisal of the evidence on record, the learned Single Judge has come to the conclusion that the wife who has emphatically stated that she is not prepared to live with her husband any longer has not been able to make out any reasonable excuse for her withdrawal from the society of her husband. We do not think it to be open to us in exercise of our jurisdiction under clause 10 of the Letters Patent to reappraise the evidence in order to attempt to come to a different finding. Mr. Joginder Singh Wasu, the learned counsel for the appellant, has vehemently argued that the learned Single Judge has not in so many words disbelieved the evidence about the respondent having pushed her out from the house and having taken her to a well on

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the outskirts of the village where two witnesses are alleged to have seen the husband giving beating to the wife. Evidence to the above effect was disbelieved by the trial Court. The learned Single Judge does not appear to have accepted it.

It has been next contended by Mr. Wasu, that the fact that the husband is not earning anything itself amounts to cruelty. He has relied in this connection on a judgment of the Madhya Pradesh High Court in *Baburao v. Mst. Sushila Bai and others* (1), wherein it was held that the wife had a just excuse to live away from her husband if she was an educated lady and the husband was uneducated. No such consideration comes in the instant case. The mere fact that the husband is not earning anything does not, in our opinion, furnish to the wife a reasonable excuse within the meaning of sub-section (1) of section 9 of the Hindu Marriage Act, 1955, to withdraw from the society of the husband. There is no doubt that even when the conditions mentioned in sub-section (1) of section 9 of the Hindu Marriage Act are satisfied, it is in the discretion of the Court whether or not to pass a decree for the restitution of conjugal rights. Such a discretion having been exercised by the trial Court and not having been interfered with by the learned Single Judge of this Court, it is too late in the day for the appellant to canvass that the petition of the husband should be dismissed at this stage merely because the husband has started trimming his beard or started smoking. Nothing has been pointed out to us which may lead us to think that the discretion was not exercised by the trial Court in this case on anything other than sound judicial principles. We find ourselves unable to go to the extent of holding that merely because there is no possibility of the parties living together in a state of happiness, a decree for restitution of conjugal rights must be refused irrespective of other considerations and evidence of the conduct of the parties. Decree for restitution should no doubt be refused where the attitude of the husband amounts to legal cruelty even in the absence of evidence of actual beating. No such legal cruelty has been proved on the record of this case. We, therefore find it impossible to interfere with the judgment of the learned single Judge and upholding the same, dismiss the appeal, though without any order as to costs.

B.R.T.

(1) A.I.R. 1964 M.P. 73.