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FA-1462-2022

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

ON THE 13th OF NOVEMBER, 2024

FIRST APPEAL No. 1462 of 2022



Versus



Appearance:

Shri Raghvendra Singh Raghuvanshi - Advocate for the appellant.

None for the respondent.

ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

1. Appellant has filed the present appeal seeking the following relief:-

"It is, therefore, most humbly prayed that this Hon'ble Court may kindly be pleased to set aside the impugned judgment and decree dated 17.08.2022 passed by the Additional Principal Judge, Family Court, Indore in HMA Case No.125/2020 and allow the divorce petition of the appellant by passing the decree of divorce between the parties."

2. The present appeal has been filed on the ground that the court below has substantially erred in law and facts both in not appreciating that till today there is no notice received by the appellant-wife of Section 9, HMA case filed by the respondent-husband. As such she had no knowledge about the same and Section 9 case was filed after filing of the divorce petition by the



appellant-wife. Hence, mere filing of Section 9 case cannot mar the rights of the wife under the law.

3. The further ground in the present appeal is that the court below has committed substantial error of fact and law in not properly appreciating the clear pleadings and evidence on record that the respondent treated the appellant with cruelty and deserted her as not joined her at Indore, where appellant was working in government job with LIC Housing Finance Limited and the respondent was not working.

4. Learned counsel appearing on behalf of the appellant submits that the trial court failed to appreciate that if the wife is compelled and constrained to live separately with her husband to save her life, dignity, modesty etc. and to escape the continuous physical and mental cruelty by the husband and his family members, living separately with the husband on such grounds and specially when she is employed in government job she has to live separately for such job, are lawful and the same cannot be considered as desertion by the appellant-wife without any sufficient cause. The court below has not considered the expression "sufficient cause" for desertion in its proper perspective and has given improper finding to that effect.

5. We have perused the impugned order passed by the learned Family Court, whereby the Family Court has recorded as under:-

- "(i) No complaint made by appellant regarding cruelty before any police station;
- (ii) No other witness has been examined by the appellant/wife for proving cruelty;
- (iii) Wife wished mutual consent divorce as is reflected from her legal notice as such there is no cruelty;
- (iv) Small quarrels cannot be termed as cruelty;
- (v) Section 9 Hindu Marriage Act petition filed by husband is



pending and thus it is clear that he intends to live with the wife, though such Section 9 petition was filed after filing of divorce petition;

(vi) Desertion is not proved as wife is living separately since year 2017 as her job is in Indore and she stated year 2018, though from records it is clear that she is living separately since year 2017."

6. It is pertinent to mention here that despite notice served upon the respondent, no one appeared on behalf of the respondent. This Court has already proceeded ex parte vide order dated 30.04.2024.

7. It is not in dispute that marriage has taken place on 19.04.2014 and before the marriage appellant and respondent were known to each other and they were in love. The appellant was appointed as Assistant Manager in LIC Housing Finance Limited in the year 2017 and by that time the respondent-husband was doing nothing. This was the reason he compelled the appellant to leave the job and stay with him and till he gets the job, appellant should not do any job.

8. It is also not in dispute that the respondent-husband file petition under Section 9 of the Hindu Marriage Act at Family Court, Bhopal on 24.01.2020 after filing of the divorce petition by the appellant herein.

9. It is also not in dispute that after dismissing the divorce petition filed by the appellant, respondent-husband withdrew Section 9 petition on 20.10.2022.

10. Whether husband or wife wants to live together, it is their wish. Neither husband nor wife can force other side not to do job or do any job as per the choice of the spouse. In the present case, the husband compelled his wife to leave the government job till he gets the job. In this manner, forcing the wife to leave the job and live as per his wish and style, it amounts to



cruelty.

11. The learned Family Court has not considered the statement made by the appellant-wife, who specifically stated that due to the reason that respondent-husband compelled her to leave the job and stay with him, she filed the divorce petition and before that since there was compatibility issue, therefore, she issued notice to the respondent-husband requesting for mutual divorce. The respondent-husband never wanted that appellant should get divorce, this itself amounts to cruelty.

12. In view of above, we hereby allow the present appeal by dissolving the marriage dated 19.04.2014 between the appellant and respondent. The impugned judgment and decree dated 17.08.2022 passed by the Additional Principal Judge, Family Court, Indore in HMA Case No.125/2020 is hereby set aside. Decree be drawn accordingly.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

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