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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

FIRST APPEAL No. 1273 of 2014

BETWEEN:-

DILIPRAJ S/O SHRI GIRDHARILAL JI, AGED ABOUT 46 YEARS,
OCCUPATION: SERVICE, R/O JYOTINAGAR RATLAM, AT
PRESENT BANK OF MAHARASHTRA, MANJHGAON NESBIT
ROAD MUMBAI (MAHARASHTRA)

.....APPELLANT

*(SHRI AJAY KUMAR KANTHED, LEARNED COUNSEL FOR THE
APPELLANT)*

AND

SMT.REKHA W/O SHRI DILIPRAJ, AGED ABOUT 44 YEARS,
OCCUPATION: HOUSEWORK AND PAPAD BADI BANANA, R/O
SHAMSHAN ROAD RATLAM (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI VISHAL LASHKARI, LEARNED COUNSEL FOR THE
RESPONDENT)*

FIRST APPEAL No. 352 of 2020

BETWEEN:-

DILIPRAJ S/O GIRDHARILAL JI KASERA, AGED ABOUT 55
YEARS, OCCUPATION: SERVICE, R/O JYOTI NAGAR, RATLAM /
AT PRESENT CHIEF MANAGER REAL ASSET BRANCH BANK OF
MAHARASHTRA MG ROAD INDORE (MADHYA PRADESH)

.....APPELLANT

*(SHRI AJAY KUMAR KANTHED, LEARNED COUNSEL FOR THE
APPELLANT) .*

AND

SMT. REKHA W/O DILIPRAJ JI KASERA, AGED ABOUT 49

YEARS, OCCUPATION: MAKING PAPAD AND BADI, R/O SHAMSHAN ROAD, TRIVENI MARG, RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(SHRI VISHAL LASHKARI, LEARNED COUNSEL FOR THE RESPONDENT)

*This appeal coming on for orders this day, **JUSTICE VIVEK RUSIA** passed the following:*

Heard on : 28.09.2022.

Judgment passed on : 31.10.2022.

JUDGMENT

Appellant-Husband has filed F.A. No. 1273/2014 under Section 19 of the Hindu Marriage Act against the judgment and decree dated 16.09.2014 whereby the Family Court, Ratlam has dismissed a petition filed under Section 13(1)(1-a) (1-b) of the Hindu Marriage Act.

Appellant-Husband has filed F.A. No. 352/2020 under Section 19 of the Hindu Marriage Act against the judgment and decree dated 08.01.2020 whereby the Family Court, Ratlam has allowed a petition filed by the respondent /wife under Section 25(2) of the Hindu Marriage Act.

The common facts of both appeals are as under:

[1] The marriage of the appellant/husband and respondent/wife was solemnized at Mandsaur under the Hindu customs and rituals on 28.04.1990. According to the appellant/husband, after one year of the marriage, the respondent/wife left his house on 31.05.1991 thereafter he made various efforts to bring her back but she did not return to his house. The appellant filed a First application for dissolution of marriage before the Civil Court on 23.06.1992 which was registered as HMA No. 58-A/1992. Simultaneously, the

respondent/wife has also filed an application under Section 9 of the Hindu Marriage Act, 1955 (HMA No. 45-A/1992) for Restitution of Conjugal Rights on 01.05.1992. On 22.09.1993, the appellant/husband withdrew his application filed for dissolution of marriage (HMA No.58-A/1992).

[2] The appellant/husband filed a second application for dissolution of marriage which was registered as case No.28-A/1993. Both the cases i.e. 45-A/1992 and 28-A/1993 were decided by the learned Additional District Judge vide order dated 05.04.1995. The second application filed by the appellant/husband for dissolution of marriage was dismissed and the application filed under Section 9 for Restitution of Conjugal Right Act filed by the wife was allowed, against which no appeal was filed till date.

[3] On 03.07.1996 the appellant/husband filed a third application for dissolution of marriage which was registered as HMA No. 89-A/1998. First Additional District Judge, Ratlam granted the decree of dissolution of marriage vide judgment and decree dated 02.04.1998 with the permanent alimony at the rate of Rs. 1,200/- per month.

[4] Being aggrieved by the aforesaid judgment and decree on 17.04.1998 the respondent/wife filed F.A. No.166/1998 before the High Court. It is important to clarify that the appellant/husband did not file any appeal or cross-appeal against the decree of permanent alimony in favour of the respondent. Vide judgment dated 17.03.2005, the High Court has set aside the judgment and decree dated 02.04.1998 and did not interfere with the order of permanent alimony.

[5] Being aggrieved by the judgment dated 17.03.2005 the

appellant/husband approached the Apex Court by way of SLP (Civil No.14672/2005) which came to be dismissed vide order dated 03.04.2006.

[6] On 10.11.2010, respondent/wife filed an application under Section 25(2) of HMA seeking enhancement of the amount of permanent alimony and vide order dated 10.11.2010 the learned Court has enhanced the maintenance from Rs. 1,200/- to Rs. 4,000/- per month.

[7] On 04.05.2010, the appellant/husband again filed another application (Fourth)for dissolution of marriage which was registered as HMA No. 39-A/2014. The respondent/wife filed an execution application of a decree of Restitution of Conjugal Rights on 03.08.2013. Vide order dated 16.09.2014, the learned Family Court dismissed the fourth application of dissolution of marriage against which this present appeal [F.A. No.1273/2014] is filed.

[8] The respondent/wife has preferred a second application for enhancement of maintenance and which was registered as Miscellaneous Civil Case No.13/2015. Vide order dated 14.05.2019, the executing Court has passed an order of payment of a sum of Rs. 10,000/- per month for disobedience of the decree of Restitution of Conjugal Right passed in HMA No.45-A/1992 on 05.04.1995 which the appellant is paying regularly.

[9] The Principal Judge of Family Court vide order dated 08.01.2020 has passed an order under Section 25(2) of the Hindu Marriage Act enhancing the amount of maintenance. Vide order dated 08.01.2020, the learned Family Judge has directed the appellant to pay maintenance at the rate of Rs. 25,000/- per month, Rs. 10,000/- per month for rent of the house, Rs. 1,00,000/- for the

purchase of household articles. However, the Court has directed for adjustment of the amount of Rs.10,000/- payable under Order 21, Rule 33 of CPC granted vide order dated 14.05.2019 against which the appellant has preferred a First Appeal No.352/2020 before this Court.

[10] Arguments were heard at length on 29.06.2022 and we have also interacted with the parties in camera proceedings. Both parties have fairly admitted that there is no serious dispute between them due to which they are living separately. According to the appellant, the respondent left him and started living with her parents in their house without any reason, he made various efforts to bring her back but she did not show any interest, therefore, now after so many years, he is not willing to reside with her and serving her aged father and mother. The appellant/wife has made certain allegations against the appellant, but there is nothing in the pleadings or evidence hence liable to be ignored. We found that there is no possibility of reconciliation between them and the marriage is virtually a dead marriage. They are living separately since 1991 i.e. more than 30 years and the marriage is virtually a dead marriage.

[11] Learned counsel for the parties are also made efforts for an amicable settlement between them. The husband has agreed to provide the house to the respondent to secure her future and she has also accepted this offer but they could not find a better house. The hearing was deferred on 20.07.2022.

[12] On 28.09.2022, also both are present before this Court. Learned counsel for the respondent submits that the houses shown to the respondent by the present appellant are not worth living therefore, she has refused to purchase the same. Learned

counsel for the appellant submits that the appellant is going to retire from the service hence he is not in a position to take a house loan to purchase an expensive house for the respondent. It is further submitted by the learned counsel that the respondent-wife does not need her own house as she is already living in the house of her late father and there are no other legal heirs to reside in it except the respondent. The other brother and sister are married and living in their own house, therefore, the respondent is having a house of her father and resides in it. The appellant is paying maintenance, however same is on the higher side.

We have heard the learned counsel for the parties and perused the record.

[13] The appellant approached the Family Court for the dissolution of marriage four times, out of which only once a decree of divorce was granted to him which had been set aside by this Court against which SLP had also been dismissed. The fourth time the appellant filed an application for the dissolution of marriage only on the ground of separation since last so many years. It is not the case that the respondent-wife has deserted him without any sufficient reasons to give him grounds for divorce. The respondent/wife is having decree of restitution of conjugal rights in her favour and she filed execution proceedings of decree of restitution of conjugal rights therefore, she is willing to reside with the appellant as wife, thus, the decree of divorce cannot be granted to the appellant. The appellant is seeking a decree of divorce on the ground that for 19 years she has deserted him without any sufficient reasons but he has failed to establish it.

[14] We are of the firm opinion that the appellant has no case for

divorce because he has himself deserted his wife without any reason. The wife approached the Family Court by way of an application under Section 9 of the Hindu Marriage Act which came to be allowed on 05.04.1995 against which the appellant did not file any appeal. He is paying Rs.10,000/- per month for disobedience of the said order passed in the execution proceeding. Therefore, it cannot be held that the respondent-wife has deserted him for which he is entitled to a decree of divorce. Hence, on this ground, the order is not liable to interfere. This court cannot grant the decree only on the ground that the marriage is dead marriage and there is no hope to reunite them in future especially when the Apex court has declined to uphold the decree of divorce granted by the learned Family Court on his third application.

In view of the above, F.A. No.1273/2014 is hereby dismissed.

[15] So far as **First Appeal No.352/2020** is concerned, the appellant is working Class-II Officer in the nationalised bank and earning a handsome salary. As held in F.A. No.1273/2014 he has deserted his wife without any reason for the last three decades. He has failed to get the decree of divorce on 4 successive occasions. The respondent-wife has contested all the cases and apart from that, she has filed one case of restitution of conjugal rights, two applications of maintenance and one execution proceeding. She is contesting these two first appeals before this High Court despite the fact that she has no one in the family to support her. Admittedly she has no independent source of income and she is also not highly educated, therefore, the amount of Rs. 25,000/- has rightly been awarded by the Court, hence we are not inclined to interfere with

the same.

[16] So far the award of Rs.10,000/- per month of the rented house is concerned, admittedly, the respondent is residing in her parents' house, therefore so long she is residing in the said house, she is not entitled to get rent separately from the appellant. The amount of 25,000/- is sufficient to survive a single lady at this age to live even in a rented house in Ratlam city. Hence we hereby set aside impugned judgment and decree for the grant of Rs 10,000 pm as house rent. So far as the award of the lump-sum amount of Rs.1,00,000/- for purchasing household articles is concerned, the order is upheld. First Appeal No. 352/2022 is partly allowed. The Decree be drawn accordingly.

[17] Learned counsel for the respondent/wife submits that the appellant is not paying the maintenance amount, therefore appropriate order be issued to the Bank for remission of maintenance amount by way of deduction from the salary of the appellant, we find substance in the aforesaid request, hence, we hereby directed to the employer of the appellant to remit the amount of Rs. 25,000/- per month in the saving account of respondent/wife. The details of saving account of respondent/wife is as under:

Account No.29240100008899

Account holder name: Heeri Bai Kasera Rramchandra Ji Kasera, Joint Name No.1 Rekha Kasera Dilipraj Kasera.

IFSC : BARB0CHARAT.

Records of both cases be sent back to the concerned courts.

(VIVEK RUSIA)
JUDGE

praveen

(AMAR NATH (KESHARWANI))
JUDGE