APPELLATE CIVIL

Before Inder Dev Dua, J.

M. P. SHREEVASTAVA,—*Appellant*

versus

MRS. VEENA,—*Respondent.*

F. A. O. 174-D of 1963

1964

May, 29th.

Code of Civil Procedure (Act V of 1908)—Order 21, Rules 2 and 32—Decree for restitution of conjugal rights—Whether can be obeyed and recorded as satisfied—Institution of marriage—Importance of—Duty of spouses towards each other and their children indicated.

Held, that a decree for restitution of conjugal rights can be obeyed and satisfied if the wife goes and lives with the husband as a wife or reasonably does all she can in this direction. In other words, if the conjugal rights of the aggrieved party have been restored, then the decree must be deemed to be satisfied and the particular grievance redressed. In case, however, the judgment-debtor is willing to obey the decree but the unjustified obstruction towards the performance of the decree comes from the decree-holder, then the judgment-debtor would be fully entitled to approach the court and pray that the decree be recorded as satisfied so that the decree-holder may not fraudulently and *mala fide* utilise this decree for the purpose of securing a decree for divorce. There is no bar in the Code of Civil Procedure to the recording of satisfaction of a decree for restitution of conjugal rights. It is not necessary that there should be a positive affirmative provision to this effect. The provisions of Rule 32 of Order 21, prescribing the mode of execution of a decree for restitution of conjugal rights do not seem to imply any bar to the recording of satisfaction of such a decree.

(*Dictum*). The institution of marriage is the very foundation of our civilized society and both the public and the State are interested in its stability. The interests of the society and the State require some permanency of marital status on which depends good citizenship. Tolerant behaviour among the family members is the basic foundation on which happy family life can be founded and the parties must be prepared to adopt an attitude of give and take and of mutual adjustment. Normal wear and tear and stresses and strains of a matrimonial home are to be roughed in a disciplined manner and differences are not to be magnified. Neither a woman is to be treated as a slave nor is the husband to be deprived of a home and a housewife. Both of them owe a social duty towards each other and towards their offspring whom nature and God have entrusted to their care to be brought up with their cooperative joint efforts. Their child is entitled to the affection of both of them and also to a home, to deny which is both unjust and anti-social.

First Appeal from the order of Shri P. P. R. Sawhney, District Judge, Delhi, dated August 2, 1963, declaring that the petitioner has satisfied the decree for restitution of conjugal rights.

RADHEY LAL AGGARWAL, ADVOCATE, for the Appellant.

SOHAN LALL SETHI, ADVOCATE, for the Respondent.

JUDGMENT

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DUA, J.—This first appeal from order is directed against the order of the learned District Judge, dated 2nd August, 1963, by which it has been held that Mrs. Veena has satisfied the decree for restitution of conjugal rights obtained by the appellant Dr. M. P. Shreevastava, her husband.

In order to understand the controversy, it may be stated that Mrs. Veena Shreevastava presented an application under section 47 read with section 151, Code of Civil Procedure, in the Court

of the learned District Judge claiming that the decree for restitution of conjugal rights obtained by her husband Dr. M. P. Shreevastava has been satisfied and a finding be recorded to that effect. According to her allegations, her husband had deserted her and she had always been willing to live with him as his wife. In May, 1961, she came to know that her husband had obtained an *ex parte* decree for restitution of conjugal rights and she instead of applying for setting aside the said decree, considered this as an opportune moment for going back to her husband and living with him as his wife in pursuance of the decree. According to her version, accompanied by her father she came to Delhi on 20th May, 1961 and went to the house of her husband with the object of living with him. Her husband was not present at his house at that time, with the result that she waited for him. When he came home, she greeted him but there was no response from her husband and indeed he immediately went away from the house and did not return for so long as she remained there. She waited for a couple of hours, but since the husband did not come back, she went away. On account of absence of response from her husband, she went back to Calcutta with her father and from there she wrote two letters to her husband, one on 6th June, 1961 and the other on 16th June, 1961 under registered covers requesting her husband to allow her to come back and live with him as his wife. However, for reasons best known to him, the husband did not even take delivery of the letters which were returned to the sender. Some attempt was also made through common friends to persuade the husband to take his wife back but without any fruitful result. In this setting, according to the wife, she has done all that was possible for her to do to perform the direction given in the decree and that according

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to her the husband should be held to be debarred from claiming that there has been no satisfaction of the *ex parte* decree obtained by him for restitution of conjugal rights.

This application has been resisted by the husband and a preliminary objection has been taken urging that the application is vague and barred by time under Article 174 of the Indian Limitation Act. The application is also contended to be unmaintainable because the wife has not actually alleged satisfaction of the decree and indeed it is pleaded that the application has not been made with a genuine desire on the part of the wife to live with her husband. On the merits, it has been pleaded that the wife left her husband's house without his permission on 18th November, 1959 and has since not come back or shown willingness to live with him. It has also been controverted that she came to her husband's house on 24th May, 1961 or on any other date along with her father. It is admitted that he has refused to take delivery of one of the registered letters because he was not desirous of entering into any correspondence with her. The other letter, according to his plea, was never presented to him in those days. I may mention here that the second letter has on it a note purporting to be by the postal authorities that he had left service and his address was not known. The other allegations made by the wife were of course denied.

Applicability of Article 174 of the Limitation Act has been disputed by the wife in her application. She has, however, reiterated that she had always been and is even now prepared to go and live with her husband as his wife. The pleadings of the parties gave rise to two issues:—

(1) Whether, as stated in the application, the decree for restitution of conjugal

rights in favour of the petitioner (decree-holder) has been satisfied?

(2) Whether the petition is not within time?

Before framing the issues, the statements of the parties were recorded. In her statement the wife stated that she wished to live with her husband and was prepared to go with him as she had actually come all the way from Calcutta with their child for this very purpose. The husband, however, stated that he was not satisfied about the genuineness of the wife's offer of living with him adding that on three or four occasions attempts had been made to prevail upon her to live with him but she never cared to do so and, therefore, he was desirous of having the decision on the merits and did not want to have any reconciliation. After going through the evidence produced in the Court below, in a fairly detailed and well-considered order, the learned District Judge has come to the conclusion that the petitioner has all along been and is willing to live with her husband and it is the husband who is at fault and is adamant in not showing his willingness to take her back. The petition has also been held not to be barred by time under Article 174 of the Limitation Act.

The appeal before me first came up for hearing on 8th May, 1964. After the appellant's learned counsel had stated all the facts and given to me the conclusion of the Court below, I felt that if both the parties were genuine in their assertions that they wanted to live together as husband and wife there should be no controversy left for coming to Court. Naturally, therefore, I called upon the counsel for the parties to contact their clients so that misunderstandings, if any, may be removed and both the husband and the wife may live together happily with their child.

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I gave them an adjournment for one week. On 15th May, 1964, the learned counsel for the husband stated that there was no reasonable chance for the two parties coming together and the counsel for the respondent said that in spite of his client's desire to live with her husband, the appellant had not shown any keenness even to talk the matter over. It is a pity that the attitude of the husband and the wife should be such as is calculated to deprive their only child of the pleasure of her parents' affection and a proper parental home.

The appellant's learned counsel has, to begin with, submitted that a decree for restitution of conjugal rights is not capable of being recorded as satisfied. For this purpose, he has drawn my attention to the provisions of section 22 of the Special Marriage Act, XLIII of 1954, according to which when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the District Court for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. He has next read section 27 of this Act, clause (j) of which has been particularly emphasised. According to this provision, subject to the other provisions of the Act and the rules made thereunder, a petition for divorce can be presented to the District Court either by the husband or the wife on the ground that the respondent has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent. After reading these two provisions of law, the

counsel has then read Order 21, Rule 32, Code of Civil Procedure, which so far as relevant for our purposes, is in the following terms:—

"32. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both;

(2) * * * * *.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from

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the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

According to the appellant's learned counsel, once a decree for restitution of conjugal rights has been passed, there is no occasion or scope as a matter of law for recording that the decree has been satisfied, and that either the decree-holder chooses to proceed under Order 21, Rule 32 of the Code or he proceeds to secure a decree for divorce under section 27(1) of the Special Marriage Act; of course it is open to him not to bother about the decree at all, if he is so minded. The counsel submits that once a decree for restitution of conjugal rights is secured by a husband then even if the wife comes to live with him and does so live for a length of time, every fresh and new desertion by the wife would also be covered by the said decree, which, according to the counsel, is operative against all future refusal of the wife to live with her husband, even if such refusal be fully justified.

After hearing the learned counsel at length, I am unable to sustain this contention. The decree for restitution of conjugal rights, in my opinion, can be obeyed and satisfied if the wife goes and lives with the husband as a wife or reasonably does all she can in this direction. In other words, if the conjugal rights of the aggrieved party have been restored, then the decree must be deemed to be satisfied and the particular grievance redressed. In case, however, the judgment-debtor is willing to obey the decree but the unjustified obstruction towards the performance of the decree comes from the decree-holder, then, in my opinion, the judgment-debtor would be fully entitled to approach the Court and pray that the decree be recorded as satisfied so that the decree-holder may not fraudalently and *mala fide* utilise this decree for the purpose of securing a decree for divorce. There is no bar in the Code of Civil Procedure to the recording of satisfaction of a decree for restitution of conjugal rights, and indeed none has been pointed out by the counsel. It is not necessary that there should be a positive affirmative provision to this effect. The provisions of Rule 32 of Order 21, prescribing the mode of execution do not seem to imply any bar to the recording of satisfaction, and the appellant's counsel is not right in his submission. To uphold his submission may, at times, lead to unjust and oppressive consequences, which I find difficult to impute to the legislature. The next challenge by the appellant is directed against the conclusion of the learned District Judge that the wife actually came from Calcutta with her father to the house of the husband at Delhi on 20th May, 1961 and that the husband declined to receive her. He has also taken me through the evidence both of the wife and the husband and has tried to persuade me to hold that the wife is not telling the truth

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and that the statement of a husband is worthy of credence.

The wife has appeared as P.W. 1, and has sworn that her husband had obtained a decree for restitution of conjugal rights on 13th March, 1961. She came to Delhi on 20th May, 1961. Her father had come a little earlier and her sister accompanied her. Her child was also with her. She had come to Delhi to stay with her husband and went to his house accompanied by her father and one of her father's friends. The husband had gone out at the precise moment and enquiries were made from the husband's sister as to where he had gone. When the husband returned and she greeted him, he ignored her, telling her to go away. He himself also left immediately thereafter and did not return for a couple of hours. After waiting for so long he went back to Calcutta. From there she sent two letters marked Exhibits P. 1 and P. 2, the first one was refused by the husband and the second was returned by the postal authorities with the remark that the addressee was not known. The postal receipts Exhibits P. 3 and P. 4 have also been produced. Even after writing those letters, she has sworn to have made efforts requesting her husband to take her back but there was no response. In cross-examination she has stated that her uncle stays in Delhi and so does her aunt. She had not informed her husband in advance about her arrival in Delhi. During the course of proceedings for restitution of conjugal rights, she did not ask for forgiveness from her husband, though she did write to him that they both should start their life afresh. She admitted having not contested the petition for restitution of conjugal rights because her friends were trying to bring about reconciliation between

the parties. Those friends are Shri Hamendar Kumar Ji, and Pt. Mahi Lal Ji. When asked if she had any girl friend in Delhi she replied in the negative. She had stayed with her husband in Delhi for one year and then went away because he had threatened her. She was then asked if she had made any report to the police when her husband declined to allow her to live with him on her arrival from Calcutta to stay with him, to which she replied in the negative. She was also asked if she had gone to her husband's house on the morning of the day when she was being examined which was 25th February, 1963. To this, she replied in the negative. She also denied having gone to her husband's house on the earlier hearing. Her father too had not gone to the house of her husband on 25th February, 1963 or on the earlier date of hearing, for bringing about a reconciliation between the two parties. She emphatically denied (describing it as incorrect) the suggestion that she suffered from fits of temper and that this was the reason of unpleasantness between the two spouses. She admitted being a teacher in Calcutta. She also denied having informed her friends about the treatment that was meted out to her by her husband, though her uncle knew about it. She denied that she had sent the letter to her husband after consulting a lawyer at Calcutta. The wife's statement appears to me to be a straightforward one fully inspiring of confidence and I have not been persuaded to hold that she does not genuinely desire to live with her husband, as has been suggested by the appellant's learned counsel. The husband has appeared as R. W. 2 and his examination begins with the assertion that his wife is of a very violent temperament and she loses temper for no reason whatsoever. So long as she lived with him, according to his assertion, he was

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always kind and affectionate towards her and looked after her very well. She is stated to have deserted him in November, 1959, and has not cared to return ever since. According to him, she did not come to him after the decree for restitution of conjugal rights had been passed. I may reproduce his exact words at this stage:—

> "My wife has deserted me since November, 1959, and has not cared to come to me ever since after I had secured a decree for restitution of conjugal rights. That being so, the question of her having come to me either on the 20th or 24th of May, 1961, does not arise."

He has denied that his wife or any one of her relations and friends, which according to him are numerous, have ever come to him for reconciliation. He has, however, asserted that his wife has "never mended her behaviour". In the Court when she appeared, she completely ignored him and his father-in law was also completely indifferent towards him. Similarly, according to him, is the case of his mother-in-law. His father in-law who is a Chief Engineer, Signals and Telecommunications is also stated by Shri Shreevastava to be a man of very bad temperament. Ever since her desertion, he has not had any sexual intercourse with his wife. He has indeed gone to the length of asserting that his wife liked to mix freely with males to which he objected but she took no notice of her husband's advice, and has proceeded to state that he had grave doubts even about her chastity. He admitted having declined to receive a registered letter from his wife in June, 1961, the reason given being that he wanted her to come to him and talk personally. He, however, denied having received any second

letter. He emphatically asserted that it was not possible for him to live with his wife "unless of course she were to show genuine repentance". In cross-examination, he has stated that when he filed the petition for restitution of conjugal rights, he very much wanted his wife to come and live with him, though he did not write to her any letter after the passing of the decree. In answer to a question, presumably asking him as to whether he was willing to allow his wife to live with him, he gave the following reply:—

> "I have already said that I am prepared to take her back as my wife provided she shown genuine repentance. This would arise if she were to apply to the Court of her intention of living with me and I would then make known my conditions of taking her back. Since she has now taken up the wrong position, I am not prepared to state the conditions on which I would have her back."

Then he was questioned about the place where he was staying in Delhi but his reply appears to me to be somewhat unimpressive. He has stated that Exhibit P. 1, letter from his wife, was offered for delivery to him on the address mentioned therein which is his office address. He has, however, admitted that he did not inform his wife about the change in his address. In the concluding part of his statement, he has again repeated that he had some doubt about the chastity of his wife before he filed the petition for restitution of conjugal rights but this doubt had now been confirmed, the grounds for the confirmation being that she never cared to write to him or to bring the child so that the child may meet him and also because she was indifferent towards him.

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These statements of the parties, in my opinion, fully justify the conclusion of the learned District Judge. I may here also point out that before the issues were framed, the learned District Judge had, very properly, in my opinion, examined the parties. Mrs. Veena Shreevastava, the wife stated on S. A. as follows:—

> "I wish to live with my husband (Dr. M. P. Shreevastava) and am prepared to go with him. I have come all the way from Calcutta with a view to go and live with my husband along with my child, whom I have brought in Court today."

The statement of the husband was then recorded which is as follows:—

> "I have heard the statement made by the applicant and I am not at all satisfied that she is making a genuine offer of going with me with a view to live with me. I have already made efforts on three or four occasions to prevail upon her to live with me, but she has not cared to come. I would like the present application to be disposed of and then consider this offer."

These statements were made on 10th January, 1963, and are self-explanatory.

The main criticism levelled by the counsel for the appellant is that if the wife was so anxious to live with her husband then why did she allow the *ex parte* decree for restitution of conjugal rights to be passed and also, why she did not write to her husband from Calcutta before coming to Delhi to

live with him ? In my opinion, this criticism is wholly insufficient to discard the wife's statement on oath. On the other hand, the statement made by the husband quite clearly betrays his *mala fides* in opposing the wife's application and also in declining to have her in his house as his wife. It is clearly indicative of a planned design of having a decree for divorce on the basis of this decree for restitution of conjugal rights and thereby attempting to get rid of his liability towards his wife and incidentally also towards his child, unless perhaps the child is handed over to him, and then presumably claiming to be free to remarry. The policy of the law, in my view, is not to encourage utilisation of decrees for restitution of conjugal rights for such purposes. The learned counsel for the appellant has completely failed to persuade me by any cogent reason to differ from the Court below. He has equally failed to convince me that a decree for restitution of conjugal rights is incapable of being recorded as satisfied.

It may also be noted that Exhibits P. 1 and P. 2, two letters sent by the wife, are still closed or sealed and have not been opened. The respondent's learned counsel, who had copies thereof with him, has read them out and they clearly show that these letters were meant to request the husband to forget the past and to allow the wife to come and live with him so that they may start their life afresh. There is also an appeal to the husband in the name of the child that they should live together.

I also again impress upon the counsel for the parties the desirability of the clients coming together, if for no other reason, at least for the sake of their own daughter, who in our social conditions would probably be handicapped when she

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grows up, if her parents do not reunite and start their life as husband and wife afresh. On the record, I do not find any material which would show that the husband and the wife have got any inseparable gulf between them exempt minor points of difference magnified by their own unbridled sensitive imagination. I have, therefore, no hesitation in agreeing with the reasoning and conclusion of the Court below, which has not been shown to be wrong or erroneous, and in dismissing the appeal.

Before closing the judgment, I consider it my duty to point out to the parties that the institution of marriage is the very foundation of our civilized society and both the public and the State are interested in its stability. The traditions of all civilized societies of our pattern advocate the belief in the theory of indissolubility of marriage. The scheme of the Special Marriage Act is also founded on this theory. Once marital status of the parties is proved, then the interest of the society as well as that of the State requires that, so far as possible, such status should have some permanency in its character, for, on this depends the structure of our society on which in turn would depend good citizenship. Tolerant behaviour among the family members is thus the basic foundation on which happy family life can be founded and the parties must be prepared to adopt an attitude of give and take and of mutual adjustment. The normal wear and tear and stresses and strains of a matrimonial home are notorious, but sensible and properly educated spouses always rough them in a disciplined manner both for their own sake and in the interest of their progeny. Neither a woman is to be treated as a slave nor is the husband to be deprived of a home and a house-wife. They both owe a social

duty towards each other and towards their offsprings which nature and God have entrusted to their care to be brought up with their co-operative joint efforts. Their child is entitled to the affection of both of them and also to a home, to deny which is perhaps both unjust and anti-social. The basic requirement of indispensable tolerance and mutual understanding in matrimonial life is unfortunately not sufficiently realised by many spouses in modern times; normally constituted spouses properly educated with healthy mental outlook are expected not to make mountains out of mole hills; nor to magnify small differences and bickerings. It is their social duty to discipline into compatibility their differences of temperament, and not to exaggerate and let loose their passions, frivolous dislikes and abnormal impulses. On the contrary, they should control them and keep them within social restraints. It is for this reason and to avoid further bitterness that I am directing that the parties should bear their own costs, so that even now they may realise in calm and sober moments the disastrous consequences of their obstinacy, and earnestly try to forget the past differences and start their life anew for their own sake; for the sake of their child and for the sake of the society.

As already observed this appeal fails and is hereby dismissed but without any costs.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

PRITAM SINGH,—*Appellant*

versus

RANJIT SINGH AND OTHERS,—*Respondents*

F. A. O. No. 1-E of 1964

1964

July, 14th.

Representation of the People Act (XLIII of 1951)—Ss. 33 and 34—Conduct of Election Rules—Rule 4 and Form