President or Vice-President ever gave his resignation in writing and both of them only handed over the same to the Deputy Commissioner who did not accept them and wrote back to respondents 1 and 2 advising that they should submit the resignations to the Committee which was never done. In *Sukhdeo Narayan's case* (2), another President had been elected whereas in the case before us it is conceded that respondent 1 is still functioning as a President and respondent 2 also continued to hold his office of Vice-President for the full term. The allegation of voluntary abandoning of their offices by respondents 1 and 2 is denied by respondent 1 in his affidavit and this disputed question of fact cannot be resolved in these proceedings under Articles 226 and 227 of the Constitution. Moreover, there is no material on which it can possibly be held that respondents 1 and 2 ever quitted their offices.

(7) For the foregoing reasons, there is no merit in the writ petition which stands dismissed. In the peculiar circumstances of this case, the parties are left to bear their own costs.

B.S.G.

LETTERS PATENT APPEAL

Before Harbans Singh, A.C.J. and Prem Chand Jain, J.

CHAMAN LAL,—*Appellant.*

versus.

MOHINDER DEVI,—*Respondent.*

Letters Patent Appeal No. 11 of 1968.

July 22, 1970.

Hindu Marriage Act (*XXV of* 1955)—*Sections* 9, 13(1), 13(1*A*) *and* 23(1)(*a*)—*Wife obtaining decree for restitution of conjugal rights—Decree remaining unsatisfied for the required period—Mere existence of such decree—Whether gives absolute right to the husband to obtain divorce—Section* 13(1*A*)—*Whether subject to the provisions of section* 23(1)(*a*).

Held, that from the plain reading of section 23 of the Hindu Marriage Act, 1955, there is no manner of doubt that this section is in the nature of an overriding provision. It governs "any proceeding" under the Act and provides that it is only if the conditions mentioned in sub-section (i) are satisfied "but not otherwise" that the Court shall decree the relief sought.

This section requires that before decreeing any relief in any proceeding, whether defended or not, under the Act, the Court must be satisfied that (a) the ground for relief exists and has been established; and (b) to the granting of such relief, there is no bar of any kind mentioned in the section. The rule is based on the principle of justice that wrong-doer should not be permitted to take advantage of his or her own wrong or disability while seeking relief at the hands of the Court in any matrimonial proceeding. Sub-section (1) of section 13 is clearly subject to the provisions contained in sub-section (1) of section 23. There is, therefore, no warrant in the language of sub-section (1A) of section 13 for holding that it confers an absolute or unrestricted right to a party to apply for and obtain a decree for divorce. If a wife is keen for a decree of restitution of conjugal rights and actually obtains it against the husband, that decree should not be allowed to result in the dissolution of the marriage for no fault of hers, and merely due to the wrong committed by the husband in not even making an effort to comply with the decree. Thus, the mere existence of an unsatisfied decree for restitution of conjugal rights for the required period is not sufficient to grant a decree for divorce and sub-section (1A) of section 13 is subject to the provisions contained in sub-section (1) of section 23 of the Act. (Para 5)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 14th November, 1967 passed by Hon'ble Mr. Justice Prem Chand Pandit dismissing FAO No. 31-M of 1966 and affirming that of Shri A. D. Koshal, District Judge, Amritsar, dated 31st January, 1966 whereby he dismissed the petition of Chaman Lal Petitioner against Smt. Mohinder Devi his wife for dissolution of marriage by divorce with costs.

H. L. SARIN, SENIOR ADVOCATE WITH H. S. AWASTHY, ADVOCATE, for the appellant.

BAHADUR SINGH, ADVOCATE, for the respondent.

ORDER

The Judgment of this Court was delivered by:—

P. C. JAIN, J.—(1) Briefly the facts of this case may be stated thus. The appellant Chaman Lal was married to Smt. Mohinder Devi on August 26, 1959. A daughter was born to them on 21st of October, 1960. It appears that the relations between the parties became strained and according to the appellant, the respondent left his house and started living with her parents in Amritsar. Several efforts were made by the appellant to bring her back but with no effect. On 10th of February, 1962, the appellant filed a petition under

section 9 of the Hindu Marriage Act, 1955 (hereinafter called the Act), for restitution of conjugal rights. On 17th March, 1962, Smt. Mohinder Devi, the wife, also presented a similar petition against her husband. The proceedings in the husband's petition were stayed and an *ex parte* decree for restitution of conjugal rights was granted in favour of the wife on 16th January, 1963.

(2) The appellant filed an appeal in this Court against the *ex parte* decree and the same was rejected on 23rd December, 1964. On 17th July, 1965, the husband moved the petition under section 13 of the Act, for divorce, on the ground that there had been no restitution of conjugal rights between the parties for a period of two years after the passing of the decree for restitution of conjugal rights.

(3) The petition was resisted by the wife who denied the allegations made against her by her husband. The learned District Judge who tried the case, came to the conclusion that the husband had not made any effort whatsoever for complying with the decree of restitution of conjugal rights passed against him and refused to keep the respondent in his house at any cost. The learned District Judge was, therefore, of the opinion that the husband, Chaman Lal, was not entitled to take advantage of his own wrong in not making any effort for satisfying the decree dated 16th January, 1963. Under section 23(1)(a), he therefore, refused to grant him the relief prayed for and held that the appellant was not entitled to a decree for divorce against his wife. Feeling aggrieved from the judgment and decree of the learned District Judge, F.A.O. No. 31-M of 1966, was presented in this Court but the same was dismissed by the learned Single Judge on 14th November, 1967. This present appeal under clause 10 of the Letters Patent, is directed against the said judgment of the learned Single Judge.

(4) In challenging the correctness of the order under appeal, Mr. H. L. Sarin, learned counsel for the appellant has reiterated the plea that under section 13(1-A)(ii) of the Act, the mere existence of an unsatisfied decree for restitution of conjugal rights for the required period was sufficient for the Court to grant a decree for divorce and that the provisions of section 23(1)(a) did not apply to the facts of the present case.

(5) After giving our thoughtful consideration to the entire matter, we are of the view that the contentions of the learned counsel

for the appellant, are devoid of force and were rightly rejected by the learned Single Judge. At this stage it will be appropriate to reproduce the relevant provisions of the Act which read as under :—

"13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

* * * * * *.

* * * * * *.

* * * * * *.

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

* * * * * *.

* * * * * *.

23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that—

(a) any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief; and

* * * * * *.

* * * * * *.

then, and in such a case, but not otherwise, the Court shall decree such relief accordingly.

* * * * * *

* * * * * *

By Hindu Marriage (Amendment) Act, 1964 (44 of 1964), sub-section (1A) was introduced in section 13 and clauses (viii) and (ix) were deleted from sub-section (i) of that section. Prior to the amendment the position which obtained under clauses (viii) and (ix) of section 13(1) was that the right to apply for divorce was restricted to the party which had obtained a decree for judicial separation or for restitution of conjugal rights. Such a right was not available to the party against whom the decree was passed, but after the amendment and the introduction of sub-section (1A), a right was conferred on both the parties to the marriage so that a petition for divorce could after the amendment be filed not only by the party which had obtained a decree for judicial separation or for restitution of conjugal rights but also by the party against whom such a decree was passed. From the plain reading of section 23, there is no manner of doubt that this section is in the nature of an overring provision. It governs "any proceeding" under the Act and provides that it is only if the conditions mentioned in sub-section (i) are satisfied "but not otherwise" that the Court shall decree the relief sought. This section requires that before decreeing any relief in any proceeding, whether defended or not, under the Act, the Court must be satisfied that (a) the ground for relief exists and has been established; and (b) to the granting of such relief, there is no bar of any kind mentioned in the section. The rule is based on the principle of justice that wrong-doer should not be permitted to take advantage of his or her own wrong or disability while seeking relief at the hands of the Court in any matrimonial proceeding. Sub-section (1) of section 13 is clearly subject to the provisions contained in sub-section (1) of section 23. That being so, there is no warrant in the language of sub-section (1A) of section 13 for holding that it confers an absolute or unrestricted right to a party to apply for and obtain a decree for divorce. As observed by the learned Single Judge, it could not possibly have been the intention of the Legislature that for the wife, who was keen for a decree of restitution of conjugal rights and actually obtained it against the husband, that decree should ultimately result in the dissolution of the marriage for no fault of hers,

and merely due to the wrong committed by the husband in not even making an effort to comply with the decree. If the contention of the learned counsel for the appellant is accepted, then that would obviously be the result. In this view of the matter, we hold that mere existence of an unsatisfied decree for restitution of conjugal rights for the required period is not sufficient to grant a decree for divorce and that sub-section (1A) of section 13 is subject to the provisions contained in sub-section (1) of section 23.

(6) It was next contended by Mr. H. L. Sarin, learned counsel for the appellant, that the finding of the learned Single Judge affirming that of the learned District Judge that the husband was guilty of not complying with the decree for restitution of conjugal rights passed against him on 16th January, 1963, during the period preceding the filing of the petition under section 13 of the Act by him, was wrong and erroneous. We are afraid, this contention of the learned counsel is liable to be rejected on the short ground that the finding of the learned Single Judge is based on the appreciation of evidence and is a pure finding of fact and cannot legally be challenged in this appeal. After consideration of the entire oral evidence, the learned Single Judge has affirmed the finding of the learned District Judge on this aspect of the matter. Absolutely no ground has been made out by the learned counsel for interference with that finding.

(7) No other point was urged.

(8) For the reasons recorded above, this appeal fails and is dismissed with costs.

N.K.S.

CIVIL MISCELLANEOUS.

Before H. R. Sodhi, J.

HARBANS LAL AND OTHERS,—*Petitioners.*

versus.

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 363 of 1970.

July 27, 1970.

Punjab Municipal Act (III of 1911)—Municipal Election Rules (1952)—Rules 8-J (2), 8-JJ, 8-L and 10—Municipal elections—Revision of electoral roll every year—Whether mandatory—High Court directing the holding of