Before Vijender Jain, C.J. & S.S. Nijjar, J.

GURNAM SINGH—*Appellant*

versus

SATWANT KAUR—*Respondent*

L.P.A. No. 669 of 2002
In F.A.O. No. 93-M of 1995

6th December, 2006

Hindu Marriage Act, 1955—S. 13—Husband and wife living separately for 24 years—Efforts for reconciliation failed before trial Court as well as before Ld. Single Judge—No relationship between parties except of hatred and venom—Findings of trial Court ordering dissolution of marriage by a decree of divorce based on overwhelming evidence on record—Appeal allowed, order of Ld. Single Judge set aside.

Held, that the District Judge has rightly observed in its order that it is almost an admitted fact between the parties that since 1984, the respondent is living separate from the petitioner and there appears no chance for reconciliation between them and living together as husband and wife. The parties have lost mutual trust in each other. In such circumstances, in case the petitioner is compelled to live with the respondent, taking the view from a broad human angle on the facts of the case, it will be nothing short of virtual hell on earth for the petitioner.

(Para 5)

Sukhant Gupta, Advocate, *for the appellant.*

J.B. Yadav, Advocate, *for the respondent*

JUDGEMENT

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

(1) Aggrieved by the order passed by learned Single Judge, this appeal has been filed by the appellant who is the husband, respondent being the wife. The learned Single Judge set aside the finding of learned Additional District Judge, Ludhiana where the appellant Gurnam Singh filed a petition for dissolution of marriage by a Decree of Divorce under Section 13 of the Hindu Marriage Act,

1955. The learned Additional District Judge on the pleading of the parties, framed the following issues :—

"1. Whether the respondent has treated the petitioner after solemnization of marriage with cruelty ? OPA

2. Whether the Respondent has deserted the petitioner for a continuous period of two years immediately preceding the presentation of the present petition ? OPA

3. Relief.

(2) Both the parties led their evidence in support of their respective contentions. The instances of cruelty, which find mention in paragraph 9 of the judgment of the learned Additional District Judge, were that since the birth of the male child in 1978, the respondent started ignoring him by remaining absent for long time from his company ; She also started scolding and misbehaving with him and his family members on small matters and in anger, she used to threaten him to involve him and his family members in false cases. In support of his allegations, the appellant produced five witnesses, including himself as PW5, PW-2 Balwant Singh, PW-3 Sukhdev Singh. The testimony of these witnesses was to the effect that respondent did not visit the appellant and the appellant was upset as he was being harassed by his wife, whereas PW-3 Sukhdev Singh deposed that he was involved in re-conciliation efforts between the parties. PW-4 Pritam Singh deposed that he had attended the marriage of the parties and was also involved in re-conciliation effort but the respondent and her father started abusing him. He also deposed that the attitude and behaviour of the respondent was cruel towards the appellant and his other family members. The respondent was abusing and quarrelsome. PW-5 is the appellant Gurnam Singh who deposed that the respondent threatened to immolate herself and she tried to poison him in the milk. The evidence in rebuttal was led by the respondent RW-1 Ujjagar Singh who deposed that he knows the parties and they have strained relations and are living separately and efforts for re-conciliation have not been successful. Even the father of the respondent appeared in witness box as RW-3 and he also deposed that his daughter separated in 1984 from the appellant at Village Jagera. In his entire statement, he had not rebutted any allegation stated by the appellant against the respondent on the point of cruelty. From the

scrutiny of the evidence of the parties, the learned Additional District Judge found that neither the respondent nor any of her witnesses tried to rebut the allegations of the appellant regarding cruelty and that the behaviour of the respondent towards the appellant and his family members was insulting even on trifling matters. The testimony also went un-rebutted with regard to the attempt to immolate herself and with regard to poisoning the appellant in the milk. Inspite of the overwhelming evidence on record, the learned Single Judge without discussing anything has set aside the decree of divorce passed by the learned Additional District Judge.

(3) Learned counsel for the respondent appearing before us in support of his contention states that an irretrievable breaking down of marriage is not a ground for grant of divorce. In support of his argument, he has relied upon a Division Bench judgment of this Court rendered in the case of **Surender Kumar** *versus* **Smt. Seema, L.P.A. No. 2931 of 2001,** decided on 25th April, 2006. We are conscious of the fact that irretrievable breaking down of marriage is not a ground for grant of divorce but can the Court shut it eyes to the ground realities ? Admittedly, the case of the parties is that since 1984 they are living separately. From the wedlock, a male child was born in 1978. He is now a young man of 28 years of age. The son is living with the appellant. There is no relationship between the parties except of hatred and venom. Continous litigation for the last 12 years is the only thing, which is surviving in their relationship. The petition for getting a decree of divorce was filed by the appellant in the year 1994. In such circumstances, can the Court sit with folded hands to let the parties go on for decades in their life totally extinguished without getting any relief as is sought by the parties ? the answer is negative. The mere fact that the parties are living separately for the last 22 years is a ground which the learned Single Judge ought not to have overlooked. The Judgment of the Division Bench cited by the learned counsel for the respondnet, as a matter of fact, goes against him because the normal rule and the fundamental principle, which govern the appellate court in dealing with the judgment of the lower courts are that even if the appellate Court comes to a different finding, the finding of the trial court should not be lightly interfered with unless and until the findings are perverse or infirm and patently illegal.

(4) On the other hand, learned counsel for the appellant also cited the judgment of the Hon'ble Supreme Court titled as **Durga Prasanna Tripathy** *versus* **Arundhati Tripathy, (1).** In the said judgment, Hon'ble the Supreme Court in somewhat similar circumstances has held as under :—

"29. The facts and circumstances in the above three cases disclose that reunion is impossible. Our case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot.

30. Before parting with this case, we think it necessary to say the following : Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce. The Family Court has directed the appellant to pay a sum of Rs. 50,000 towards permanent alimony to the respondent and pursuant to such direction the appellant had deposited the amount by way of bank draft. Considering the status of parties and the economic condition of the appellant who is facing criminal prosecution and out of job and also considering the status of the wife who is employed. We feel that a further sum of Rs. 1 lakh by way of permanent alimony would meet the ends of justice. This shall be paid by the appellant within 3 months from today by an account payee demand draft drawn in favour of the respondent-Arundhati Tripathy and the dissolusion shall come into effect when the demand draft is drawn and furnished to the respondent.

(1) AIR 2005 S.C. 3297

(5) The District Judge has very rightly observed in its order that it is almost an admitted fact between the parties that since 1984, the respondent is living separate from the petitioner and there appears no chance for reconciliation between them and living together as husband and wife. The parties have lost mutual trust in each other. In such circumstances, in case, the petitioner is compelled to live with the respondent, taking the view from a broad human angle on the facts of the case, it will be nothing short of virtual hell on earth for the petitioner.

(6) We have also been told that at every stage before the trial Court/ before the learned Single Judge efforts have been made for reconciliation between the parties, which have yielded no result.

(7) In view of the above, the present appeal is allowed and the order of learned Single Judge is set aside and the decree passed by the Additional District Judge is restored. The Decree of Divorce is granted to the husband, Gurnam Singh, appellant.

R.N.R.

Before Rajive Bhalla, J.

A.C. JAGGI AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Crl. M. No. 69710/M of 2005

21st November, 2006

Code of Criminal Procedure, 1973—Ss. 156(3) and 202—Complaint u/s 156(3) filed—Magistrate ordering police to conduct investigation—After presentation of enquiry report by police, Magistrate directing complainant to lead preliminary evidence—Whether the revisional Court has jurisdiction to direct the Magistrate to revert to the process prescribed u/s 156(3) Cr.P.C. and issue directions to the Magistrate to order registration of an FIR—Held, No.