

that account they can make proper representation to the authorities concerned who might look into the matter.

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The petitions accordingly fail and are dismissed.

Khanna, J.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

GULAB KAUR *alias* PARSINO,—Appellant.

versus

GURDEV SINGH,—Respondent.

First Appeal from the Order No. 3(M) of 1962.

1963

Hindu Marriage Act (XXV of 1955)—S. 13(1)(viii) and (ix)—Decree for restitution of conjugal rights obtained by husband—Non-compliance of the decree by the wife for more than two years—Whether entitles the husband to a decree for divorce.

Feb., 27th.

Held, that where a decree for restitution of conjugal rights is obtained by the husband, it is for the wife to comply with that decree within a period of two years as she is the judgment-debtor. The decree-holder does not come in the picture at all and it is not necessary for him to execute the decree or otherwise seek its compliance by making a demand, etc. Non-compliance of the decree by the wife for a period of two years or more entitles the husband to a decree for divorce under section 13(i)(ix) of the Hindu Marriage Act, 1955.

First Appeal from the order of Shri A. P. Chowdhry, Subordinate Judge, 1st Class, Bhatinda, dated the 30th November, 1961 granting a decree of divorce on ground provided in S. 13(ix) of the Hindu Marriage Act, 1955 that is dissolving the marriage between Gurdev Singh and Gulab Kaur.

H. R. AGGARWAL, ADVOCATE, for the Petitioner.

S. L. AHLUWALIA, ADVOCATE, for the Respondent.

JUDGMENT

Mahajan, J.

Mahajan, J.—This appeal is directed against the decision of the Subordinate Judge, 1st Class, Bhatinda, dissolving the appellant's marriage with the respondent under section 13(1)(ix) of the Hindu Marriage Act, 1955. There is no dispute on facts. The appellant suffered an *ex parte* decree for restitution of conjugal rights. This decree was never executed and after the lapse of two years, the present petition for divorce was filed under section 13(1)(ix) of the Act. The petition was opposed mainly on the grounds that the *ex parte* decree for restitution of conjugal rights was obtained by fraud, and that in any case the decree-holder had to seek its compliance and as no compliance was sought, it cannot be held that there has been no compliance with the decree. It is true that no steps were ever taken to execute the decree for restitution of conjugal rights. No arguments have been addressed on the first ground which was found against the appellant. So far as the second ground is concerned I have to proceed on the basis that there is a decree for restitution of conjugal rights against the appellant which has not been executed so far. The argument of the learned counsel for the appellant is that as the decree has not been executed nor been an oral demand for its compliance made, therefore, it cannot be said that there has been a failure of compliance with the decree for a period of two years and, thus the respondent is not entitled to a decree for divorce. I am unable to agree with this contention. Clause (ix) of sub-section (1) of section 13 of the Act, reads, thus—

“13. (1) Any marriage solemnised, 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 " * * * (ix) 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.

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As I read this clause I cannot import the construction which the learned counsel for the appellants wants me to place on this provision. The compliance has to be by the Judgment-debtor. The decree-holder does not come in the picture at all. Therefore, the argument that the decree-holder had to execute the decree or to otherwise seek its compliance is untenable. The construction derives further support from clause (viii) of section 13(1) of the Act, which reads thus—

"13(1) (vii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party; or"

The obligation under this provision is on the judgment-debtor. I cannot conceive that the Legislature was trying to put different standards with regard to a decree for judicial separation and a decree for restitution of conjugal rights. In this view of the matter, there is no force in this appeal. The same fails and is dismissed, but there will be no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before A. N. Grover, J.

MASTER UMRAO SINGH,—Petitioner.

versus

S. P. KAUSHIK,—Respondent.

Civil Revision No. 490-D of 1961.

Landlord and tenant—Change of identity of the premises—meaning of—Substitution of a kitchen by bath-room—Whether alter the identity of the premises so as to entitle landlord to have the fair rent fixed again.

1963

March, 4th.