



2023 INSC 961

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(arising out of SLP(C) No. 28145 OF 2018)

NIKESH KUMAR

APPELLANT(S)

VERSUS

SUMAN DEVI

RESPONDENT(S)

O R D E R

Leave granted.

This appeal by Nikesh Kumar impugns the judgment dated 02.07.2018 passed by the High Court of Jharkhand at Ranchi in F.A. no. 158/2012, whereby the appeal preferred by the respondent - Suman Devi was allowed and the decree of divorce was set aside.

The appellant - Nikesh Kumar and the respondent - Suman Devi got married on 08.12.2004. However, within a year of marriage or on or about 10.11.2005, the respondent started residing separately. Since then they have not cohabited.

The appellant had filed a petition for divorce on 15.09.2006, M.T.S. no. 121/2006, on the ground of cruelty and desertion. The decree for divorce was passed by the Family Court, Hazaribagh, Jharkhand on 09.08.2012.

After the decree for divorce was passed, the appellant got married to a third person on 29.11.2012. The marriage is duly registered. The appellant also has a child from the said marriage.

The respondent, in the meanwhile, had filed an appeal

challenging the decree for divorce dated 09.08.2012, which has been allowed by the impugned judgment dated 02.07.2018.

This Court in "*Shilpa Sailesh v. Varun Sreenivasan*"¹ held that in exercise of power under Article 142(1) of the Constitution of India, marriage can be dissolved on the ground of its irretrievable breakdown. Further, this Court in *Shilpa Sailesh* (supra) laid down the factors to be considered in determining irretrievable breakdown of marriage:

1. The period of time the parties had cohabited after marriage;
2. When the parties had last cohabited;
3. The nature of allegations made by the parties against each other and their family members;
4. The orders passed in the legal proceedings from time to time;
5. The cumulative impact on the personal relationship;
6. Whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc.;
7. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor.

The aforesaid factors, this Court clarified, have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children.

The appellant and the respondent are living separately since more than 17 years, having last cohabited in November 2005. We are satisfied that the facts established show that the marriage has

¹ 2023 SCC OnLine SC 544.

completely failed and there is no possibility that the parties will reunite or cohabit together. In our considered view, the continuation of the formal legal relationship between the parties is unjustified.

In view of the aforesaid facts and without going into the allegations and counter allegations, we deem it appropriate to exercise our power under Article 142(1) of the Constitution of India and pass a decree for divorce on the ground of irretrievable breakdown of marriage. The marriage between the appellant - Nikesh Kumar and the respondent - Suman Devi shall stand dissolved.

During the pendency of the present appeal, numerous attempts were made to settle the matter. On persuasion by this Court, the appellant has agreed to pay an amount of Rs.25,00,000/- (Rupees twenty five lakhs only) to the respondent, in addition to the amount of Rs.15,00,000/- (Rupees fifteen lakhs only) which the appellant has already paid. This payment will be made by way of two installments of the equal amount of Rs.12,50,000/- (Rupees twelve lakhs fifty thousand only) each. The first installment will be paid on or before 30.11.2023 and the second installment will be paid on or before 28.02.2024.

The payment of Rs.40,00,000/- (Rupees forty lakhs only) by the appellant will be in lieu of the maintenance payable to the respondent. After the payment is made, all the claims/proceedings pertaining to maintenance shall stand disposed of. The aforesaid payments and the present order will be duly taken into consideration in the other proceedings pending *inter se* the parties.

The appellant had purchased a plot situated at Ranchi, Jharkhand, which is registered in the name of the respondent *vide* registration dated 04.10.2019. The respondent has clearly stated that she does not want this plot of land. The respondent shall execute a gift deed, on documents to be prepared by the appellant, in the name of the appellant or his wife, as per the choice of the appellant. The documents will be executed and registered on or before 28.02.2024. On failure of the respondent to execute the gift deed, the document shall be executed by an officer nominated by the Family Court, Hazaribagh, Jharkhand, on behalf of the respondent.

There is dispute as to the possession of the original sale deed of the aforesaid plot. In view of the gift deed being executed, the respondent will be accepting title/ownership of the appellant or his spouse. The conveyance by the gift deed will be treated as absolute and complete transfer from the respondent.

The appeal is allowed and disposed of in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
OCTOBER 20, 2023.