

**Court No. - 39**

**Case :-** FIRST APPEAL No. - 325 of 2015

**Appellant :-** Dr. Ravi Shanker Gupta

**Respondent :-** Dr. Anita Gupta

**Counsel for Appellant :-** Ashwani Mishra, Shiv Bahadur Yadav

**Counsel for Respondent :-** ,M C Yadav, S.K. Dubey

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Donadi Ramesh, J.**

1. Heard Sri Shiv Bahadur Yadav, learned counsel for the appellant and Sri M.C. Yadav, learned counsel for the respondent.

2. Present appeal has been filed against judgment and order dated 26.3.2014 passed by Principal Judge, Family Court, Mirzapur in Petition No. 237 of 2008 (Dr. Ravi Shankar Gupta Vs. Dr. Anita Gupta), whereby the divorce petition filed by the present appellant has been dismissed.

3. Admittedly, parties were married on 21.06.1999. Both are medical doctors. Whereas the appellant set up his private practice at Delhi, the respondent was earlier employed with the Indian Railways, till her voluntary retirement. Undeniably, there are two children born to the parties, one has lived with the appellant and the other has lived with the respondent. 9 years after their marriage, the divorce proceedings were instituted by the appellant on the ground of cruelty. The only cruelty alleged in the plaint is denial of sexual intercourse. In that, no specific allegation has been made. At the same time, it has been admitted in the plaint that there are two children born to the parties. Further allegation has been made in the plaint that the respondent was a disciple of a person described as a religious teacher. Under the influence of

such teachings received from her religious teacher, she declined to engage in sexual intercourse. On her part, the respondent denied the plaint allegations.

4. Besides referring to birth of two children to establish normal healthy relationship between them, she has then referred to other facts and circumstances as reason for the appellant seeking divorce.

5. At any rate, it is admitted to the parties that for the last many years, the appellant has resided at Delhi, whereas the respondent stayed away from Delhi for reason of her job with the Indian Railways. At present, she is also living at Delhi in her own accommodation. In such facts, on 7.8.2024, we passed the below-quoted order:

*"1. Sri Shiv Bahadur Yadav, learned counsel for the appellant and Sri M.C. Yadav, learned counsel for the respondent are present.*

*2. Learned counsel for the parties are at variance as to the current status of the relationship between the parties. Learned counsel for the respondent states that the parties are living together at Delhi, whereas learned counsel for the respondent states that they are living separately.*

*3. Peculiar situation exists.*

*4. Let both parties be present along with their two children before the Court on 14th August, 2024.*

*5. List on 14th August, 2024."*

6. Thereafter, on 14.8.2024, we passed the below-quoted order:

*"1. In compliance of the last order the appellant and the respondent are present along with their son Madhusudan.*

*2. In the interest of parties we had required the parties to appear before the Mediation Centre, today (in the morning session). The mediator has reported as below:-*

*"Both the parties appeared before the undersigned at the Mediation Centre today at 1:00 P.M. and several separate and joint sessions were held between the parties. Both the parties are willing to live together as husband and wife in the larger interest of their children."*

*3. The brief report of the mediators has been marked as 'X' and retained on record.*

*4. Both counsel for the parties thus submit that the parties in dispute may be*

*given another chance to revive their matrimonial relationship.*

*5. We have briefly interacted with the parties. They assure the Court that in the best interest of their children they will try to start afresh. In that regard we are told that the respondent has taken voluntarily retirement from service. She expresses her desire to accompany the appellant to Delhi. As for their son Madhusudan, he is already staying in Delhi in connection with his educational needs. The elder son born to the parties is gainfully employed at Bangalore.*

*6. At present we adjourn the hearing of the appeal to 16.10.2024 on which date it is hoped that the parties would confirm to the Court that their matrimonial relationship has been revived such that no adjudication may be made on merits."*

7. Last, on 16.10.2024, we passed the below-quoted order:

*"1. Learned counsel for the parties are at variance as to the status of the marriage between the parties and developments subsequent to the order dated 14.08.2024.*

*2. Learned counsel for the respondent states that parties have revived their matrimonial relationship, whereas learned counsel for the appellant states to the contrary.*

*3. In view of such contradictory statement, the Court has no option but to hear the matter finally.*

*4. As jointly prayed, put up on 6th November, 2024, peremptorily."*

8. Thus to us, it appears that the ground of cruelty prayed by the appellant was not established. Prima facie, evidence clearly exists that the parties experienced normal matrimonial relationship, wherein two children were born to them within two years of their marriage. Therefore, no ground of incapacity on part of the respondent may ever exist. As to what exact relationship parties may be able to maintain, with respect to physical intimacy, *per se*, the issue is not justiciable. It is not for the Court to lay down any law, as to exact nature of private relationship between two consenting parties living in matrimonial relationship. To seek dissolution of marriage on ground of denial of sexual intercourse, such fact occurrence has to be seen to have existed/sustained consistently, over a long period of time.

9. Insofar as no fact was pleaded and no evidence was led to establish that the appellant was completely deprived of physical

intimacy by his wife over any specified time, we do not find any infirmity in the order impugned dismissing the divorce suit, instituted solely on that ground.

10. Reliance placed on **Ravindra Pratap Yadav Vs. Smt. Asha Devi and Others, N.C. No. 2023:AHC:106512-DB**, is also misplaced inasmuch as in the present case, no evidence has been led to establish continued mental cruelty suffered by the appellant for reason or conduct attributed to the respondent.

11. As to the irretrievable breakdown of marriage prayed by learned counsel for the appellant, we find that that is not a statutory ground to dissolve a Hindu marriage.

12. The appeal lacks merit and is, accordingly, dismissed.

**Order Date :- 6.11.2024**

Noman

**(Donadi Ramesh, J.) (S.D. Singh, J.)**