HIGH COURT OF ANDHRA PRADESH

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM

<u>CIVIL MISCELLANEOUS APPEAL No. 4279 of 2004</u>

Between:

.....APPELLANT

AND

....RESPONDENT

DATE OF JUDGMENT RESERVED : 10.02.2026
DATE OF JUDGMENT PRONOUNCED : 28.04.2026
DATE OF JUDGMENT UPLOADED : 28.04.2026

<u>SUBMITTED FOR APPROVAL:</u>

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

____

MAHESWARA RAO KUNCHEAM, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

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! Counsel for the Appellant : Sri K. A. Narasimham

Counsel for the Respondent : Sri Anup Koushik Karavadi

< Gist :

> Head Note:

? Cases Referred:

1. AIR 1984 SC 1562
2. 2025 SCC OnLine SC 2798
3. AIR 1984 Andhra Pradesh 54
4. (1975) 2 SCC 326
5. AIR 1977 SC 2218
6. AIR 1996 Bom 85

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM

CIVIL MISCELLANEOUS APPEAL No. 4279 of 2004

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri K. A. Narasimham, learned counsel for the appellant and Sri Anup Koushik Karavadi, learned counsel for the respondent.

2. The appellant is the husband and the respondent is the wife.

3. This appeal arises out of the judgment and decree dated 06.08.2004 in HMOP.No.64 of 2002 on the file of the Judge, Family Court-cum-V Additional District Judge, Tirupati, by which the HMOP filed by the appellant/husband seeking divorce under Section 13 (1A) (ii) of the Hindu Marriage Act, 1955 was dismissed.

4. The appellant and the respondent were married on 05.02.1992 as per the Hindu rites and customs. They have one male child. Due to some differences and disputes between them, initially the divorce OP.No.113 of 1999 was filed by the husband, whereas the wife filed OP.No.114 of 1999 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The wife had already filed maintenance case MC No.35 of 1995 against the husband, which was allowed awarding the maintenance to the wife and also to the son. O.P.Nos.113 and 114 of 1999 were decided by the common Order dated 12.07.2001, the petition for divorce was dismissed and the petition for restitution of conjugal rights was allowed. The contention of the husband is

that the wife failed to join the husband and there was no restitution of conjugal rights pursuant to the decree for restitution of conjugal rights in O.P.No.114 of 1999 for a period of one year and hence he filed HMOP No.64 of 2002 seeking divorce under Section 13 (1A) (ii) of the Hindu Marriage Act.

5. The wife filed the counter. The previous proceedings were not disputed. However, it was denied that she failed to join the husband. She submitted that there was no refusal on her part. She repeatedly went to the house of the husband, but he did not allow the wife inside the house. So, there was no cause of action to the husband and he was not entitled for decree of divorce on that ground under Section 13 (1A) (ii) of the Act. She also submitted that she was still ready to join the husband at any time.

6. During the enquiry, the husband examined himself as PW 1 (and marked Ex.A1, the certified copy of the common order in O.P.Nos.113/99 and 114/99 on the file of Family Court, Tirupati. The wife (examined herself as RW 1, and got examined on her behalf RW 2-Rajamma and RW 3-D.Chandramma. Any document was not marked on her behalf.

7. The learned Judge, Family Court, framed the following points for consideration:

> "1) Whether the respondent failed to join petitioner and failed to comply orders of restitution of conjugal rights passed in O.P.114/99 on the file of this Court?
> 2) Whether the petitioner is entitled for grant of divorce decree as prayed?"

8. The learned Judge, Family Court recorded the finding that the husband was not entitled for grant of divorce decree. The view taken was that

the decree of divorce cannot automatically be granted in the absence of *bona fides* on the part of the husband to comply with the decree of restitution of conjugal rights passed previously. The learned trial Court also recorded that from the evidence of RWs 2 and 3, it was clear that the wife/respondent made attempts to join the petitioner/husband, but the petitioner/husband refused to allow her to join the matrimonial home. The oral evidence of PW 1 (husband) was not accepted, observing that his evidence was of the interested person and there was no independent evidence to corroborate that the wife did not comply with the decree of restitution of conjugal rights and also that the husband did not refuse the wife to join.

9. HMOP.No.64 of 2002 was thus dismissed on 06.08.2004.

10. Learned counsel for the appellant submitted that the decree for restitution of conjugal rights was not complied by the wife. She failed to join and consequently, on expiry of the statutory period of one year, the husband had the right to file petition for divorce on such ground and there was no justification for the learned Judge, Family Court to have dismissed the petition.

11. Learned counsel for the appellant placed reliance on the following judgments:

1. ***Smt.Saroj Rani v. Sudarshan Kumar Chadha***[1]
2. ***Nayan Bhowrnick v. Aparna Chakraborty***[2]
3. ***Pavuluri Murahari Rao v. Povuluri Vasantha Manohari***[3]

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[1] AIR 1984 SC 1562
[2] 2025 SCC OnLine SC 2798
[3] AIR 1984 Andhra Pradesh 54

12. Learned counsel for the respondent submitted that there is evidence on record of independent witnesses RW 2 and RW 3, which show that the wife intended to comply the decree for restitution of conjugal rights and also went to the house of the husband but he did not allow her to join and enter the house. So, the submission is that the husband himself is not permitting to comply the decree of restitution of conjugal rights nor he himself made any effort towards compliance and consequently, he cannot take the benefits of his own wrong and seek divorce on such ground under Section 13 (1A) (ii) of the Hindu Marriage Act. He submitted that there is no illegality in dismissal of the divorce petition as also in recording the finding against the husband, which is based on consideration of evidence on record, to which there is no contrary evidence.

13. Learned counsel for the respondent also placed reliance in ***Pavuluri Murahari Rao*** (supra).

14. The point for consideration and determination is as follows:

"Whether the learned Judge, Family Court committed error of law and fact in dismissing the petition for divorce on the ground of Section 13 (1A) (ii) of Hindu Marriage Act on the ground that the husband was himself responsible for non-compliance with the decree for restitution of conjugal rights passed in O.P.No.114 of 1999 granted on 12.07.2001?"

15. We have considered the aforesaid submissions and perused the material on record.

16. Section 13 (1A) (ii) of the Hindu Marriage Act reads as under:

"**Section 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--

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.--In this clause,--

(a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; [4]***

[*Explanation*.In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful

neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[(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 [8][one year] 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 [8][one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,--

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [9][bestiality; or]

[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]"

17. It is evident from the aforesaid provision of Section 13 (1A) (ii) that either party to a marriage whether solemnized before or after the commencement of the Hindu Marriage Act may also present a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

18. The period of one year as contemplated under clause (ii) of sub-section (1A), i.e., one year or upwards, is from the date of decree for restitution of conjugal rights. In other words, this period of one year commences from the date on which the decree for restitution of conjugal rights is passed. That decree is dated 12.07.2001 in OP No.114 of 1999 and was a contested decree. The period of one year therefore came to an end on 12.07.2002. HMOP No.64 of 2002 was filed on 22.07.2002, i.e., after expiry of one year.

19. Section 23 of the Hindu Marriage Act reads as under:

"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 except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb)when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and.

(c) the petition (not being a petition presented under section 11) is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, **then, and in such a case, but not otherwise, the court shall decree such relief accordingly**.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with

directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties."

20. Section 23 (1) (a) of the Hindu Marriage Act provides that in any proceeding under the Hindu Marriage Act, whether defended or not, if the Court is satisfied that any of the grounds for granting relief exists and the petitioner in any way not taking advantage of his or her own wrong or disability for the purpose of such relief, then in such a case but not otherwise, the Court shall decree such relief accordingly.

21. In ***Dr. N. G. Dastane v. Mrs. S. Dastane***[4] the Hon'ble Apex Court observed that the rider of Section 23 (1) (a) of the Hindu Marriage Act is that the relief prayed for can be decreed only if the Court is satisfied that the petitioner is not in any way taking advantage of his own wrong and not otherwise.

22. In ***Dharmendra Kumar v. Usha Kumar***[5] the Hon'ble Apex Court held *inter alia* that the grounds for granting reliefs under Section 13 including Sub-section (1A) continue to be subject to the provisions of Section 23 of the Hindu Marriage Act.

23. It has further been held in ***Dharmendra Kumar*** (supra)that in order to be a wrong the conduct alleged has to be something more than a

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[4] (1975) 2 SCC 326
[5] AIR 1977 SC 2218

disinclination to agree to an offer of reunion. It must be misconduct serious enough to justify denial of relief claimed and otherwise entitled thereto.

24. Para-3 of ***Dharmendra Kumar*** (supra) reads as under:

"**3.** Section 13(1-A)(*ii*) of the Hindu Marriage Act. 1955 allows either party to a marriage to present a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for the period specified in the provision after the passing of the decree for restitution of conjugal rights. Sub-section (1-A) was introduced in Section 13 by Section 2 of the Hindu Marriage (Amendment) Act, 1964 (44 of 1964). Section 13 as it stood before the 1964 Amendment permitted only the spouse who had obtained the decree for restitution of conjugal rights to apply for relief by way of divorce; the party against whom the decree was passed was not given that right. **The grounds for granting relief under Section 13 including sub-section (1-A) however continue to be subject to the provisions of Section 23 of the Act. We have quoted above the part of Section 23 relevant for the present purpose. It is contended by the appellant that the allegation made in his written statement that the conduct of the petitioner in not responding to his invitations to live with him meant that she was trying to take advantage of her own wrong for the purpose of relief under Section 13(1-A)(*ii*). On the admitted facts, the petitioner was undoubtedly entitled to ask for a decree of divorce. Would the allegation, if true, that she did not respond to her husband's invitation to come and live with him disentitle her to the relief? We do not find it possible to hold that it would.** In *Ram Kali case* a Full Bench of the Delhi High Court held that mere non-compliance with the decree for restitution does not constitute a wrong within the meaning of Section 23(1)(*a*). Relying on and explaining this decision in the later case of *Gajna Devi* v. *Purshotam Giri* a learned Judge of the same High Court observed:

"Section 23 existed in the statute book prior to the insertion of Section 13(1-A) … Had Parliament intended that a party which is guilty of a matrimonial offence and against which a decree for judicial separation or restitution of

conjugal rights had been passed, was in view of Section 23 of the Act, not entitled to obtain divorce, then it would have inserted an exception to Section 13(1-A) and with such exception, the provision of Section 13(1-A) would practically become redundant as the guilty party could never reap benefit of obtaining divorce, while the innocent party was entitled to obtain it even under the statute as it was before the amendment. Section 23 of the Act, therefore, cannot be construed so as to make the effect of amendment of the saw by insertion of Section 13(1-A) nugatory.

. . . the expression 'petitioner is not in any way taking advantage of his or her own wrong' occurring in clause (*a*) of Section 23(1) of the Act does not apply to taking advantage of the statutory right to obtain dissolution of marriage which has been conferred on him by Section 13(1-A) . . . In such a case, a party is not taking advantage of his own wrong, but of the legal right following upon of the passing of the decree and the failure of the parties to comply with the decree . . ."

In our opinion the law has been stated correctly in *Ram Kali* v. *Gopal Dass* and *Gajna Devi* v. *Purshotam Giri*. Therefore, it would not be very reasonable to think that the relief which is available to the spouse against whom a decree for restitution has been passed, should be denied to the one who does not insist on compliance with the decree passed in his or her favour. **In order to be a "wrong" within the meaning of Section 23(1)(*a*), the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled.**"

25. In ***Smt. Saroj Rani*** (supra), the Hon'ble Apex Court considered that the conduct of the husband, as in that case was sought to be urged against the husband, could possibly come within the expression 'his own wrong' under Section 23 (1) (a) of the Act so as to disentitle him to a decree of divorce to which he was otherwise entitled to. In the said case, the conduct of the

husband attributed was that there was consent for decree for restitution of conjugal rights. The Hon'ble Apex Court held that the decree for restitution of conjugal rights could also be on consent and there was no wrong on it. On that ground it could not be said that there was any collusion, observing further that from the consent decree, it could not be withdrawn that the husband had deliberately not opposed the decree for restitution of conjugal rights so as to make it as a ground in future for a decree of divorce. Para-10 of ***Smt. Saroj Rani*** (supra) reads as under:

> "10**.** In this appeal before this Court, counsel for the wife did not challenge the finding of the Division Bench that the consent decree as such was not bad or collusive. What he tried to urge before us was that in view of the expression "wrong" in Section 23(1)(*a*) of the Act, the husband was disentitled in this case to get a decree for divorce. It was sought to be urged that from the very beginning the husband wanted that decree for divorce should be passed. He therefore did not deliberately oppose the decree for restitution of conjugal rights. It was submitted on the other hand that the respondent-husband had with the intention of ultimately having divorce allowed the wife a decree for the restitution of conjugal rights knowing fully well that this decree he would not honour and thereby he misled the wife and the Court and thereafter refused to cohabit with the wife and now, it was submitted, cannot be allowed to take advantage of his "wrong". There is, however, no whisper of these allegations in the pleadings. As usual, on this being pointed out, the counsel prayed that he should be given an opportunity of amending his pleadings and, the parties, with usual plea, should not suffer for the mistake of the lawyers. In this case, however, there are insurmountable difficulties. Firstly there was no pleading, secondly this ground was not urged before any of the courts below which is a question of fact, thirdly the facts pleaded and the allegations made by the wife in the trial court and before the Division Bench were contrary to the facts now sought to be urged in support of her appeal. The definite case of the wife was

> that after the decree for restitution of conjugal rights, the husband and wife cohabited for two days. The ground now sought to be urged is that the husband wanted the wife to have a decree for judicial separation (*sic* restitution of conjugal rights) by some kind of a trap and then not to cohabit with her and thereafter obtain this decree for divorce. This would be opposed to the facts alleged in the defence by the wife. Therefore quite apart from the fact that there was no pleading which is a serious and fatal mistake, there is no scope of giving any opportunity of amending the pleadings at this stage permitting the wife to make an inconsistent case. Counsel for the appellant sought to urge that the expression "taking advantage of his or her own wrongs" in clause (*a*) of sub-section (1) of Section 23 must be construed in such a manner as would not make the Indian wives suffer at the hands of cunning and dishonest husbands. Firstly even if there is any scope for accepting this broad argument, it has no factual application to this case and secondly if that is so then it requires a legislation to that effect. We are therefore unable to accept the contention of counsel for the appellant that the conduct of the husband sought to be urged against him could possibly come within the expression "his own wrongs" in Section 23(1)(*a*) of the Act so as to disentitle him to a decree for divorce to which he is otherwise entitled to as held by the courts below. Furthermore we reach this conclusion without any mental compunction because it is evident that for whatever be the reasons this marriage has broken down and the parties can no longer live together as husband and wife; if such is the situation it is better to close the chapter."

26. In ***Pavuluri Murahari Rao*** (supra), a Coordinate Bench of this Court held that the conduct anterior to the decree should not be permitted to cast a shadow and the subsequent conduct alone is germane. Any conduct prior to a decree of conjugal rights is not relevant. It is only the conduct after the decree of restitution of conjugal rights that becomes relevant, to determine,

if the conduct of such party seeking divorce is falling under Section 23 of the Hindu Marriage Act so as to disentitle him or her for a decree of divorce.

27. In ***Sunita Rajendra Nikalie v. Rajendra Ednath Nikalie***[6] 'wrong' as used in Section 23 (1) (a) means serious or grave misconduct on the part of party seeking divorce or the relief against the other. It is not necessary that there should be a fresh marital offence.

28. So, it depends upon the facts and circumstances of each case to judge whether there was 'wrong' or not to disentitle the relief claimed even though otherwise entitled.

29. In the light of the above legal provisions and the judicial pronouncements, keeping the same in mind, we now proceed to consider the evidence on record to determine if there was any 'wrong' on the part of the husband/appellant, so as to deny the relief of divorce under Section 13 (1-A) read with Section 23 (1) (a) of the Hindu Marriage Act.

30. The evidence on record of RW 1-wife in para-3, is that,

> "………..He never expressed his willingness to take me back. He has no right to maintain the above O.P in pursuance of the decree obtained by me."

Para-4 of the Chief affidavit of RW 1- wife reads as under:

> "4. I submit that the petitioner has been shedding crocodile tears that be is very much interested in me and my son by keeping out photos. But he has no inclination to take me. In spite of it, at this young age keeping in view the status in the society, I have been eager to join my husband. My husband is avoiding me in spite of my repeated approaches. I never deserted my husband. The desertion or compliance of restitution of conjugal rights decree is not as

[6] AIR 1996 Bom 85

interpreted by the petitioner. Even now I am ready and willing to join my husband provided he takes me."

RW 1-wife in her cross examination deposed *inter alia* as follows:

"……I did not take execution proceedings even after obtaining decree by me under Ex.A1. For last 10 years myself and petitioner are living separately. **Fifteen days after obtaining decree under Ex.A1 I met my husband. But I cannot give the day, date and time. I did not issue any lawyer notice though my husband refused to take back me even after obtaining decree by me. It is not true to suggest that even after obtaining decree under Ex.A1, I did not met my husband and tried to live with him.**"

31. RW 2 – D. Rajamma, a third party to the proceedings deposed as follows:

"…….After the decree also, within six months, the respondent along with me and her parents approached the petitioner to take her back even as per the decree. He has been postponing stating that he is searching for an auspicious day. In that wise, he has been postponing and he did not take the respondent to his fold……."

RW 2 – D. Rajamma further deposed that,

"The respondent did not take legal action as the petitioner has been postponing to comply with her demands. In that wise, the respondent was not allowed to join the petitioner and the respondent is very much eager to join the petitioner."

In her cross examination, RW 2 deposed that,

"…..Nearly **12 years back I visited the house of the petitioner along with the respondent in order to reunite them.** But the petitioner send her back stating that he would get back his wife on auspicious day….."

The entire cross examination of RW 2 is reproduced as under:

> "I did not arrange the marriage and did not act as elderly person in the marriage of the petitioner and respondent. I do not know as to why disputes arose between the petitioner and respondent. **For last 12 yers petitioner and respondent are living separately. Nearly 12 years back I visited the house of the petitioner along with the respondent in order to reunite them.** But the petitioner send her back stating that he would get back his wife on auspicious day. It is not true to suggest that did not act as mediator at any point of time and that I am deposing falsely."

32. The date of the cross examination of RW 2 is 22.01.2004. So, 12 years back means 1992. The decree for restitution of conjugal rights was granted on 12.07.2001. Marriage took place between the parties on 05.09.1992. So, on the face of the admitted dates, the evidence of RW 2 does not inspire confidence about the visit of the wife along with RW 2 to the appellant's house after the decree of restitution of conjugal rights. So, we are of the view that the evidence of RW 2 that the husband send her back stating the he would get back his wife on auspicious day appears to be not correct and not the correct deposition, upon which the reliance cannot be placed to hold that the RW 2 went to husband's house after the decree for restitution of conjugal rights and the husband committed wrong by not allowing wife to comply with the decree. Further, even if the same be accepted as deposed, any such act of the husband is prior to the decree of the restitution of conjugal rights which cannot be covered under the expression 'wrong' within the meaning of Section 23 (1) (a) of the Hindu Marriage Act.

33. RW 3 – D. Chandramma, in the cross examination dated 08.03.2004 deposed that,

> "….**In the month of December, 2001 I took the respondent to the house of petitioner and requested him to take back her for which the petitioner stated that he would take his wife at a late date**….."

This RW 3 is related to the parties. The daughter of RW 3 was married to the brother of the appellant and as per the deposition, in the cross examination of RW 3,

> "….**It is true that my daughter is not living with the brother of the petitioner for about last one year.**"

RW 3 further deposed in the cross examination that,

> "….So far we did not lodge any complaint with the police against the brother of the petitioner and his relations. **On the other hand the brother of the petitioner and his relations lodge complaint against us**….."

34. The aforesaid shows that the daughter of RW 3 was married to the brother of the appellant (husband) and they were also not living together for last one year from the date of deposition. Some complaints were also lodged against RW 3 by the brother of the appellant and his relations, as per the deposition of RW 3. Besides, the evidence of RW1 and RW 3 when read together, as per the evidence of RW 1, she (wife) met the husband 15 days after obtaining the decree under Ex.A1. So, according to that statement, 15 days after 12.07.2001, may be in the month of July or in earlier August 2001. In her examination in chief, as also in the cross examination, RW 1 did not say that she was accompanied either by RW 2 or by RW 3. Even in the counter

filed in the petition seeking divorce, she did not disclose the names of the persons, if any, along with whom she had visited the husband to comply with the decree of restitution of conjugal rights. Even in the evidence of RW 1 as mentioned above, she did not disclose the name of those persons in particular RW 2 and RW 3, whereas RW 2 and RW 3 both have stated that they visited the house of the husband along with the wife (RW 1), but the husband sent them back stating that he would take his wife on an auspicious day. The evidence of RW 2 as stated above is wholly unreliable for the reasons already mentioned. The evidence of RW 3 cannot be given much credence for the reasons already mentioned above and based thereon it cannot be concluded that she (RW 3) went in the month of December 2001 along with wife to the house of the husband and requested the husband to take back the wife. RW 1, the wife never stated that she visited in the month of December 2001 nor that she visited with RW 3.

35. Further, from the evidence of RW.1 and RW.3, even if considered and taken together, what follows at the most is the disinclination of the husband to take the wife back. Such a disinclination, though not established, cannot be termed 'wrong', as held in ***Smt. Saroj Rani*** (supra) that, the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, to deny the relief.

36. Even if we do not consider the evidence of PW 1, the husband, for the reason as given by the learned trial Court that he is the applicant himself and there is no corroboration of his evidence, still we are of the view that any

'wrong' within the meaning of Section 23 (1)(a) of the Hindu Marriage Act on the part of the husband could not be established or proved against him on preponderance of probabilities based on evidence on record neither as a fact nor in law.

37. It was the case of the wife that the husband failed to obey the decree in spite of wife's effort and consequently, the husband could not take the benefit of his own wrong. So, the burden of proof that the wife made the efforts but it was the husband who was responsible for non-compliance with the decree by committing 'wrong', was on the wife/respondent. Evidence was lead, but for consideration made above, we are of the considered view that the burden of proof could not be discharged by the wife. The evidence of RWs 1 to 3 is wholly unreliable for the contradictions and does not corroborate the evidence of each other or prove the case of the wife.

38. We are of the view that the learned trial Court acted illegally in dismissing the OP for divorce holding that the husband was not entitled for divorce decree on the ground under Section 13 (1A) (ii), as the husband was himself responsible for non-compliance with the decree of restitution of conjugal rights, invoking Section 23 (1) (a) of the Hindu Marriage Act.

39. In ***Pavuluri Murahari Rao*** (supra), relied upon by the learned counsel for the respondent, a Coordinate Bench of this Court held that if the petitioner contributed to misconduct he would forfeit to obtain the relief of dissolution of marriage. There cannot be any dispute on such proposition of law, in the light of Section 13 (1A) (ii) and when read with Section 23 (1) (a) of

the Hindu Marriage Act. But in the present case, the act or conduct of the husband is not such nor could be so proved, as to attract any wrong on his part within the meaning of Section 23 (1) (a) to deny the relief of dissolution of marriage under Section 13 (1A) (ii) of the Hindu Marriage Act.

40. The judgment in ***Nayan Bhowrnick*** (supra) cited by the learned counsel for the respondent is on the point of dissolution of marriage, due to irretrievable broke down of marriage, granted by the Hon’ble Apex Court in the exercise of powers under Article 142 of the Constitution of India and is not attracted to the present case.

41. Admittedly, the decree of restitution of conjugal rights remained uncomplied and for such non-compliance, the husband cannot be held to have committed any wrong or taking any advantage of any of his mistakes.

42. The decree was against the husband and in favour of the wife.

43. We are of the further view that under Section 13 (1A) of the Hindu Marriage Act obligation is on the judgment debtor to comply with the decree for restitution of conjugal rights and in case of non-compliance, it is open to the decree holder (wife in the present case), to execute the decree for which Order 21 Rule 31 CPC provides specifically. According to the said provision, where the party against whom a decree for restitution of conjugal rights has been passed and had an opportunity of obeying the decree but has willfully failed to obey it, the decree may be enforced by the attachment of his property. There is nothing on record to indicate and the learned counsels for both the sides also

submitted that the decree for restitution of conjugal rights was not put for execution by the respondent-wife.

44. The appeal is pending since 2004 and during this period also nothing has been brought to show the efforts made by either side to live together.

45. We are of the view that the ground for divorce under Section 13 (1-A) of the Hindu Marriage Act was made out and the learned Judge, Family Court was not correct in dismissing the OP which deserved to be allowed. It failed to appreciate the evidence in the correct perspective and erred grossly in appreciation of evidence and the application of law correctly to the facts of the case.

46. We allow the appeal and set aside the Judgment and Decree dated 06.08.2004. The marriage dated 05.02.1992 between the parties stands dissolved.

47. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: 28.04.2026
Dsr

Note:
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