

**AIR 2013 SUPREME COURT 2916**  
**SUPREME COURT**  
 (From : Rajasthan)

**G. S. SINGHVI, J. and S. J. MUKHOPADHAYA, J.**

Civil Appeal No. 3861 of 2013 (arising out of S. L. P. (C) No. 20277 of 2007), **D/-15-4-2013**

**Ashok Kumar Jain v. Sumati Jain**

**Hindu Marriage Act (25 of 1955), S.13, S.23- Divorce - Refuse of relief to person taking advantage of his or her own wrong - Fact that appellant was earlier married not revealed to respondent and her parents - Pending appeal, appellant also came out with a fresh matrimonial advertisement - It clearly reveals his intention to re-marry for third time even before getting divorce from respondent - Appellant not only cruel to respondent but also brought situation to point where respondent has**

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**no option but to leave matrimonial home - Order of High Court dismissing appellant's petition for dissolution of marriage is proper.**

Under sub-clause (a) of clause (1) of Section 23, in any proceeding under the Act, if the Court is satisfied that any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, the Court shall grant relief under Section 23 (1)(a) of the Act, Therefore, it is always open to the Court to examine whether the person seeking divorce 'is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief'. On such examination if it is so found that the person is taking advantage of his or her wrong or disability it is open to the Court to refuse to grant relief. In the present case admittedly marriage has not been dissolved by any of the Court of Law. On the other hand, the petition under S. 13 for dissolution of marriage was dismissed by the Judge, Family Court. In such case there was no occasion for the appellant to come out with another advertisement for third marriage. The High Court rightly held that the aforesaid acts during the pendency of the appeal clearly reveals appellant's psychology of disobeying the law and of entering into a number of marriages. Thus, both the Courts noticed the relevant facts and came to a definite that the appellant has not only been cruel to the respondent, but has also brought the situation to the point where the respondent had no option but to leave the matrimonial home. In this situation as the appellant was trying to take advantage of his own wrong, the Courts disallowed the relief as was sought for. Thus, the order to that effect of the High Court does not suffer any infirmity, illegality or perversity; on interference is called for. **(Paras12131415)**

Sarad Kumar Singhania, for Petitioner; Ms. Pratibha Jain, for Respondent.

### **Judgement**

**1.SUDHANSU JYOTI MUKHOPADHAYA, J. :-**Leave granted.

**2.**The appellant has preferred this appeal against the judgment dated 9th March, 2007 passed by the Rajasthan High Court at Jaipur in DB Civil Miscellaneous Appeal No. 332 of 1998 whereby the Division Bench upheld the judgment dated 13th February, 1998 passed by the Judge, Family Court, Jaipur dismissing the appellant's petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act" for short).

**3.**The facts of the case are as follows:

The appellant and respondent are married to each other. The appellant preferred a petition for dissolution of marriage under Section 13 of the Act before the Judge, Family Court, Jaipur and brought on record the following facts:

The appellant and the respondent were married according to Hindu rites on 30th October, 1990 at Jaipur. For the first few days the respondent stayed at her matrimonial home and behaved well with family members of the appellant. However, upon her return from her parental house, after a few days of the marriage, her behaviour suddenly changed. Appellant claimed to be the only son of the family having two small sisters and old father to look after. The aforesaid fact was known to the respondent even prior to her marriage when appellant informed the respondent's family that since there is no one to look after his aged father, his wife would have to look after him. But, upon her return from her parental place, the respondent started abusing her father-in-law by calling his name and by neglecting his welfare. She also pressurized the appellant to abandon his father and shift to another house. Since the appellant refused to succumb to her pressure, her behaviour became more and more cruel towards the appellant and his family members. Thereafter, without any rhyme or reason on 30th March, 1991 in the absence of

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appellant and his father, the respondent packed up her bags, collected her jewellery and left the matrimonial home. Since that date, she has refused to come back to the matrimonial home. On 5th December, 1991 she gave birth to a son, but the appellant was never informed either by the respondent or by his in-laws. When the appellant came to know about the birth of son, he went to see his wife at the Hospital, but he found her missing. Thereafter, the appellant went to his in-laws' place but they refused to let him enter inside the house. Hence, the appellant could neither see his newly born child nor meet his wife. Furthermore, according to the appellant despite sending many persons to reconcile with his wife, the respondent consistently refused to come back to him. In this background, the appellant filed a petition under Section 13 of the Act before the Judge, Family Court, Jaipur for the divorce on the grounds of cruelty and desertion.

4. The respondent, on the other hand, filed written statement in the Family Court and narrated a totally different set of facts. She alleged that since from first night, the appellant came deadly drunk into the room and abused her for bringing insufficient dowry. Subsequently, she was shocked to learn that the appellant was earlier married to a woman known as 'Shanta' and had a son from the said marriage. According to the respondent, the aforesaid fact relating to first marriage was not revealed by the appellant in the matrimonial advertisement given by him on 8th April, 1990 in the daily newspaper "Rajasthan Patrika". When she inquired about his first marriage she realized that the appellant had sought divorce on the exact same grounds as are pleaded by him in the present case. The respondent further claimed that once when the appellant had lost Rs.3,000/- in gambling, he forced her to go to her parental place and to bring Rs.3,000/- for him. Moreover, when her father retired from the service and had received retiral benefits of Rs.1,20,934/-, the appellant pressurized her to convince her father to part with Rs.50,000/- for him. Whenever, she refused to talk to her father on this topic, the appellant assaulted her. She further alleged that despite the fact that she was a woman from a Jain community, the appellant would force her to cook meat or to drink with him. Since the respondent believed in nonviolence according to her religious tenance, she could never convince herself to eat non-vegetarian food and to drink. The respondent further alleged that finally on 30th March, 1991, the appellant mercilessly bashed her up and threw her out of the matrimonial home. She had no option but to return to her parental place. According to the respondent, when she was hospitalized and required blood and even after the birth of her son, the appellant never visited the hospital to see her and the son and enquired about her welfare. Therefore, according to the respondent, in fact the cruelty and desertion have been committed by the appellant and not by her.

5. In the Family Court the appellant examined four witnesses including himself and submitted a number of documentary evidence. The respondent also examined four witnesses including herself and submitted the large number of documentary evidence. The learned Judge after going through the oral and documentary evidence and on hearing the parties, by the judgment dated 13th February, 1998 dismissed the petition for divorce with cost.

6. The Appellate Court, as noticed above, dismissed the appeal. The Appellate Court held that the appellant has not only been cruel to the respondent, but has also brought the situation to the point where the respondent had no option but to leave her matrimonial home. Hence the appellant has committed constructive desertion of the respondent.

7. Learned counsel appearing on behalf of the appellant submitted that the cruelty and desertion were committed by the respondent. He has taken us to the factual matrix narrated above and submitted that these facts as alleged by the appellant and

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supported by evidence clearly shows that the respondent has neglected her matrimonial duties both towards the appellant and his family. The respondent's persistent demand to separate from her father-in-law, depriving the husband of the matrimonial relationship, refusal to resume cohabitation with the appellant, all these acts and omissions amount to cruelty and desertion. The cruelty was constituted to the extent that it was impossible for the husband to live with such a wife. It was also submitted by the learned counsel for the appellant that the approach of the High Court was incorrect as it failed to notice that when the appellant and the respondent have been living separately for about sixteen years, there is no purpose in compelling both the parties to live together. The High Court ought to have granted decree of divorce. It was further contended that where the marriage is irretrievably broken down with no possibility of the appellant and the respondent to live together again, the best recourse for the High Court to adopt was to dissolve their marriage and thereby allow the appellant and the respondent to live remaining part of their life peacefully both having already lost valuable part thereof.

8. On the other hand, learned counsel for the respondent highlighted the facts not disputed by the appellant that the appellant is in the habit of marrying and remarrying. Even prior to the present marriage, the appellant had married one 'Shanta' from whom he has a son. This fact was never revealed by the appellant to the respondent or to her parents prior to the solemnisation of the present marriage. Therefore, while playing fraud with woman, the appellant wishes to continue solemnising number of marriages.

9. We have heard learned counsel for the parties and perused the record.

10. It is not in dispute that even prior to the present marriage the appellant had married one 'Shanta' from whom he has a son. The aforesaid fact was never revealed by the appellant to the respondent or to her parents prior to the solemnisation of the present marriage or thereafter. Even in the matrimonial advertisement (Ex. A11), the appellant had not revealed the fact that he is already a divorcee. Moreover, the appellant had written a letter to his father-in-law (Ex. A10) but therein also not mentioned that he is a divorcee and a father of a son. Moreover, even during the pendency of the appeal, the Court noticed that the appellant has placed a matrimonial advertisement in the paper as he wishes to enter into a third marriage.

11. The High Court perused the divorce petition as was filed by the appellant against his first wife as well as the divorce petition filed by the appellant against the present respondent and noticed that they are almost identical in their content. The same sets of allegations were levelled against the first wife as levelled against the present respondent. This clearly shows the modus operandi of the appellant.

Taking into consideration the aforesaid fact and the fact that even during the pendency of the appeal the appellant came out with a fresh matrimonial advertisement, the High Court rightly held that the appellant played fraud with the respondent. The High Court noticed that surprisingly the subsequent matrimonial advertisement published by him clearly reveals his intention to re-marry for the third time even before getting divorce from his second wife. The High Court observed that this is against the Section 15 of the Act, whereunder it is stipulated that even after dissolution of marriage by a decree of divorce, up to certain period no party to the marriage can marry again.

12. In the present case admittedly marriage has not been dissolved by any of the Court of Law. On the other hand, the petition under Section 13 for dissolution of marriage was dismissed by the Judge, Family Court. In such case there was no occasion for the appellant to come out with another advertisement for third marriage.

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In this background, the High Court rightly held that the aforesaid acts during the pendency of the appeal clearly reveals appellant's psychology of disobeying the law and of entering into a number of marriages.

13. Under sub-clause (a) of clause (1) of Section 23, in any proceeding under the Act, if the Court is satisfied that any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, the Court shall grant relief under Section 23 (1) (a) of the Act. Therefore, it is always open to the Court to examine whether the person seeking divorce "is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief". On such examination if it is so found that the person is taking advantage of his or her wrong or disability it is open to the Court to refuse to grant relief.

14. In the present case, both the Courts noticed the relevant facts and came to a definite conclusion that the appellant has not only been cruel to the respondent, but has also brought the situation to the point where the respondent had no option but to leave the matrimonial home. In this situation as the appellant was trying to take advantage of his own wrong, the Courts disallowed the relief as was sought for. We find that the order to that effect of the High Court does not suffer any infirmity, illegality or perversity; no interference is called for.

15. In the result and in absence of any merit, the appeal is dismissed but there shall be no separate orders as to costs.

**Appeal Dismissed.**

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