

Significance of order passed U/Sec 9 of Hindu Marriage Act, 1955

Uday Pratap Singh,
Judge, Family Court, Khatima,
Distt Udam Singh Nagar

U/Sec 9 of Hindu Marriage Act, 1955

Restitution of conjugal rights- When either the husband or the wife hasm without reasonable excuse, withdrawn from the society of the otherm the aggrieved party may apply, by petition to the District Court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no leagal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(1) Hon'ble Supreme Court in SAROJ RANI VS SUDARASHAN KUMAR CHADHA (1984) 4 SCC 90 Held that Constitutional validity of Sec 9 H.M.Act.

Para No- 14 of this judgment conjugal rights I.e. right of the husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself.-----*The essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life*

Para No- 15 Section 9 is only a codification of pre-exist ion law. Rule 32 of Order 21 of the Code of Civil procedure deals with decree of specific performance for restitution of conjugal rights or for an injection.

Para No- 16 only sanction is by attachment of property against disobedience of a decree for restitution of conjugal rights where the disobedience follows as a result of a wilful conduct. ----- that the court can only decree if there is no just reason for not passing decree for restitution of conjugal rights to offer inducement for the husband or wife to live

together in order to give them an opportunity to settle up the matter amicably.

It serves a social purpose as an aid to the prevention of break-up of marriage.

(2) The essence of a decree for restitution of conjugal rights is that the husband desiring the company of the wife makes an effort through the court for its assistance. (B.R. Syal vs Ram syal AIR 1968 P H 489 Para No-16)

(3) Under the modern Indian law, a decree for restitution cannot be executed by the arrest of the judgment debtor. But under Rule 32, Order 21, Code of Civil procedure, financial coercion can be exercised for its enforcement, that is to say, the decree can be executed by the attachment of the property of the judgment-debtor. Rule 33 further provides for periodic payment of money if a decree for restitution of conjugal right is not complied with.

(4) The non-compliance with the decree amounted to *constructive desertion* on the basis of which divorce could be obtained.

The non-compliance of the decree of the restitution of conjugal rights for a period of one year under Sec 13(i-A) (ii) the Hindu Marriage Act and the Sec 27 Special Marriage Act entitles either party to obtain a decree of divorce.

The decree of restitution of conjugal rights is that one year's non-compliance of the decree can lead to divorce under section 13(IA)(ii). This is hardly a merit of the decree of restitution of conjugal rights. Then we should not forget that under rule 33, order 21, Civil procedure Code, financial coercion can still be exercised for the enforcement of the decree of restitution of conjugal rights.

THANKS...