

**Smt. Asha Mishra Vs. Dhirendra Kumar**

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**Court :** Rajasthan

**Decided On :** Oct-11-1976

**Reported in :** 1976WLN(UC)373

**Judge :** S.N. Modi, J.

**Appeal No. :** S.B. Civil Miscellaneous Appeal No. 91 of 1970

**Appellant :** Smt. Asha Mishra

**Respondent :** Dhirendra Kumar

**Disposition :** Appeal dismissed

**Judgement :**

S.N. Modi, J.

1. This is a civil miscellaneous appeal under Section 28 of the Hindu Marriage Act, 1956 (hereinafter referred to as 'the Act'), against the judgment and decree of the District Judge, Jaipur City, dated March 26, 1970, in proceedings under Section 9 of the Act.

2. The respondent moved an application under Section 9 of the Act for restitution of conjugal rights. It was alleged that the marriage between the parties was solemnized on May 27, 1937. The parties lived together up to the 1st week of April, 1963 and thereafter the appellant left the company of her husband and went to her father's house. The respondent made several efforts to call the appellant to his house, but to no avail. Ultimately, the respondent moved this petition which was allowed by the District Judge, Jaipur City, and a decree for restitution of conjugal rights was passed against the appellant. It is against this order that the appellant has filed this appeal.

3. In the lower court, the respondent raised the objection that she was a minor. An issue was framed to that effect and it was decided against the appellant on November 4, 1969. The main issue in the case was, whether the appellant, without any reasonable and probable cause, withdrawn herself from the society of the respondent? The case was fixed for respondent's evidence on January 15, 1970. On this date, an application was moved on behalf of the appellant that in case two days' time was given to the appellant, she would willingly go with the respondent to his house. The case was therefore adjourned to January 21, 1970. The appellant, however, did not put in appearance on the adjourned date. The respondent appeared in the witness-box and stated on oath that the appellant has left the company of the respondent without any reasonable excuse. The respondent also produced three letters of the appellant wherein she promised to return to her husband's house, but in

fact she never returned. The conduct of the appellant clearly shows that she does not want to live with her husband and there is no reasonable or probable cause for withdrawing herself from the society of the respondent. It appears that ex parte proceedings were taken against the appellant, who did not produce any evidence in rebuttal. The Learned District Judge placed reliance on the testimony of the respondent and allowed the petition under Section 9 of the Act and granted a decree for restriction of conjugal rights.

4. The learned Counsel for the appellant was not able to show why the appellant did not appear in the court on January 21, 1970. Not only that, the learned Counsel for the appellant was also not able to point out the reasons why the appellant, in spite of her letters, did not return to her marital home. In three circumstances, I am satisfied that the lower court was fully justified in granting a decree in favour of the respondent under Section 9 of the Act.

5. In these circumstances, the appeal fails and it is dismissed. Having regard to the circumstances of the case, the parties are left to bear their own costs throughout.

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