

SITARA BEGUM

v.

LIAQAT ALI

B

and

SURUJ KUMARI

C

v.

ATIL KUMAR

D

[SUPREME COURT, 1979 (Dyke, J.) 2nd February]

Divorce Jurisdiction

Matrimonial causes Act s.31(3)—leave to issue petition within 3 years—“exceptional hardship”.

E

Jay Raj Singh for the Petitioner.

Where in the Matrimonial Causes Act 1971 s.31(3) the phrase “exceptional hardship” is used, it must be given a meaning which takes the question of hardship far beyond the normal hardship involved in a case of cruelty.

F

Application for leave to institute proceedings for dissolution of marriage may not be made within 3 years thereof unless a refusal to grant it would impose exceptional hardship on applicant, or there has been exceptional depravity by the other party.

Held: Applications dismissed.

G

The error of Counsel can in some circumstances and was in this case such that it was unfair for a party to have to pay costs. Therefore Counsel himself was ordered to bear the costs of the applications.

DYKE, J:

Judgment

A

Both actions are brought by the same firm of lawyers. Both actions are ex parte motions in which petitioners ask leave of the court to institute proceedings for divorce within three years of the date of marriage. In each case the ground of divorce is cruelty. Since the same issues are involved in each case it will be convenient to deal with them jointly. Section 31(3) of the Matrimonial Causes Act is as follows:

B

"The Court shall not grant leave under this section to institute proceedings (i.e. within three years of the date of the marriage) except on the ground that to refuse to grant that leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage."

C

In neither case has exceptional hardship or exceptional depravity been pleaded, merely acts of cruelty which would undoubtedly found a petition for divorce in normal circumstances, and yet I am expected to infer from those acts that the petitioner would suffer exceptional hardships if I refuse leave to petition.

In Case 179/78 the petitioner pleads as follows:—

D

4. "That within the latter part of the said eight months (i.e. of cohabitation) my husband started to ill-treat me and began to be cruel to me in that he hit me with fists, kicks, slaps and curtain wire.
5. That my husband assaulted me regularly and on one occasion I had to be attended in Lautoka Hospital for treatment (on 7/1/78).
6. That my husband was subsequently convicted in Ba Magistrate's Court for the said assault and was sent to prison for ten months."

E

No medical certificate is annexed to describe any injuries the petitioner may have suffered.

In Case 180/78 the petitioner pleads:—

F

4. "That within one month of my said cohabitation my husband started to ill-treat me and began to be cruel to me in that he hit me with fists, kicks and slaps.
5. That my husband assaulted me regularly and on one occasion I had to be attended in Lautoka Hospital for treatment, a copy of the medical report is annexed hereto marked 'A'.
6. That my husband then left me at my parents home in Sabeto."

G

A medical certificate is annexed to the petition which indicates multiple bruises to the right wrist, but no other injury. The bruises do not appear to have been serious injuries.

H

What is apparent also from the pleadings is that both petitioners have been living separate from their husbands for some time and both have, albeit after reference to the courts, received lump sum maintenance from them. So that neither of them appears to be in desperate plight and neither appears to have been in any particular hurry to petition this court since the incidents complained of.

When Section 31 of the Act refers to "exceptional hardship" the word "exceptional" must be given a meaning which takes the question of hardship far beyond the normal hardship involved in a case of cruelty. Exceptional depravity does not apply of course since that relates to matters of a sexual nature such as bestiality, sodomy, etc. The petitions, apart from the fact that they do not contain any plea of exceptional hardship, do not go anywhere near

persuading me that by refusing leave I will be causing the petitioners exceptional hardship, and therefore both petitions will be dismissed.

When the petitions were first filed, counsel for the petitioners were by letter from the Registrar referred to the requirement to show exceptional hardship or exceptional depravity before leave to petition may be granted. This was done as a matter of courtesy to put counsel on their guard, possibly to avoid useless applications to the court and to save unnecessary expense. In spite of this counsel appear not to have been put on their guard, and they have persisted in these applications. Counsel did not come to court armed with authorities to be cited, no examples produced to justify the applications in their existing form, and no attempt was made to amend the applications. In some ways this can be said to show some contempt for the court, it certainly shows a recklessness as to the outcome of the applications, or indifference to the waste of their clients money. In the circumstances I think it would be quite unfair for the applicants to have to pay for their counsels' errors, and I therefore direct that counsel themselves should bear the costs of these wasted applications.

Applications dismissed.