

BARS OF MATRIMONIAL RELIEF

The bars of matrimonial relief are based on the maxim:

“One Who Comes To Equity Must Come With Clean Hands”

There is no excuse to the petitioner by the court to take advantage of his own disability or wrong to the petitioner. The bars of matrimonial relief are:

Doctrine of Strict Proof

Taking advantage of once own wrong or disability

Accessory

Connivance

Condonation

Collusion

Delay

Any other legal ground.

The decree passed in disregard of the bars is a nullity

1. Doctrine of Strict Proof: (Burden and standard proof)

There are 3 situations usually arises in matrimonial laws just like in ordinary civil law case proceedings:

The defendant appears in the court and contests the claims of the plaintiff.

If the defendant won't appear before the court even after the service of summons, the court may decide it as exparte.

The defendant appears in the court of justice and admits the claims made by the plaintiff.

In a matrimonial proceeding, the petitioner must establish the ground of matrimonial remedies beyond all reasonable doubts in all the 3 situations.

Case law: Dasthane vs Dasthane:

The court laid down that, the untrue statement of proof not beyond all reasonable doubt. The petitioner must prove to this ground (mental harassment by the spouse) against the respondent beyond all reasonable grounds.

2. Taking Advantage of once own wrong/ Disability:

There is no legal ground why relief should be granted. If petitioner is directly or indirectly responsible for respondent wrongful act then, the petitioner cannot be granted.

According to section 23 (1)(a) of Hindu Marriage Act, the court bars grant of relief if the petitioner is in anyway taking advantage of his or her own wrong of disability for the purpose of such relief.

Eg: when a husband is guilty under his wife adultery then he cannot appeal for divorce.

3. Accessory:

Under the Hindu Marriage Act, Special Marriage Act and Indian Divorce Act, when a petition is filed on the ground of respondent's adultery accessory may be the trend.

It is a term of criminal law if a husband promotes people to have intercourse with his wife or keep a watch while his wife is having sex with a another third parson, or fetch his wife's name from the place where she had gone to commit adultery, he is an accessory. In India not a single case is reported on accessory. No single case is yet reported on "accessory"

4. Connivance:

It is the same as an accessory.

The difference between two is that, in accessory there is active participation by the petitioner in the guilt of the respondent while in connivance there is no such participation.

To constitute connivance, express, or implied consent is necessary. When the petitioner agrees with the proposal of the respondent to earn money by illicit intercourse, then the petitioner is guilty of the connivance. It is a bar for matrimonial relief to the offence of adultery only. In this indirectly husband gives an opportunity or gives consent to his wife.

5. Condonation:

Condonation is the reinstatement of the partners who have committed a matrimonial offence with the intention to repeat it in the future of his or her matrimonial position. It is a consequence of the acts.

Caselaw: Hearn v. Hearn:

Spouse continued to cohabite for ten years after adultery of the respondent though sexual intercourse did not take place even once it was considered as condonation.

Women are suffering from cruelty and after that also they are living or cohabiting in the same house with husband and subjected to humiliation against their wish in the hope that there will be improvement in the behavior of the husband and their relationship.

They prefer silence to exposure.

6. Collusion:

Under Sec.23 (1) (c) of Hindu Marriage Act, Under Sec. 34 (1) (d) of Special Marriage Act collusion was a bar to all matrimonial reliefs.

The act abolished collusion as a bar to the petitions for a declaration that a marriage is null and void under the Hindu Marriage Act but not in Special Marriage Act

7. Improper and unnecessary delay:

In Hindu Marriage Act, under Sec.23 (1) (d) Improper and unnecessary delay is a bar to relief in respect of all matrimonial causes

Caselaw: Niromo v. Nikka

There is 11 years delay in filing the petition by wife.

She gave an explanation that she kept quiet all along and had no intention to file the suit for her husband's harassment which began soon after she had got the property in inheritance from her father.

This was accepted as a reasonable explanation to delay.

8. Other legal grounds:

Under Sec.23 (1) (e) of Hindu Marriage Act,

It is a general bar which is applicable to all matrimonial remedies. The act of cruelty done without any intention which causes injure or hurt the victim then it is considered as cruelty.

CONCLUSION

The Marriage law not only gives matrimonial reliefs, it has the provision to bars the matrimonial relief to the persons who are immoral in nature. The provision is to be used with due diligence in order not to left behind anyone.