

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (M) 816/2009

Date of Decision: May 11, 2010

M.M. KASHYAP Petitioner

Through: Petitioner in person.

versus

SUREKHA KASHYAP Respondent

Through: Respondent in person.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM (M) 816/2009

1. Impugned in this petition is the order of the Trial Court dated 6.04.2009 dismissing his application under Order 12 Rule 6 CPC filed in his divorce petition under Sections 13 (1) (ia) and 13 (1) (iii) of the Hindu Marriage Act (hereinafter referred to as 'Act').

2. Petitioner has submitted that on 19.5.2008 Mr. Mukesh Vats counsel for the Respondent wife had stated before the Trial Court that she was ready for divorce, if granted without her admitting the contents of the petition as this was the case of irretrievable break down of marriage. In view of the admission made by the Respondent wife through her counsel, he was entitled to decree for divorce under Order 12 Rule 6 CPC and the Trial Court erred in dismissing the application holding that the impugned petition was hotly contested by the wife and there was no admission of fact for grant of decree for divorce under Order 12 Rule 6 CPC.

3. Contentions of the Petitioner cannot be entertained for the simple reason that irretrievable break down of marriage is not a ground available under Section 13 of the Act for seeking divorce. Respondent nowhere accepted the allegations made by the Petitioner in his petition for divorce on the grounds of cruelty. True that, she expressed her willingness to grant divorce to the Petitioner but then her willingness was conditional i.e. on withdrawal of the allegations made by the Petitioner husband against her in the divorce petition. In other

words, Respondent was probably agreeable for divorce by mutual consent under Section 13 (B) of the Act. Since petition is being hotly contested by the Respondent, the Trial Court rightly dismissed the application filed by the Petitioner.

4. On 19.05.2008, Mr. Mukesh Vats counsel for the Respondent, in her presence submitted to the Court that she was ready for divorce as this was a case of irretrievable breakdown of marriage without admitting the contents of the petition. On 05.09.2008 Respondent herself made a statement on oath in the Court that she was ready for divorce without admitting any of the ground mentioned in the petition as there is irretrievable breakdown of marriage and she did not want to press her application for interim maintenance. On 06.04.2009 i.e. the date of the impugned order, she again appeared in the Court and made a statement that it was not a case of irretrievable breakdown of marriage and that she was not ready for divorce. On that day she was called to make a statement on the request of the Petitioner himself to enquire from her if she was still ready for decree of divorce on the ground of irretrievable breakdown of marriage, as submitted

by her counsel on 19.05.2008 and by her on 05.09.2008. In other words, she expressed her unwillingness to grant divorce to the Petitioner.

5. As discussed above, irretrievable break down of marriage is not a ground for seeking divorce under Section 13 of the Act. Therefore, even if the statement of the counsel for the Respondent and her own statement are considered as admission, it, in no manner can be considered as admission of averments contained in the divorce petition.

6. The Trial Court while dismissing the application observed:-

“.....Under order 12 Rule 6 r/w 151 CPC, court is empowered to pass judgment where admission of fact has been made either in the pleadings or otherwise and is not to wait for determining of any other question between the parties, having regard to such admissions.

This court has gone through the averments made by the respondent in his petition and the WS filed by the wife/respondent. This court finds that respondent has denied the averments put forth by the petitioner in the main petition regarding the grounds for decree of divorce. Therefore, this is not a case of admission of fact/ground for decree of divorce so as to deliver judgment in

favour of the petitioner u/o. 12 R. 6 CPC.

As regards submissions put forth by Shri Mukesh Vats, Ld. counsel for the respondent on 19.5.2008, it stands recorded in the order dt. 19.5.2008 that the counsel submitted on that date that the respondent was ready for divorce “without admitting the contents of the petition filed by the husband.....”

7. In *‘Samar Ghosh vs. Jaya Ghosh’*, MANU/SC/1386/2007, a Full Bench of the Supreme Court laid down instances which may be relevant in dealing with the cases on mental cruelty, they are :-

“74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to

put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though

supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

8. In ‘*Naveen Kohli vs. Neelu Kohli, AIR 2006 SC 1675*’, it was observed in para 61 as under:-

“61. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into services, the divorce cannot be granted. Ultimately, it is for the Legislature, whether to include irretrievable breakdown of marriage as a ground of divorce or not but in our considered opinion the Legislature must consider irretrievable breakdown of marriage as a ground for grant of divorce under the Hindu Marriage Act, 1955.”

9. In ‘*Sanghamitra Ghosh v. Kajal Kumar Ghosh, MANU/SC/5143/2006*’, Supreme Court granted divorce to the parties in exercise of its powers under Article 142 of the Constitution.
10. Similarly, in ‘*Manjula vs. K.R. Mahesh, AIR 2006 SC 2750*’, on a Transfer Petition, the Court granted divorce because of

irretrievable breakdown of marriage in exercise of its power under Article 142 of the Constitution.

11. For consideration of an application under Order 12 Rule 6 CPC admissions have to be unambiguous, clear and voluntary. The Court can pass judgment on admission only after giving due opportunity to the other side to explain the admission, if any made. This admission should be made only in the course of pleadings and the Court at any stage of the suit can make such order as it think fit considering the nature of admission. Court need not necessarily proceed to pass an order on the basis of such admission and can call upon the party to prove its case independent of the admission.

12. As discussed above, in this case, there is no unambiguous, clear admission on the part of the Respondent. Rather her application filed under Section 24 of the Act is still pending adjudication though she has admitted that marriage has irretrievably broken down but has not admitted the alleged acts of cruelty mentioned in the petition.

13. Hence, since the Petitioner has not sought divorce on the

grounds of irritable breakdown of marriage, the Court rightly rejected the application. I find no merits in the petition, the same is accordingly dismissed.

CM APPL.11610/2009 (for stay)

14. With dismissal of the petition, this application has become infructuous. Hence, the same is accordingly dismissed.

ARUNA SURESH, J.

MAY 11, 2010
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