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% 06.10.2010

Present:- Mr. Rajan Bhatia for the appellant.

+ MAT. APP. No. 88/2010

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Counsel for the appellant submits that the learned Trial Court has not properly appreciated the facts based on which the appellant has sought divorce on the ground of cruelty. Contention of counsel for the appellant is that specific allegations of cruelty were leveled by the appellant, but the same were not considered by the learned Trial Court in the right perspective.

I have heard learned counsel for the appellant at considerable length and gone through the judgment passed by the learned Trial Court.

Counsel for the appellant has not been able to specifically point out as to which allegation of the appellant was not properly appreciated by the learned Trial Court or which part of the evidence was ignored by the Trial Court. Perusal of the impugned judgment clearly shows that the allegations leveled by the appellant in a divorce petition were vague allegations. The Court in the impugned order has observed that there is no

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specific allegation of cruelty committed by the respondent against the appellant. Neither in the petition nor in the evidence any such incident has been mentioned by the appellant which could fall within the definition of term cruelty. It would be apt to reproduce para 8 of the impugned judgment as under:-

"8. Although, respondent in the present case is ex-parte and the testimony of the petitioner is uncontroverted and unrebutted but it is the duty of the court to see whether the allegations as well as evidence led by petitioner is falling within the requirement of provision of section 13(1) (ia) of Hindu Marriage Act or not in order to make the petitioner entitled for the decree for dissolution of marriage. In the present case all the allegation leveled by the petitioner are vague allegations. There is no specific allegation of any cruelty committed by Respondent against the petitioner. Neither in the petition nor in the evidence any incident has been mentioned by the petitioner which could fall within the definition of term cruelty. Even otherwise if it is taken that mis behaviour as alleged in the petition can be taken as a cruelty then also petitioner has failed to prove her case because allegations of mis behaviour leveled by the petitioner are against her in laws i.e. mother in law and brother in law and no allegations whatsoever has been leveled by petitioner against her husband i.e. Respondent. Therefore I am of the opinion that the petitioner has not been able to prove her case for being entitled to decree of dissolution of marriage."

It is settled legal position that for claiming divorce on the ground of cruelty, the petitioner has to level specific allegations of cruelty with precise dates and events. As per the above observation made by the Court it is quite manifest that the

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appellant failed to level any specific allegations of cruelty against the respondent.

I do not find any perversity or illegality in the impugned judgment and nor anyone has been pointed by the counsel for the appellant. There is no merit in the present appeal and hence the same is dismissed.

October 06, 2010
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KAILASH GAMBHIR, J