

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAT.APP. No. 87/2009

Judgment delivered on: 24.09.2010

Jasmeet Kaur

..... Petitioner

Through: Mr. Manish Nayak, Advocate

Versus

Pawan Kumar

..... Respondent

Through: Mr. H.C. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

*

1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908 the appellant seeks to set aside the judgment and decree dated 28.07.2009 passed by the court of Additional District Judge whereby a decree of restitution of conjugal

rights was passed in favour of the respondent and against the appellant.

2. Brief facts of the case relevant for deciding the present appeal are that the respondent filed a petition for restitution of conjugal rights stating therein that the marriage of the appellant and the respondent was solemnized on 26.2.2004 in Laxmi Narain Mandir, Faiz Road, New Delhi where after the couple resided at 10219/43, Bhagat Singh Nagar, Manak Pura, New Delhi. He further states that due to some marital discord, the appellant was taken away from the matrimonial home by her father and despite making efforts she did not return. On the other hand, the factum of marriage itself is disputed by the appellant. However, the respondent filed the petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and vide judgment dated 28.7.09 the same was decreed in favour of the respondent and against the appellant. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Ld. Counsel for the appellant submits that in fact no proper marriage between the parties has taken place and even the respondent has failed to prove solemnization of the marriage between the parties according to Hindu rites and ceremonies. Counsel also submits that even an FIR has been registered against the respondent u/s 366/420/468/471 IPC and in the said case, charges have already been framed by the Ld. Trial Court against the respondent. Counsel also submits that the respondent did not adduce any evidence to establish the fact that the 'Saptapadi' was performed around the sacred fire at the time of the alleged ceremonies and therefore no marriage between the parties according to Hindu rites and ceremonies took place on the alleged date of 26.02.2004. In support of his argument, counsel for the appellant has placed reliance on the judgment of the Calcutta High Court in ***Mousumi Chakraborty Vs. Subrata Guha Roy II (1991) DMC 74 (DB)***.

4. Refuting the said submissions of the counsel for the appellant, counsel for the respondent submits that the marriage was duly solemnized between the parties according

to Hindu rites and ceremonies and a marriage certificate to this effect was also issued by Shri Radha Krishan Mandir, Bela Road, Delhi. Counsel further submits that even the marriage of the parties was registered and the marriage certificate dated 5.3.2004 was duly issued by the Registrar of Marriages. The contention of the counsel for the respondent is that both the parties had appeared before the Registrar of Marriages and even the application form for the registration of marriage was filled in by the appellant herself with her own handwriting and thus the appellant cannot dispute the factum of marriage in the face of these documents. Counsel also submits that the appellant had failed to adduce any evidence to rebut the case of the respondent. Counsel further submits that after the solemnization of the marriage both the parties lived together in the matrimonial home but the appellant left the company of the respondent without any just and reasonable cause. Counsel further submits that the respondent is still prepared to take back the appellant to the matrimonial home.

5. I have heard counsel for the parties at considerable length.

6. The respondent/husband filed a petition under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. In this petition he has stated that his marriage with the appellant was solemnized according to Hindu rites and ceremonies on 26.02.2004 in Laxmi Narain Mandir, Faiz Road, New Delhi. The respondent further stated that the marriage was duly consummated but no issue was born out of the said wedlock. He has claimed that the said marriage was a love-cum-arrange marriage as the parties were known to each other for about eight years before the marriage. The respondent has also claimed that the said marriage was registered with the Registrar of Marriages, Central Zone, New Delhi and the marriage certificate dated 05.03.2004 was duly issued by the said officer. The respondent has stated that on 10.03.2004 when he was nearly to leave for his work, the father of the appellant came to his residence along with two/three persons and took away the appellant with him along with all her belongings, including clothes and jewellery, etc. The respondent has claimed that the appellant is under the influence and pressure of her father

and due to that reason alone she has abandoned the respondent without any reasonable cause. He further stated that he made his best efforts to persuade the appellant to come back and join the matrimonial home but with no results. The respondent has also claimed that the appellant had also put forth a condition that of taking a separate house and then only she would return to join the respondent at the newly purchased house.

7. The appellant had filed a written statement in response to the said petition filed by the respondent husband. The main objection of the appellant was that in fact no marriage according to Hindu rights and ceremonies was performed between the parties. The appellant, however, has admitted the existence of the marriage certificate but has claimed that she had appeared before the Registrar of Marriages under pressure of the respondent/husband. The appellant has also claimed that an application was also moved by her before the concerned ADM to revoke the said marriage certificate. The other allegations leveled by the respondent

have also been denied by the appellant in her written statement.

8. Based on the pleadings of the parties the Ld. Trial court framed the following issues:-

- 1) Whether the respondent No.1 left the company of the petitioner by leaving the matrimonial house without any reasonable cause or justification as alleged in the petition. If so, to what effect?
- 2) Relief.

Additional issue:-

- 1) Whether the present petition filed by the petitioner U/s 9 of the Hindu Marriage Act is not legally maintainable in view of the preliminary objections No. "A to D" taken by respondents in their Written Statement?"

9. The learned trial court first proceeded to decide the additional issue. The respondent/husband examined himself as PW1 and produced two witnesses in support of his case. He vide his affidavit Ex. PW1/A submitted the fact of the solemnization of marriage, though no specific place has been stated. However in the additional affidavit tendered by him as Ex. PW1/B he claimed that the marriage took place at Shri

Radha Krishna Mandir, Bela Road, Delhi and not in Laxmi Narayan Mandir, Faiz Road, Delhi. This difference has been seriously relied upon by the appellant claiming that it is enough to negate the factum of marriage. The respondent however has corroborated his stand by producing one marriage certificate of the Shri Radha Krishna Mandir, Bela Road, Delhi as Ex. PW1/7 where the marriage was duly performed. He also produced photographs of the said marriage Ex. PW1/2A to G, alongwith negatives thereof. He produced the certificate of registration of marriage as Ex PW1/4. He also placed on record a copy of the letter dated 9.3.2004, signed by the appellant, Ex. PW1/5, sent to the SHO of P.S D.B Gupta Road giving information of their marriage and the setting up of the matrimonial home.

10. The appellant, on the other hand, did not prefer to adduce any evidence. The evidence of the appellant was accordingly closed on 13.01.2009. In the written statement file by her she had claimed that the marriage certificate issued by the registrar was obtained by the respondent in collusion with the Marriage Registrar. She even claimed that the

photographs produced by the respondent were fabricated. However no evidence was led by the appellant to prove the said allegations. The respondent on the other hand had examined PW 2 Shri Anil Kumar from the office of the Registrar of marriages who produced the documents submitted by the parties at the time of registration of the marriage which included the Secondary School Certificate of the appellant, Election Card, etc., but no explanation as to how they were in possession of the respondent at the time of the marriage has been given. The appellant claimed that the photographs produced by the respondent were fabricated but nothing more than that has been said to dispute the existence of the said photographs of the marriage. The appellant has made a bald statement that the signatures on the letter dated 9.3.2004 are forged but no material to prove the claim or request to send the signatures or the photographs to CFSL was made. It is quite surprising to know that the appellant, who has denied almost all the claims of the respondent, did not even bother to step into the witness box to depose so as to lend some sanctity to her vague allegations. Once the

appellant did not choose to contest the case set up by the respondent, no infirmity or illegality can be found in the order passed by the Ld. Trial Court believing the factum of the said marriage between the parties. Mere denial of the marriage in the written statement would not have sufficed as the respondent has placed on record not only the marriage certificate dated 26.2.2004 issued by Shri Radha Krishan Mandir, Bela Road, Delhi but the marriage certificate issued by the concerned Registrar of Marriages as well. The plea that the marriage certificate issued by Shri Radha Krishan Mandir was later on obtained by the parties simply because of the fact that the Laxmi Narayan Mandir, Faiz Road did not issue any marriage certificate, would not help the case of the appellant. Even otherwise, the marriage certificate issued by the Registrar of Marriages has not been denied by the appellant and the explanation given by the appellant that she had appeared before the marriage officer under pressure and coercion of the respondent, the fact which could have been established by the appellant by leading sufficient cogent evidence. But the appellant failed to adduce any evidence in

this regard and therefore it is difficult to believe that she was under pressure before the Marriage Registrar. This court is therefore of the considered view that the ld. Trial Court has rightly believed the factum of the said marriage.

11. So far the contention of the counsel for the appellant that the marriage has not taken place according to Hindu rites and customs is concerned, it was for the appellant to have rebutted the evidence produced by the respondent claiming that the marriage had in fact taken place according to Hindu rites and ceremonies, which burden she failed to discharge. When the fact of celebration of marriage is established it will be presumed in the absence of evidence to the contrary that all the rites and ceremonies to constitute a valid marriage have taken place. The photographs produced by the respondent show that essential ceremonies were being performed by the parties. No suggestion was given by the counsel for the appellant in the cross examination of the respondent to suggest that the marriage was not performed according to Hindu rites and ceremonies. Hence the totality of evidence substantiates solemnization of a valid marriage. The

presumption may not be available in a case, for example, where the man was already married or there was any insurmountable obstacle to the marriage, but presumption arises if there is strong evidence by documents and conduct which is the situation in the present case. The judgment of the Calcutta High Court in ***Mousumi Chakraborty (Supra)*** cited by the counsel for the appellant will be of no help to the case of the appellant as it supports the case of the respondent .The judgment reiterates the law that the burden to prove the fact of a valid marriage is on the party who claims it, and in the case at hand the respondent has successfully discharged the said burden and it is only the appellant who has failed to dislodge the case set up by him.

12. The provision of Section 9 of restitution of conjugal rights has been enacted in the Hindu Marriage Act with an intention to give the parties to the matrimonial dispute an opportunity to reconcile with the bitterness that emerges in the delicate relationship of husband and wife. This provision has been undoubtedly at the receiving end of scathing remarks of various sections of the society as it becomes a

scapegoat provision for laying the foundation for claiming a decree for divorce. But it cannot be ruled out that this provision has been responsible for breathing life into many relationships which have been on the verge of a stagnant demise. The act of the party approaching the court for seeking a decree under this provision has to be seen as a denotation of the genuine effort to patch up the differences, whatsoever, and give the matrimony another chance. The other party who resists such a claim on the ground of any just and reasonable cause can certainly be looked into, but in cases where it is resisted in the garb of bringing the edifice of subsistence of a valid marriage under scanner, the institution of marriage as a whole suffers a setback. But in the hindsight it is the solemn duty of the parties to make every endeavour that can give a lease of fresh life to the relationship and conduce the parties to lead a benign married life.

13. In the light of the aforesaid discussion, I do not find any illegality and perversity in the impugned order passed by the

ld. Trial court. There is no merit in the present appeal and is thus dismissed.

September 24, 2010
pkv

KAILASH GAMBHIR, J