

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

+ MAT.APP. 39/2011

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Date of Decision: 20.04.2012

LAXMI GAUTAM

..... Appellant

Through : Mr. Tarun Shokeen, Adv.

versus

VINOD GAUTAM

..... Respondent

Through : Mr. Manish Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.(ORAL)

1. Present is an appeal under Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') against impugned judgment and decree dated 09.02.2011 passed by learned ADJ, Delhi by which divorce petition of appellant/wife under Section 13 (1) (i-a) and (i-b) for dissolution of marriage by grant of decree of divorce has been dismissed.

2. Briefly, the facts of the case are as under:-

The marriage between the parties was solemnized on 20.02.2002 at Mathura, U.P. according to Hindu rites and ceremonies. One son (namely Tejaswe) was born from their wedlock on 30.08.2003. Appellant/wife has alleged in her divorce petition that her parents had given enough dowry in her marriage but respondent and his family members were not satisfied with the same. She has alleged that during her honeymoon respondent gave

beatings to her on a minor altercation. During her stay in the matrimonial home, she was forced to take monetary help from her parents in order to satisfy the greed of the respondent and his family members. Appellant/wife has alleged that she was given beatings in the matrimonial home and was tortured and humiliated and was not given love and affection. Even during her pregnancy, she was ill-treated and was not provided good food. Further, allegations are that even after the birth of her son, there was no change in the behaviour and a demand of cash of Rs. 1 lakh was made upon her. Due to non-fulfilment of demand, she was abused and manhandled. She has alleged that on 05/06.01.2006, respondent came home heavily drunk and abused the appellant and her family members. He had also caught hold of her hair and turned her out of the matrimonial home along with the minor child. She has alleged that she had to spend the night at the bus stand and in the morning she went to her paternal home and since then she has been staying there. Appellant has alleged that respondent has deserted her since 06.01.2006 and has withdrawn from her conjugal society without any reasonable excuse. Her parents made efforts to persuade respondent and his family members but all turned futile. In February 2008, her husband came to her house and took the child on the pretext of an outing and did not return the child to her. She has alleged that respondent has treated her with cruelty and has deserted her without any cause as such her marriage be dissolved by decree of divorce.

3. Respondent has opposed the divorce petition by filing the written statement. He also raised preliminary objection that the court has no jurisdiction to entertain the matter as the respondent never resided at Delhi nor their marriage was solemnized at Delhi and she has wrongly filed a

petition by mentioning her address that she is residing at Delhi. He has made allegations against her that she is living with her boy friend and the respondent/husband has already filed a complaint against the said person under Section 156(3) of Cr.P.C. for directing the Police to register a case against him. He has denied the allegations of cruelty and desertion levelled by appellant/wife against him. As per him, the appellant/wife was not discharging domestic responsibilities and wanted to live a luxurious life. Respondent encouraged her to become a teacher but she wants to work in a Call Centre. He has made allegations of illegal relations of the wife with one Ajay Tanwar.

Replication is filed by the appellant/wife denying the allegations made in the written statement and she has reiterated the allegations made in the divorce petition.

4. On the pleadings of the parties, the learned ADJ framed issues and listed the matter for evidence.

5. On the basis of material on record it is seen that the appellant/wife had filed her own affidavit and tendered the same in evidence as Ex.PW1/A. On 09.02.2011, she did not appear for cross-examination and the cross-examination of appellant (PW1) was closed. On that very day, i.e. 09.02.2011 the respondent also made a statement that he did not want to lead any evidence as the appellant/wife has not come forth for her cross-examination. Accordingly, the respondent's evidence was closed and arguments were heard on behalf of the respondent and on that very day the judgment was passed dismissing the divorce petition.

6. Learned counsel for appellant has contended that the appellant had filed her own affidavit and tendered the same in evidence as Ex.PW1/A. It is submitted that the respondent had presented herself for cross-examination on 06.07.2010 but on that day the counsel for respondent was not available and Rs. 2,000/- cost was imposed upon the respondent. Thereafter, it was listed on 31.10.2010. Even on that day, the appellant had appeared but the learned trial court made efforts for reconciliation. The same were not successful as the respondent declined to settle the matter. It is submitted that on 09.02.2011, the appellant/wife could not appear as the court room was changed. She tried to locate the new court room but could not locate it.

7. It is contended that a great injustice has been caused to the appellant vide order dated 09.02.2011 passed by the learned ADJ by closing the cross-examination of PW1 and dismissing the petition on merits on that very day.

8. Nothing contrary is pointed out by the learned counsel for respondent.

9. It may be noticed that appellant has tendered her affidavit in evidence as Ex.PW1/A. On two occasions, she has also presented herself for cross-examination. On one occasion, the respondent had not cross-examined her and adjournment was allowed at the request of respondent, subject to cost of Rs. 2,000/-. On the second occasion, it is submitted that the court has held reconciliation talk between the parties and the matter could not be settled and the matter was adjourned. On the third occasion, the appellant could not appear as the court of Ld. ADJ was shifted and she could not locate the new room. The substantial evidence was also not before the court. The reasons given for non-appearance on 09.02.2011 are justified reasons. The impugned judgment has serious consequences on the appellant inasmuch as

she is unable to substantiate the allegations levelled by her against the respondent. Further, as regards territorial jurisdiction also, learned counsel for the appellant has submitted that there is sufficient material on record to prove that the court has territorial jurisdiction to deal with the matter.

9. In these circumstances, the order of closing of the cross-examination of appellant and disposal of the petition on merits on that very day is harsh as it has resulted in miscarriage of justice. There was also no substantial evidence on record. The reasonable opportunity has not been given to the appellant to prove her case. The hasty closure of evidence and disposal of the petition on merits was not justified in the facts and circumstances of the case.

10. In the result, the appeal is allowed. The impugned judgment and decree stand set aside and the matter is remanded back to the learned trial court for a fresh disposal in accordance with law. The appellant shall remain present in court before the learned trial court on 30.05.2012 and the court shall give a date for her cross-examination, subject to payment of cost of Rs. 5,000/- to the respondent.

VEENA BIRBAL, J

APRIL 20, 2012

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