

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

% *Date of Decision: February 18, 2013*

+ **FAO 84/2013**

DEVENDER SINGH Appellant

Represented by: Ms.Reena Jain Malhotra, Adv.

versus

PARAMJEET KAUR Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this appeal, the appellant has challenged the ex parte judgment/decreed dated August 31, 2012 passed by the Learned Judge-01, South, Family Courts, Saket Courts Complex in HMA No.17/2011 whereby the divorce petition filed by the appellant/husband has been dismissed.

2. A divorce petition under section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was filed by the appellant against the respondent seeking dissolution of their marriage on the ground of cruelty and desertion. It was alleged in the petition that marriage between the parties was solemnised on August 14, 1988 according to Sikh rites and ceremonies at Gurudwara Sarojani Nagar and it was a simple marriage. Two children, one female child and male child were born in the year 1989 and 1991 respectively. The appellant had alleged that on the very first day of marriage he was shocked to know that respondent/wife was

previously married to someone and after taking divorce from earlier husband she got married with him. It was alleged that the said fact was concealed from the appellant and his family members. It was alleged that from the beginning, respondent wanted to live a very lavish life and told him to provide her money for clothes, jewellery and for installing A.C in the house. Appellant had told her that he was not a man of status and was unable to arrange huge amount. It was further alleged that in the month of July, 1991, both parties had gone to Gurudwara Moti Bagh, from where the respondent went to her parental home and did not return back. On being threatened by appellant that he would perform second marriage in case she did not return back, respondent had come to live with him. Again in the year 1992, the respondent pressurized him for separate residence and at her request, appellant had taken a room at Laxmi Nagar where they had lived together for six-seven months. Another accommodation was taken at Yusuf Sarai at the request of respondent where her parents had come to live with them. When it was objected by the appellant/husband, she picked up quarrel with him and filed a complaint in the CAW cell. The matter was compromised with the intervention of relatives and friends.

3. It was further alleged that in the year 1993, respondent took a loan for the purchase of house and they started living together at H.No.U-52/34, DLF, Phase-3, Gurgaon, Haryana. In January, 1997, when appellant asked about her salary, she created a scene and told appellant to move out of the house. However, with the intervention of relatives and friends, matter was compromised. Again in September, 1998 with the intervention of some mediator, matter was settled. However, after 4/5 months, again dispute arose and the respondent told the appellant to go from her house. Further allegations are that in the year 2000, respondent through her daughter filed a

civil suit against the appellant to grab the property belonging to the mother of the appellant which was ultimately dismissed. Appellant had also sent a legal notice calling her to join the matrimonial home but she did not join. Accordingly, appellant had filed the aforesaid petition.

4. Respondent did not appear before the Family Court despite being served, as such, she was proceeded ex parte on November 2, 2011. Appellant tendered his evidence by way of affidavit Ex.PW 1/A1.

5. After explaining the scope and meaning of word ‘cruelty’ under section 13(1)(i-a) of the Act and relying upon the judgments of the Supreme Court in Shobha Rani Vs. Madhukar Reddi: 1988 AIR 121 and A.Jayachandra v. Aneel Kaur: AIR 2005 SC 534, the learned Family Court Judge had dismissed the petition by observing that the appellant/husband had failed to prove specific dates and instances which were alleged to have created apprehension in the mind of the appellant making him impossible to live with the respondent. Petition on the alleged ground of desertion was also rejected by observing that according to appellant, respondent had deserted him in the year 2000 whereas petition was filed on July 27, 2010. Ld. Judge by relying upon provisions of Section 23 of the Act observed that the appellant had not explained the delay in filing the divorce petition.

6. Aggrieved with the same present appeal is filed.

7. Learned counsel for the appellant has contended that the respondent did not appear before the Family Court and there was no rebuttal to the evidence of appellant. In these circumstances the Ld. Judge ought not have rejected the divorce petition. It is contended that respondent is not interested in living with the appellant as she is gainfully employed. It is further contended that there is no unnecessary or improper delay in filing the divorce petition and the learned trial court has wrongly dismissed the

petition.

8. Perusal of the divorce petition shows that the grounds of cruelty alleged in the petition are that respondent had concealed the factum of her previous marriage from him and when he came to know of the said fact, it had caused mental tension to him. The appellant has alleged that on the very first day of his marriage, he had come to know about her previous marriage and that she was a divorcee. There is nothing on record to substantiate the same. The necessary particulars about previous marriage/divorce papers have not been stated in the divorce petition or in the affidavit Ex.PW1/A1. In these circumstances allegations levelled are not believable. Further as per appellant he had come to know of previous marriage on the first day of marriage. As per his pleadings and evidence on record thereafter he had lived with respondent for about 10 years and there are two children born from the wedlock. In these circumstance alleged cruelty, if any, stands condoned.

9. The other allegations in the divorce petition are that on her insistence, appellant had taken a separate residence at Laxmi Nagar and thereafter at her instance shifted to Yusuf Sarai also lacks material particulars. Appellant has also failed to explain as to how respondent had caused mental cruelty to him. The other allegation of cruelty is that respondent wanted to have a lavish life style beyond the capacity of the appellant. The allegations levelled are vague. The same lacks material particulars. Appellant has not given specific dates and instances with necessary particulars which as per him have caused mental cruelty to him. The learned Family Judge has rightly disbelieved the appellant.

10. Further appellant has alleged that respondent deserted him in the year 2000 whereas divorce petition was filed in the year 2010. Under section 23

of the Act, in any proceedings whether defended or not, one of the conditions is that there has not been any unnecessary or improper delay in instituting the proceedings. In the present case, petition has been filed after 10 years of alleged desertion. In the divorce petition, appellant has stated as under:-

“24. That there is no unnecessary or undue delay in presenting the present petition.”

11. In the entire petition, nothing has been averred as to how appellant has taken ten years in the filing the divorce petition. Petition is silent on this aspect of the matter. Even in the ex parte evidence led by him nothing has been explained in this regard.

12. Section 23 of the Act reads as under:-

“23. Decree in proceedings.”-(1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in anyway taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

- (c) the petition (not being a petition presented under section 11) is not presented or prosecuted in collusion with the respondent, and
- (d) there has not been any unnecessary or improper delay in instituting the proceeding, and
- (e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the Court shall decree such relief accordingly.
- (2)
- (3)
- (4)”

13. Section 23 of the Act confers on the court power to pass a decree if it is “satisfied” on matters mentioned in clause (a) to (e) of the Section. The Court has to apply its mind to applicability of various clauses of Section 23 before disposing of the case. Clause (d) of Sub-Section (1) of Section 23 of the Act requires the Court to be satisfied that there has not been any unnecessary or improper delay.

14. In Smt. Gauri Dey vs. Bindhu Bhusan Dey: AIR 1986 GAU 22, wherein the delay aspect was examined by the Division Bench of Gauhati High Court, it was held that the District Judge should have recorded a finding as there had been unnecessary and improper delay in institution of proceedings in the said case.

15. Learned Judge, Family Court after considering the material on record has rightly recorded a finding that there is unnecessary and improper delay in filing the petition.

16. In view of the above discussion, no illegality is seen in the impugned

ex parte judgment and decree. The appeal is dismissed in limine.

17. No costs.

VEENA BIRBAL, J.

PRADEEP NANDRAJOG, J.

FEBRUARY 18, 2013

ssb