

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

% *Order delivered on: September 05, 2013*

+ **CM(M) No.393/2013 & C.M. No.5938/2013**

NEENA PAHWA Petitioner
Through Mr.Rajesh Tyagi, Adv. with Mr.Harsh
Khanna & Mr.Vaibhav Kumar, Advs.

versus

SUMIT PAHWA Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. Neena Pahwa, the petitioner, wife of the respondent Sumit Pahwa, who is in judicial custody at Jail No.6, Tihar Jail, New Delhi, filed the present petition under Article 227 of the Constitution of India against the orders dated 10th December, 2012 and 22nd January, 2013 passed by the learned Addl. District Judge, Karkardooma Courts, Delhi in HMA No.422/2011 through Sh.Suresh Kapoor, Pairokar/family friend of the petitioner.

2. By the impugned order dated 10th December, 2012, the application filed by Neena Pahwa, the present petitioner (respondent in the trial Court) under Order VII, Rule 11 CPC for rejection of the petition for dissolution of the marriage by a decree of divorce on the ground of cruelty and mental disorder under Section 13(1)(i-a) and 13(1)(iii) of the Hindu Marriage Act, 1955 was dismissed. After dismissing the said application, the right to file

the written statement was also closed in the impugned order dated 22nd January, 2013. However, by the same order, the application filed by the respondent/husband of the petitioner under Order VIII, Rule 10 CPC was also dismissed, as the learned trial Court opined that it is not a fit case where the judgment should follow on account of failure of the petitioner to file the written statement.

3. Learned counsel for the petitioner, during the course of arguments stated that he is not seriously contesting the relief claimed in the application under Order VII, Rule 11 CPC for rejection of the petition. However, he stressed his arguments before this Court by challenging the order with regard to closing of right of the petitioner to file the written statement. He states that unless the respondent moves an application for appointment of a guardian on the basis of admission made by him in his petition for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 wherein he has admitted that the petitioner is suffering from mental disorder, the closing of right to file the written statement makes it an illegal order. It ought not to have been passed by the learned trial Court unless a guardian is appointed under the provisions of Order XXXII CPC.

4. He states that it is the case of the respondent that the petitioner is of an unsound mind. In various paras of the petition, the respondent has referred various incidents and instances in his own petition in this regard, therefore, on the basis of his admission at least, the procedure of Order XXXII CPC has to be complied with before closing the right of the petitioner to file the written statement. Counsel further states that no prejudice would be caused to the respondent in case an application under Order XXXII CPC is moved before filing of the written statement.

5. Another option is given by the learned counsel for the petitioner that in case, the respondent has no objection, the family friend of the petitioner can be appointed as a guardian of the petitioner so that the requisite written statement be filed on behalf of the petitioner and the matter should not be decided in the absence of the petitioner and no advantage can be derived by the respondent.

6. The learned trial Court while considering the said aspect has referred the order dated 6th August, 2012 which reads as under:-

“The present petition for divorce u/s 13 (1) (i-a) and 13 (1) (iii) of the Hindu Marriage Act, 1955 has been filed on 23/04/2011. Till date, no written statement has been filed on behalf of the respondent despite granting of number of opportunities. Adjournments were sought by the respondent and her counsel to file the written statement. On 02/02/2012, counsel for the respondent submitted that the present petition has been filed u/s 13 (1) (i-a) and 13 (1) (iii) of the Hindu Marriage Act, 1955 and as such, without the list of guardian, the same cannot be entertained.

After hearing arguments of both the parties, my learned predecessor passed a detailed order in this regard on 06/02/2012 and directed that the concerned doctor from IHBAS who had treated the respondent be called with her case file to ascertain if the respondent is in a fit state of mind and is able to defend her case. Accordingly, notice was issued to the concerned doctor at IHBAS. On 30/07/2012, Dr. Amit Garg, Senior Resident, IHBAS, Delhi, who was looking after the respondent appeared before this court with her medical record. He stated that the respondent was diagnosed to be suffering from a severe depressive episode without psychotic symptoms and improved on treatment. After discharge, she has been following up regularly in the OPD and has shown improvement on treatment. He also stated that she was examined by the Standing Medical Board at IHBAS

on 09/03/2011 in view of the court order dated 22/02/2011 passed in FIR no.311/10, SC No.02/11, P.S. Madhu Vihar, u/s 302 IPC passed by Sh. Sanjay Garg, Ld. Addl. Sessions Judge, Delhi. She was found fit to stand trial. He also stated that presently, her condition is stable and satisfactory and she understands the nature of questions put to her regarding her current clinical state and any fresh complaints if any.

It is also seen from the order dated 07/01/2012, my learned predecessor, generally interrogated the respondent and she was answering the questions rationally and logically. I myself have also asked certain questions from the respondent and I am of the view that the respondent understands the nature of questions put to her and she is fit to face the present proceedings.

It is contended by the counsel for the respondent that in order to determine maintainability of this petition, court is required to examine the state of mind of the respondent on the date of filing of this petition. This contention is obviously misconceived. As noted above, the respondent is facing trial u/s 302 IPC. In the said proceedings, the then learned ASJ Sh. Sanjay Garg directed the MS, IHBAS, to get the respondent examined through the medical board and to give specific finding regarding her soundness and capacity to understand legal proceedings whether she is in a fit condition of mind to face trial. In compliance of the order, the Medical Board at IHBAS had examined the respondent and the Medical Board vide its report dated 10/03/2011 opined that she is fit to stand trial.

The present petition has been filed on 23/04/2011 i.e. after the opinion of the Medical Board of IHBAS vide report dated 10/03/2011.

During arguments, it is also informed that the respondent has also filed a petition under Guardian and Wards Act, 1890 against the petitioner and his family members of her own and she is pursuing those proceedings.

In these circumstances, I find no reason to differ from the opinion given by the Medical Board on 10/03/2011 regarding the respondent.”

7. In the impugned order, probably the right was closed on the basis of opinion arrived at by the various Senior Doctors as well as Standing Medical Board of IHBAS, Delhi. The reason for dismissal of the application under Order VII, Rule 11 CPC as well as closing of right of the petitioner to file her written statement, as referred by the learned trial Court is that from the order dated 7th January, 2012, it is clear that the learned Predecessor Judge interrogated the petitioner and she was answering the questions rationally and logically and the learned Judge also asked certain questions from the petitioner and felt that the petitioner understands the nature of the question put to her and she is fit to face the present proceedings.

8. In the above said facts and circumstances, I am of the view that at this stage, no positive finding can be arrived at on the basis of the reports of the Doctors as well as the Standing Medical Board in view of the incidents mentioned by the respondent in his petition for dissolution of marriage wherein it is specifically mentioned that the petitioner is mentally disordered and various examples in this regard are mentioned from paras 6 to 30 of the divorce petition. In view of the statement made in these paras, it is difficult at this stage to hold as to whether the petitioner is in mental disorder or she is already cured.

9. Left the said question open before the learned trial Court to decide the application under Order XXXIII CPC moved by either of the parties, the same shall be decided as per its own merit. In case, the Court arrives at a finding that she is mentally alert, then the written statement would be filed by the petitioner herself within 30 days from the said order, and if the prayer

is allowed, the guardian/family friend of the petitioner be allowed to file the written statement on behalf of the petitioner.

10. The present petition is accordingly disposed of with the above said directions. Pending application also stands disposed of. No order as to costs.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 05, 2013