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**HIGH COURT OF DELHI AT NEW DELHI**

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**FAO No.265 of 2013 & CMs 9591-92/2013**

**Decided on : 2<sup>nd</sup> July, 2013**

AJMER SINGH

..... Appellant

Through Mr.Mukesh Sharma, Adv.

versus

HARPINDER KAUR & ANR.

..... Respondents

Through

**CORAM:**

**HON'BLE MR. JUSTICE V.K. SHALI**

**V.K. SHALI, J. (Oral)**

1. This is an appeal filed against the order dated 5.3.2013 passed by the learned ADJ by virtue of which the appellant/husband has been directed to pay the maintenance @ Rs.8,000/- and Rs.6,000/- respectively to the respondents 1 and 2 from the date of filing of the petition.
2. Briefly stated the facts of the case are that the respondent no.1 got married to the appellant according to Sikh rites and ceremonies on 13.10.1991. Parties cohabited as husband and wife and were blessed with a female child namely Kumari Naina on 23.10.1992.

After the birth of the girl child, it seems that the parties had a matrimonial discord because of which the appellant herein filed a petition for dissolution of the marriage on the ground of cruelty under section 13(1) (ia) of the Hindu Marriage Act which was dismissed by the Court of learned ADJ on 22.11.2000. A petition was filed by the appellant under section 25 and Section 9 of the Guardians and Wards Act for claiming the custody of the respondent no.2, minor child, which was also dismissed on 27.11.2000 by the Guardianship Court, Delhi.

3. So far as the respondent no.1 is concerned, she lodged an FIR bearing no.869/1993, under section 406/498-A IPC at police station Tilak Nagar against the appellant and his mother. Both the appellant and his mother were convicted for the aforesaid offences by the learned MM on 11.2.1998. On appeal being preferred, the mother of the appellant was released on probation while as the conviction and the sentence of the appellant was maintained. The respondent no.1 also filed a petition under section 125 Cr.P.C. which was allowed on 16.2.1995 and the revision petition was filed against the said order of the learned Magistrate regarding grant of

maintenance @ Rs.400-500/- p.m. respectively to the respondent which was also dismissed on 17.1.96.

4. The present order of maintenance was passed in a petition filed by the respondent under section 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 in Civil Suit no.734/2012. The case which was set up by the respondent no.1 was that she does not have any independent source of income and she was being supported by her parents. She claimed maintenance @Rs.10,000/- for herself and @Rs.8000/- for her minor child. It was stated by her that so far as the appellant is concerned, he was running a business under the name and style of M/s Vishwakarma Engg. Works and was earning approximately ₹80,000/- per month.
5. The appellant had filed the written statement and contested the claim for grant of maintenance. Preliminary objection was taken to the effect that the respondent no.1 herself is earning and, therefore, she can maintain herself as well as her minor girl child. In any case, it was also stated that she has already been granted maintenance by the learned Magistrate which is being paid regularly to her.

6. On merits, it was stated that the respondent no.1 was not entitled to maintenance on account of the fact that she had re-married after leaving the company of the appellant with one Sh.Harbhajan Singh according to Sikh rites which disentitles her to any maintenance. It was denied by the appellant that he was doing business and is earning Rs.80,000/-. On the contrary, it was stated that he is employed in some Concern and was earning Rs.8000/- to 10,000/- and therefore, the maintenance as claimed by the respondent no.1 is not liable to be paid after framing of two issues, which read as under:

*(i) Whether the plaintiffs are entitled to any maintenance from the defendants and if so at what rate?'*

*(ii) Relief?*

7. The parties have adduced their respective evidence and after hearing the arguments, the Court passed a detailed order granting maintenance as impugned in the order.

8. I have heard the learned counsel for the appellant. The main contention of the learned counsel is that the respondent no.1 had

remarried with Sh.Harbhajan Singh and accordingly, she was not entitled to maintenance. It has been stated by him that the trial court has failed to appreciate the evidence adduced by the appellant by way of documentary evidence which would clearly establish that the respondent no.1 got remarried. It has also been stated by the learned counsel for the appellant that he has already filed an application under order 18 Rule 17 CPC seeking permission to produce additional evidence by getting the statement of Sh.Harbhajan Singh, the second husband of the appellant, recorded. It was contended by the learned counsel that though he would have liked Harbhajan Singh, the second husband of the respondent no.1 to be examined in the first instance but as he was not willing, therefore, he could not be examined earlier. It has been stated that it is after great deal of persuasion that the appellant has been able to persuade Sh.Harbhajan Singh testify in this case. He has also drawn the attention of the Court to the complaint made by the so-called second husband of the respondent under section 156 (3) wherein the factum of marriage is stated to have been verified by the police. The learned counsel has also referred to certain

documents in order to contend that these photographs show that the respondent no.1 had remarried with Sh.Harbhajan Singh and, therefore, she was not entitled to any maintenance.

9. I have carefully considered the submissions of the learned counsel for the appellant.
10. So far as the question of adducing of additional evidence is concerned, the law is very clear that Order 41 Rule 27 CPC, a party can be permitted to produce additional evidence only when the evidence which is sought to be produced by a party was not within its knowledge or was beyond its control. It is not the case of the appellant that he was not aware as to who was the second husband of the appellant. If he was aware of the second husband of the respondent no.1, he could have very well got him summoned as a witness to testify before the Court. The appellant has tried to prove the second marriage of the respondent no.1 by examining 'Granthi' from the Gurudwara wherein the marriage is purported to have taken place. This witness entered into the witness box and testified that he had performed the second marriage of the respondent no.1 and made necessary entries in a register which was allegedly

maintained by the Gurudwara in the original discharge of its duties. The trial court has disbelieved the testimony of the 'Granthi' or the employee of the Gurudwara on the ground that though the register is purported to have been maintained with regard to the marriage performed in Gurudwara, all the entries are having the photographs of the parties to the marriage except the entry purported to be attributed to the respondent no.1 in proof of second marriage of the lady as well as her proposed husband with whom she is alleged to have got remarried. In the absence of these two photographs of the respondent and her husband Sh.Harbhajan Singh in the records of the Gurudwara, the trial court has considered this to be a suspicious entry and has not placed any reliance on this entry, it will be worthwhile to reproduce the observations of the trial court in this regard, which reads as under:-

*“15. To prove the second marriage of the petitioner no.1, the respondent has examined RW-3 Sh. Gurmukh Singh who was a Sevadhar in the Gurudwara Sri Guru Singh Sabha and he produced the summoned record of 27.3.2007 and proved the copy of the same as Ex.RW-3/1. In his cross-examination, he admitted that in other record of marriages maintained in the registers, there are photographs of the parties but in the*

*document, there were no such photographs of the parties. He also stated that they do not take any age proof or affidavit at the time of marriage in their register and he admitted that the Gurudwara issues the Marriage Certificate on the basis of such records. He also testified that the Gurudwara maintains the number of Certificates issued on the basis of the records produced by him but the serial number of Certificate is not mentioned in the record but the date of issuance of the Certificate i.e. 16.7.2007 is mentioned and the said Certificate was handed-over to one Manmohan Singh. He also admitted that the marriage took place between Sh. Harbhajan Singh and Ms. Harjit Kaur.*

*16. Perusal of the testimony of this witness as well as the records produced by him does not inspire any confidence. The absence of the photographs of the bride and bridegroom in Ex.RW-3/1 creates the suspicion about the manner in which the record was prepared. It is equally surprising as to why the photographs of the parties were not taken or demanded by the Managing Committee of the Gurudwara when the photographs were affixed in other cases of marriage. RW-3 has also not stated if Harjit Kaur and petitioner no.1 are one and the same person. The respondent has also not examined any of the witnesses to the alleged second marriage of the petitioner no.1. Therefore, in my considered opinion, the respondent has failed to prove that petitioner no.1 has solemnized marriage with Sh.Harbhajan Singh. Hence, the claim of maintenance of the petitioner no.1 cannot be rejected on this ground.”*

11. Therefore, the evidence with regard to the proof of second marriage of the appellant was correctly analyzed by the learned ADJ and I find myself in full agreement with the same that the appellant has not been able to establish the second marriage, it is only by way of character assassination that the appellant has taken false plea to deprive the respondent no.1 and respondent no.2 of their legitimate right to get the maintenance.
12. So far as the ground of producing the husband of the appellant now is concerned, it has been admitted by the learned counsel that earlier he had filed an application under Order 18 Rule 17 CPC for producing husband of the appellant as a witness which was dismissed by the Court by a detailed speaking order.
13. I have gone through the said order. The trial court had rejected the said application on the ground that the evidence of the appellant has already been concluded and he was aware of his case that the respondent no.1, according to him had got married to Sh.Harbhajan Singh he should have taken steps in the first instance to summon Sh.Harbhajan Singh as a witness. It was also observed that the purpose of Order 18 Rule 17 CPC is not to permit a party to fill up

lacuna in his case.

14. Order 18 Rule 17 CPC is essentially to arrive at a fair and just decision and for this purpose, the Court will go to the extent of recording the statement of any witnesses but the purpose of Order 18 Rule 17 CPC is not to fill up the lacuna which the party might have left in his case despite knowing its defence. Therefore, I feel that this defence taken by the appellant is only a false and belated plea in order to defeat the rights of the respondent no.1 and 2. Accordingly, this plea is rejected.
15. So far as the questions of photographs of the alleged second marriage are concerned, they are placed before the High Court for the first time. The trial court did not have the advantage of taking into consideration these photographs. Apart from this, in this modern age, a photograph can easily be morphed. Therefore, if the appellant was aware of the fact that the second marriage of the respondent no.1 was photographed or videographed then appropriate steps ought to have been taken by him before the trial court in order to prove the second marriage. This Court finds difficult to take into consideration the photographs so set aside the

decision of the trial court. No other point has been urged or contended.

16. For the reasons mentioned above, I am of the considered opinion that the present appeal is devoid of any merit and the same is accordingly dismissed.

**V.K. SHALI, J.**

**JULY 02, 2013**  
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