

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

% *Judgment pronounced on: January 10, 2014*

+ **CM(M) No.1269/2012 & C.M. No.19695/2012**

KUMARI SHINAY GUPTA Petitioner
Through Mr.Jagjit Singh, Adv.

versus

MOHD. KALEEM Respondent
Through Mr.L.K.Verma, Adv. for
Ms.Subhavana Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 7th August, 2012 passed by the learned Addl. District Judge whereby the application of the petitioner under Order 15 and Order 20 CPC was dismissed.

2. The petitioner aged about 24 ½ years, daughter of Radhey Kishan, Hindu by religion and Gupta by caste and educated upto M.A. She was earlier resident of House No.705/1, Ward No.III, Mehrauli, New Delhi, whereas, the respondent, Muslim by religion and illiterate, is a tailor by profession and was stitching clothes for petitioner and members of her family and had been visiting their house for tailoring jobs.

3. As per the petitioner, on 18th January, 2007, the respondent hatched a conspiracy to forcibly marry the petitioner. In furtherance of said conspiracy, he leisured the petitioner to accompany him to his shop to take trial of her dress as he had stitched clothes for her in an ultra modern fashion and trial

thereof was essential. The petitioner accompanied him to his shop and from his shop, he took her to Arya Samaj Temple at Shankar Nagar, Nabi Karim, New Delhi-110055 for solemnization of marriage. The respondent caused entry in records whereby registering fact of solemnization of marriage between the parties was confirmed by issuing certificate No.273 dated 18th January, 2007.

4. In March, 2007, the petitioner filed suit for declaring the marriage as illegal on the grounds that the petitioner never consented, that as per Hindu Law for performing marriage as per Hindu rites in Mandir both spouses were mandatorily required to be Hindu, that the alleged conversion for performing marriage is no conversion and that the marriage certificate be declared as illegal and ordered to be cancelled. The respondent was served with summons of said suit as Mohd. Kaleem. He received summons and entered appearance and filed written statement. In the written statement, he stated his conversion into Hinduism and his change of his name at the time of marriage.

5. On 31st May, 2007, issues were framed by the trial Court. During the pendency of the above suit, the respondent filed petition under Section 9 of Hindu Marriage Act, 1955 seeking restitution of conjugal rights. In opposition to this petition, the petitioner stated that there was no relationship of husband and wife thus, alleged marriage was illegal. The petitioner also stated that the provisions of Hindu Marriage Act, 1955 were not applicable, no power and jurisdiction can be exercised by this court. The petition was dismissed by judgment and decree dated 2nd April, 2011 passed by ADJ on the ground that there was no valid marriage between the parties because respondent is not converted from Muslim religion to Hinduism and that there

could be no valid marriage between Hindu girl and Muslim boy before Arya Samaj Mandir in accordance to Hindu rites. The order was appealed of by the respondent before this Court and judgment and decree was upheld on 26th September, 2011.

6. During the pendency of the civil suit, petitioner moved an application under Section 151 CPC making a prayer before court to grant decree in favour of petitioner and against respondent declaring the marriage as illegal. The application was decided on 1st February, 2012 whereby holding that suit of plaintiff is barred by *resjudicata* and accordingly was void and dismissed.

7. The petitioner moved an application seeking review and correction of orders dated 1st February, 2012 which was dismissed vide orders dated 3rd May, 2012. The petitioner moved another application that once the issues has been framed then the court shall pronounce the judgment on all issues which was dismissed vide order dated 7th August, 2012 wherein it was observed that the suit is barred by *res-judicata* and the court did not find any necessity to decide the issue as the issue under controversy was already decided by the Court of competent jurisdiction.

8. Aggrieved with the order, the present petition was filed by the petitioner.

9. Admittedly, the petitioner had filed the suit before the learned trial Court seeking declaration that the alleged marriage dated 18th January, 2007 is void and illegal between the parties because of the following reasons:-

- (i) Petitioner never consented and even now does not consent to marry defendant;
- (ii) Respondent is a Mohammedan and not a Hindu;

- (iii) Marriage before Arya Samaj Mandir was caused on misrepresentation by respondent in as much as he stated himself to be named as Kunal instead of Mohd. Kaleem;
- (iv) Marriage in Arya Samaj Mandir caused by Hindu Rites can only be performed between two Hindus only;
- (v) Notwithstanding the fact that respondent misrepresented himself to be a Hindu, yet alleged marriage is void and illegal being hit by provisions of Hindu Marriage Act, 1955;
- (vi) Arya Samaj Mandir can perform marriage within parameters of Hindu Law/Hindu Mythology and nobody has larger or overriding powers than the one enshrined in law.

10. The petitioner was not ready and willing to accept the respondent as her husband and she does not want to live with him as partner in matrimonial home. The declaration was sought that the marriage dated 18th January, 2007 performed in the record of Arya Samaj Mandir, Shankar Nagar, Nabi Kareem, Delhi be declared as void and illegal and necessary entries in this regard be cancelled. Certain other injunction was sought by the petitioner against the respondent in prayer (c) of the suit declaration.

11. Upon service, the respondent filed the written statement and, inter alia, taken the following defence:-

- (i) Admittedly, marriage was performed between the parties on 18th January, 2007 at Arya Samaj Mandir, Nabi Karim, Delhi.
- (ii) Respondent pleaded his conversion into Hinduism on 18th January, 2007 at the time of marriage.

- (iii) He also admitted having published about conversion of his name from Mohd. Kaleem to Kunal. There is no publication or any public notice of conversion from Muslim into Hindu.
- (iv) Since, there is conversion, marriage is valid in law.
- (v) He was known as Kunal and not Mohd. Kaleem.
- (vi) Parties were in love for the past 7-8 years.
- (vii) Petitioner herein had been moving along with respondent to various Durgahs and Mosques and had even consented to embarrass Muslim religion.
- (viii) Marriage is valid law and therefore, no declaration can be granted.

12. Thereafter the issues were framed on 31st May, 2007.

13. During the pendency of the suit, the respondent filed the petition under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. The same was opposed by the petitioner. The petitioner pleaded that there was no relationship of husband and wife. Alleged marriage was illegal. Provisions of Hindu Marriage Act, 1955 are not applicable. No power and jurisdiction can be exercised by the Court.

14. The said petition was put on trial and by judgment and decree dated 2nd April, 2011, the learned Additional District Judge, Delhi dismissed the petition under Section 9 of the Hindu Marriage Act, 1955 against the respondent.

15. While passing the judgment in the said petition, the learned Additional District Judge, Delhi has come to the following conclusions:-

“(i) There was no valid marriage between petitioner and respondent because respondent is not converted from Muslim religion to Hinduism.

(ii) There could be no valid marriage between Hindu girl and Muslim boy before Arya Samaj Mandir, Delhi in accordance to Hindu rites.”

16. The aforesaid judgment and decree was impugned before this Court by filing of an appeal which was also dismissed and the said judgment and decree was upheld. The said judgment becomes final between the parties.

17. In view of the findings arrived by the Addl. District Judge, Delhi in the judgment passed against the respondent, the petitioner herein filed the application under Section 151 CPC requesting the Court to grant a decree in favour of the respondent, mainly on the reason that there is no need for further trial on the issues already framed in the suit as the marriage in connected proceedings has been declared invalid and it was also maintained by the Court that there was no conversion. Therefore, the marriage is apparently void and illegal. However, the said application filed by the petitioner was dismissed by order dated 1st February, 2012.

18. The petitioner thereafter filed an application before the learned trial Court for review of the orders dated 1st February, 2012. The said application was also dismissed by order dated 3rd May, 2012 mainly on the reason given by the learned trial Court that the Court is bound to decide the issues framed on facts and law and decree has to be passed issuewise. The said finding has

given by the Court after dismissing another application of the petitioner on 7th August, 2012.

19. The said orders are duly challenged by the petitioner in the present case. The trial Court has heard the learned counsel for the parties. It is apparent that despite of finding of fact returned by the competent court in the judgment dated 2nd April, 2011, which was also confirmed in the appeal of this Court, the trial Court failed to appreciate that the main suit filed by the petitioner for declaration ought to have been decided.

20. It was well within the jurisdiction of the Court to decide the suit for declaration itself in view of judgment passed on 2nd April, 2011 by the finding of fact. No further trial in the matter was necessary as the said order has become final between the parties where the issues involved in the suit were already determined while rendering the judgment by the competent court.

21. In fact, those findings of facts warrant grant of decree in favour of the petitioner with regard to issue No.2. The issues framed in the suit are as under:-

“1. Whether the present suit is not maintainable as claimed for by the defendant in preliminary objection No.1 of this written statement? OPD

2. Whether plaintiff is entitled to relief of declaration as sought for by her in the present suit? OPP

3. Whether plaintiff is entitled to grant of injunction as sought for by her in the present suit? OPP

4. Relief.”

22. Consequently, the prayer made in the suit for declaration filed by the petitioner ought to have been granted and the same is covered in the judgment passed on 2nd April, 2011. The burden of proof lies upon the respondent who failed to discharge the same.

23. It is a settled law that where parties are not at issue it appears to the Court on any question of law and fact, the Court can dispose of the suit by pronouncing the judgment.

24. In the present case, admittedly while rendering the judgment dated 2nd April, 2011, the Court has actually answered all the issues framed by the Court in the suit for declaration. Therefore, the finding of the learned trial Court that the trial in the matter is necessary and the Court is bound to decide all the issues framed on fact again after the trial is not correct because the said finding by the learned trial Court invites multiplicity of litigation for no reason. Thus, the impugned order dated 7th August, 2012 passed by the learned trial Court is quashed and set aside and the application filed by the petitioner is liable to be allowed under Orders 15 and 20 CPC.

25. In the light of the judgment and decree rendered by the Court on 2nd April, 2011, the suit of the petitioner is decreed in terms of the plaint. The impugned order is set-aside by allowing the application filed by the petitioner after passing the judgment dated 2nd April, 2011 which has already become final between the parties. The learned trial Court shall draw a decree in terms of the prayer made in the suit.

26. The present petition is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

JANUARY 10, 2014