

Court No. - 39

Case :- FIRST APPEAL No. - 1146 of 2023

Appellant :- Kapil Agrawal

Respondent :- Smt. Sakshi Goyal

Counsel for Appellant :- Anirudh Sharma, Neelabh Srivastava

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Syed Aftab Husain Rizvi, J.

1. We have heard Sri Neelabh Srivastava along with Sri Anirudh Sharma, learned counsel for the appellant and perused the record.
2. The present appeal has been filed under section 19 of the Family Courts Act, 1984 arising out of the order dated 09.08.2023 passed by the Principal Judge, Family Court Sambhal at Chandausi on application no.75 Ga filed by the present appellant in case no.196 of 2018 (Kapil Agrawal vs. Smt. Sakshi Goyal). Those proceedings have been instituted by the present appellant seeking dissolution of marriage between the parties. We find that the proceedings are under Section 12 of Hindu Marriage Act, 1955 (herein referred to as the Act).
3. Having heard the counsel for the appellant and having perused the record, we find that the proceedings are at an advance stage. At present, the matter is being heard finally. Relying on certain portion of the statement of the respondent recorded on 11.07.2023, the application paper no.75 Ga came to be filed seeking a medical examination of the respondent ostensibly to establish that the marriage between the parties has not been consummated.
4. The prayer is preposterous and unacceptable. What questions are put to cross-examination to a witness/ respondent, was not in her control. Merely because the appellant put a question to the

respondent to which she may have furnished answer which is not to the liking of the appellant may not prompt the appellant to seek a medical examination of the respondent to test the correctness of her statement. In matters of cross-examination, it is for the examiner to carefully choose the question knowing the probable answers that may arise.

5. Without making any comment as to the conclusion that may be drawn on the basis of cross examination statements and other evidence that may exist on record as that may prejudice the outcome of the proceedings, we decline to offer any interference in the present appeal. Being an interlocutory order, no case was made out to offer any interference in the discretion refused to be exercised by the learned court below.

6. Accordingly the appeal is dismissed without prejudice to the rights of the parties in the proceedings that are pending before the learned court below.

Order Date :- 28.10.2023

C. MANI

(S.A.H. Rizvi,J.) (S.D. Singh,J.)