

Court No. - 39

Case :- FIRST APPEAL No. - 1301 of 2023

Appellant :- Smt Seema

Respondent :- Devendra Singh

Counsel for Appellant :- Satyendra Narayan Singh, Bindeshwari Prasad Mishra

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Shri Satyendra Narayan Singh along with Shri Bindeshwari Prasad Mishra, learned counsel for the appellant and perused the record.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order dated 27.10.2023 passed by learned Additional Principal Judge, Family Court, Court No. 1, Agra, in Matrimonial Case No. 2248 of 2018 (Devendra Singh Vs. Smt. Seema), under Section 13 of Hindu Marriage Act, 1955. By that order, the learned court below has rejected two applications filed by the appellant being application paper no. 60Ga objecting to the evidence of P.W.2 and application paper no. 61Ga seeking recall of plaintiff witness P.W.1.

3. Upon hearing learned counsel for the parties and upon perusal of the record, there appears to exist no sustainable ground of challenge to assail the order of the learned court below to the extent it has rejected application paper no. 60Ga. The learned court below has found, the list of witness is available on record. P.W.2 is a listed witness. In addition, examination-in-chief of P.W.2 was taken on record by means of affidavit. At that stage, the appellant did not raise any objection to such evidence being recorded/taken

on record. For those facts and reasons, there is no error shown in the order of the learned court below in rejecting application paper no. 60Ga.

4. However, insofar as paper no. 61Ga has been rejected, we are not convinced as to the correctness of the reasons adopted by the learned court below. Perusal of the impugned order itself reveals that the cross-examination of P.W.1 was carried out by the appellant on 12.07.2023, 11.08.2023 and 16.08.2023. Further, it appears, cross-examination of the said witness was not completed inasmuch as the order sheet itself did not record the completion of the cross-examination. Merely because the order sheet does not record that the appellant had asked for further time, leaves situation in doubt as to the correct facts.

5. Therefore, in the interest of justice, we set aside the order passed by the learned court below to the extent it has rejected the application paper no. 61Ga. We also provide, the appellant shall get to cross-examine P.W.1 on one date. No further opportunity would be granted to the appellant as she has already cross-examined the P.W.1 on prior three dates.

6. With the aforesaid observations/directions, the appeal stands **disposed of.**

Order Date :- 30.11.2023
SA

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)