

Court No. - 1

Case :- FIRST APPEAL No. - 199 of 2023

Appellant :- Rahul Kumar Rai

Respondent :- Addl. Prin. Judge Family Court-4 Lko. And
Another

Counsel for Appellant :- Amit Arora

Counsel for Respondent :- Gaurav Mehrotra

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Sri Amit Amora, learned Counsel for the appellant and Sri Gaurav Mehrotra, learned Counsel appearing for the Family Court/respondent No.1.
2. The instructions from the Family Court placed before us are taken on record.
3. The instant Appeal is filed under Section 19 (1) of the Family Court, 1984 assailing the orders dated 31.07.2023 and 04.08.2023 passed by the Additional Principal Judge, Family Court, Court No.4, Lucknow. It is read and said that by virtue of Section 19(1), an appeal would not lie against an interlocutory order.
4. This Court was informed that an order was previously passed by this Court in the proceedings under Article 227 of the Constitution of India on 15.02.2023 by which the divorce proceedings pending before the Family Court were directed to be concluded by 31.03.2023. The order passed by this Court on 15.02.2023 had also permitted cross-examination of DW-1, who was previously produced on 13.05.2022, 18.05.2022 and 21.10.2022. After grant of three opportunities, it appears that the evidence of DW-1 was closed, therefore, as per order dated 15.02.2023 the cross-examination was permitted to be

concluded. The order passed by this Court on 15.02.2023 was produced before the Family Court on 20.02.2023. The order-sheet reveals that the Family Court took note of the order passed by this Court and the matter was fixed at 11:00 a.m. on the same day for cross-examination. The order-sheet reveals that no proceedings of cross-examination took place on 20.02.2023, however, on the margin of the order-sheet, there is a noting of the next date being fixed on 21.02.2023. This noting is acknowledged by none other than the learned counsel for the plaintiff himself who was appearing then. It appears that the counsel who had conducted cross-examination on 21.02.2023 was subsequently changed and a new counsel was engaged by the plaintiff before the Family Court. The evidence was closed on 28.02.2023 with the due participation of earlier counsel and the matter was posted for hearing thereafter.

5. During the interregnum period when the matter was posted for final hearing particularly after a new counsel came to be engaged on 31.05.2023 before the Family Court, an application was filed before the Family Court for conducting a judicial enquiry regarding missing statement of the defendant i.e. DW-1 recorded on 20.02.2023.

6. This application placed on record is not signed by the learned counsel or by the plaintiff. In any case, the hearing of the matter was sought to be deferred on the ground that the cross-examination recorded on 20.02.2023 having gone missing from the record has vitiated the proceedings of the case and unless the said part of evidence is made available to the appellant (plaintiff), the Family Court may be restrained from proceeding with the case. It is in the background of this submission that we ordered for summoning of the photocopy of the original record before us and the same has been produced by Shri Gaurav

Mehrotra, learned counsel appearing for the Family Court.

7. On a perusal of the order-sheet as well as the record of evidence, it is gathered that the cross-examination of DW-1 was recorded on 13.05.2022, 18.05.2022, 21.10.2022 and lastly on 21.02.2023. The cross-examination recorded on the initial three dates runs into nine pages whereas the cross-examination done on 21.10.2022 runs into four pages recorded separately. The four pages recorded separately on 21.10.2022 is explained before us in the manner that on the said date, a new Reader was assigned the Court duty by way of stop-gap arrangement, therefore, he failed to maintain the sequence of pagination. The application seeking enquiry of the cross-examination recorded on 20.02.2023 does not specifically state as to who was the counsel having undertaken the exercise of cross-examination on the said date nor the affidavit filed in the above perspective is clear enough to make out the contention put forth before us. There is no application or objection raised until the conclusion of evidence on 28.02.2023. The order-sheet of the case is the conclusive proof of the proceedings and nothing can be considered more or less.

8. The cross-examination of DW-1 concluded on 21.02.2023 runs from pages 10 to 13 and is the only evidence recorded by the Court, thus, the same in its entirety is liable to be considered for deciding the matter. The proceedings cannot be allowed to be interfered with at an interlocutory stage and all the objections available to the appellant shall remain open after the matter is finally decided in terms of the judgment/ order passed by this Court on 15.02.2023. Moreover, by virtue of Section 19 (1) of the Family Court, the instant F.A.F.O. would not lie against the interlocutory orders of this description.

9. In the circumstances of the case and having regard to the

material available on record, we are not convinced that a case for interference as against the impugned orders is made out and thus the directions contained in the orders passed by this Court on 15.02.2023 read with order 11.10.2023 be carried out in letter and spirit.

10. In view of what has been recorded above, the present appeal is **dismissed**.

[Om Prakash Shukla, J.] [Attau Rahman Masoodi, J.]

Order Date :- 3.11.2023
Mohd. Sharif