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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 255/2015

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Decided on: 23rd March, 2015

NARESH BAHUGUNA

..... Petitioner

Through: Mr. Manoj Gahlot and Mr. Rahul
Rohtagi, Advocates.

versus

LALITA BAHUGUNA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 5332/2015 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 255/2015 and CM No.5331/2015 (Stay)

1. Aggrieved by the order dated 17th September, 2012 Naresh Bahuguna the husband of Lalita Bahuguna, Respondent No.1 and father of Sunila Bahuguna and Mayank Mohan, Respondent Nos. 2 and 3 directing to pay monthly maintenance and arrears of maintenance, files the present petition.
2. The contentions raised by the learned counsel for the Petitioner before this Court are that there is no finding of the learned Trial Court that there was sufficient cause for the Respondent No.1 to desert the Petitioner nor is there any finding of cruelty.
3. During the course of trial the learned Trial Court settled the following issues:

- “1. Whether the petitioner was harassed, tortured and maltreated by respondent for not bringing sufficient dowry? *OPP*.
2. Whether the petitioner and her children have no source of income? *OPP*.
3. Whether respondent is ready to keep petitioner and his children? If so, its effect? *OPR*.
4. Whether petitioner is having sufficient means to maintain herself and her children? *OPR*.
5. Whether petitioner left matrimonial house without any reasonable cause at the instance of her parents, brother and his wife? If so, its effect? *OPR*.
6. Whether petitioners are entitled for the relief claimed?
7. Relief.”

4. As regards Issue No.1 relating to harassment, torture and maltreatment to Lalita Bahuguna, the learned Trial Court observed that:

“It can legitimately be observed that the petitioners could neither produce nor prove a single document for drawing inference of having been treated cruelly by the respondent capable of causing a reasonable apprehension in the mind of petitioner no.1 that it will be harmful or injurious to live with her husband. While concurring with Ld. Counsel for the petitioners that a lot of adjustments and compromises are required to be made by the spouses for carving a successful matrimony, it follows that just because the affected party did not go to the Police Station every time he or she felt harassed or tortured at the hand of other, in the hope that there will be light at the end of tunnel, it cannot be concluded that no harassment at all had been meted out.

The respondent being a government servant was the regular source of income for the family. The petitioner no.1 also made attempts to become an additional source of earning by acquiring additional qualifications so as to supplement family income. Apparently, there was nothing amiss in their lives. Nevertheless, the petitioners departed from the life of respondent one fine day on 08.04.2002. Why would one destroy a happy go lucky family comprising minor children if there were no differences between the husband and wife which they could not reconcile? It would be exaggerated to discern that the wife had great plans to achieve her ambitions with the help of her father, who was employed in the Ministry of External Affairs and to remarry. The petitioner no.1 is an educated lady. She must have weighed all her options in this behalf. As per the allegations of respondent himself that she is not giving him the custody of petitioner no. 2 & 3 despite court order. The petitioner no.1 would not have left them for the sake of second marriage. The parties by leveling allegations below the belt against each other in these proceedings, apparently without any basis, ruined the remaining chances of reunion. It is writ large from the course of proceedings that over passage of their short lived marital life, petitioner no.1 and the respondent gradually lost compatibility which in a normal case would have enhanced inversely from this case. The issue therefore is decided with these observations.”

5. As regards Issue No. 5 the learned Trial Court held that Naresh has not been able to prove that Lalita left the matrimonial home without any reasonable cause at the instance of her parents, brother and his wife and the issue was decided against Naresh.

6. In Mannava Satyawati and others vs. Mannava Malleswara Rao and others, 1995 Supp (3) SCC 259 it was held that the District Judge and High Court fell into patent error in denying the maintenance to the wife and the

children on the basis that they left the house on their own and thus they were not entitled to the maintenance. In Laxmi Bai Patel vs. Shyam Kumar Patel JT 2002 (3) SC 409 wherein the wife admitted that she left the matrimonial home voluntarily and was earning Rs.50/- per day, it was held that without anything more the same was not sufficient to deny maintenance.

7. Section 125 (4) Cr.P.C. provides:

“125 (4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

8. Thus the wife can be denied maintenance if she refuses to live with the husband without sufficient cause. The fact that no complaint was lodged by her during her stay with Naresh would not belie the version of Lalita that she was compelled to leave her matrimonial home. Naresh failed to prove that Lalita left the matrimonial home due to her parental family pressure. Further the learned Trial Court itself observed that differences have reached an extent so as to ruin the chances of reunion. Nothing has been urged before this Court to show that the maintenance as awarded by the learned Trial Court was excessive or not borne out from the evidence on record. Hence I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 23, 2015
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