

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.388/2014 & C.M. Nos.20519/2014, 20520/2014**

Decided on : 24th March, 2015

NAMITA MALLIK Appellant
Through: Mr. A. Niyaz, Advocate.

Versus

NISHANT KUMAR & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment and decree dated 26.5.2014 passed by the learned Additional District Judge-I (East), Karkardooma Courts, Delhi in R.C.A. No.40/2010 titled *Namita Malik vs. Nishant Kumar*.

2. Briefly stated the facts of the case are that Nishant Kumar filed a suit for declaration and permanent injunction against Namita Malik, the present appellant and one Rohit Bhdya seeking declaration that the marriage between Nishant Kumar and Namita Malik, the present appellant was a valid marriage performed according to Hindu rites and

ceremonies and that the marriage between the appellant, Namita Malik and Rohit Bhdaya was void and illegal as it was contracted during the subsistence of the first marriage. Further, a decree of permanent injunction was also sought seeking a restraint order against the present appellant and respondent No.2 from living together.

3. The case which was setup by respondent No.1/plaintiff was that while he was studying with the present appellant, he had fallen in love with her and both of them had got married against the wishes of their parents in Gujarat Samaj Mandir, Paschim Vihar on 22.8.2008 according to Hindu rites and ceremonies. After marriage, they lived together and consummated the marriage also; however, because of the pressure of the parents, they started living along with their parents. During the period of their separation, the present appellant was married to respondent No.2, Rohit Bhdaya, which culminated into filing of the present suit for declaration and permanent injunction. The appellant/defendant No.1 and respondent No.2, Rohit Bhdaya were served. The appellant was served but she did not file her written statement. Her defence was struck and thereafter, respondent No.1 adduced evidence in support of his case. He examined himself as PW-1 and three more witnesses, one of which was

the *Purohit*, who solemnized the marriage and the other two persons were the witnesses to the marriage. All these four witnesses were cross-examined and after analysis of evidence, the learned trial court granted declaration as prayed for by respondent No.1 declaring the marriage between the present appellant and respondent No.1 as a valid marriage and also declaring the marriage between the appellant and respondent No.2, Rohit Bhdaya as null and void as the same was contracted during the subsistence of the first marriage. However, so far as the grant of injunction is concerned, that relief was refused. It was observed that it is not proper for the court to pass such kind of injunction orders and the respondent No.1 has an efficacious remedy available to him to seek restitution of conjugal rights.

4. Feeling aggrieved, the present appellant filed the first appeal titled *Namita Malik vs. Nishant Kumar* bearing R.C.A. No.40/2010. The appellate court upheld the judgment and the decree passed by the trial court as it did not find any infirmity or perversity in the judgment and the decree assailed.

5. Still not feeling satisfied, the present regular second appeal has been filed. The second appeal, according to Section 100 CPC is

entertainable only when a substantial question of law is involved in the matter. The learned counsel for the appellant, in the instant case, has made three submissions. The first submission which has been made by the learned counsel for the appellant is that the court has relied upon the photographs without the negatives of the marriage being produced and, therefore, the said photographs could not be treated as valid evidence. It has been contended by the learned counsel that the witnesses have been cross-examined and despite the fact that the *purohit*, whose testimony has been recorded for the purpose of proving solemnization of marriage, he was not a *purohit* of the mandir, his testimony has been relied upon. It has been contended that the court has erroneously interpreted the evidence to assume that there was a valid marriage between the appellant and respondent No.1.

6. I have considered the submissions. None of the submissions which have been made by the learned counsel for the appellant is constituting a question of law much less a substantial question of law. The question of appreciation of evidence is already done by the two courts. It is not a case of the appellant that the finding of marriage returned by the two courts below is not supported by any evidence at all which could have

made it, is a case of perversity. There is ample evidence by way of statement on oath not only of respondent No.1 but also corroborative evidence of the *purohit* and the witness in whose presence the marriage is stated to have been solemnized. Even if the photographs are ignored still, the oral evidence adduced by respondent No.1 clearly proves that there was a valid marriage solemnized between the appellant and respondent No.1. The present appellant has failed to demolish their testimony by way of cross-examination. The appellant has been so callous that despite the service, no written statement has been filed by her and she has not setup any defence. Therefore, this point does not merit any consideration.

7. In view of the aforesaid facts and circumstances of the case, it is observed that the present appeal is totally misconceived and the same does not merit any consideration. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

MARCH 24, 2015
‘AA’