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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 224 OF 2015

Neha Bhatia d/o Rakesh Bhatia

.. Appellant
(Org. Petitioner)

Versus

Ferzad Palia s/o Cyrus Palia

.. Respondent

Ms. Sneha Singh i/by Mr. A. M. Saraogi for appellant.
Mr. Vikramaditya Deshmukh for respondent.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

RESERVED ON : AUGUST 04, 2016.

PRONOUNCED ON : SEPTEMBER 08, 2016

ORDER [Per Naresh H. Patil, J.] :

1. This appeal is directed against the judgment and decree dated 8/7/2015 passed by the Family Court No. 6, Bandra, Mumbai, in Petition No.B-56 of 2014.

2. The appellant states that she is Hindu by religion and continues to profess Hinduism. The respondent is Parsi by religion and

continues to profess Parsi religion. Both, the appellant and respondent married on 21/12/2013 at Mumbai as per Hindu Vedic rites and customs. It is contended that parties last resided as husband and wife in Mumbai. The appellant filed a petition before the Family Court, Bandra, Mumbai, seeking decree of nullity of marriage against respondent-husband under Section 34 of the Specific Relief Act, 1963. The appellant pleaded before the Family Court that she was born as Hindu on October 15, 1987 in Mumbai. She is an MBA from India School of Business, Hyderabad and she is currently working at Google India. Her father, Mr. Rakesh Bhatia, is a retired officer from the Indian Army whilst her brother is an architect and her mother Mrs. Vandana Bhatia is a homemaker. It is the appellant's case that respondent was born as Parsi on October 2, 1979 in Mumbai. He studied at Bombay Scottish School, College at HR and did studied in subjects of Commerce and Economics. She did MBA from Chetana Institute of Management. The respondent's father Mr. Cyrus Palia is a consultant at Champion Asbestors Pvt. Ltd. and his mother Mrs.Rati Palia is a homemaker. It is the appellant's case that sometime on or about December 2011, the appellant and respondent met in Bangalore. They came to Mumbai and thereafter they started meeting regularly. They developed relationship and fell in love. They decided to marry and

accordingly the marriage was planned in December 2013. It is the contention of the appellant that at the time of marriage neither appellant nor respondent were aware of the fact that for marriage to be valid and legal under the Hindu Marriage Act, both the parties must be Hindus.

3. After their marriage, the parties went to Honeymoon to Goa and Lonavala during the period December 24, 2013 to January 2, 2014. Thereafter, the parties started residing separately. The address of the appellant was mentioned in the petition. It was contended that no children were born from the relationship of the parties.

4. The appellant produced coloured xerox copy of the marriage photograph. The respondent did not produce any document on record. Respondent filed his written statement at Exh. 8. He admitted the marriage performed by them on 21/12/2013 as per the Hindu Vedic rites. He further admitted that after marriage, they stayed together only for a month and thereafter the appellant moved out. The respondent admitted the substantive contentions of the appellant. It was respondent's case that on advise of his Advocate, he realized that their marriage had not taken place as per Hindu Marriage Act, 1955. The respondent also got knowledge

that a marriage between a Hindu and a Parsi cannot be solemnized under the Hindu Marriage Act, 1955. The respondent prayed for grant of relief to the appellant.

5. The Family Court considered the pleadings and the submissions advanced before it. In para 10 of the Judgment, the learned Judge observed that there is no substance in the contention of the appellant (Petitioner before the Family Court) that acting upon the advise of a Priest, they solemnized their marriage as per Hindu Vedic rites. It was further observed by the learned Judge that the appellant herein did not specifically mention the legal impediment to their marriage. The appellant had neither given any reason for staying separately from respondent nor any cause of action for filing present petition.

6. Learned counsel appearing for the appellant submitted that cause of action was disclosed in the petition presented before the Family court. Under the provisions of the Hindu Marriage Act, 1955, the marriage between the appellant and respondent was null and void. This fact was brought to the notice of the respondent and, therefore, appellant moved for appropriate relief. Forcing the parties to continue such a relationship

would be detrimental to the future of the parties. When the legal provisions are clear and the parties are willing to get the relief by consent, then there should not be any difficulty for the court to refuse such relief. Learned counsel submitted that the impugned order passed under Order VII Rule 11 of the CPC is erroneous. Learned counsel placed reliance on the judgment of the Apex Court in the case of Gullipilli Sowria Raj vs. Bandaru Pavani @ Gullipilli Pavani [AIR 2009 SC 1085] and the provisions of Order XII Rule 6. Learned counsel appearing for the respondent supported the contentions of the appellant.

7. We have perused the record placed before us, considered the submissions advanced before us. Order VII Rule 11 of the CPC refers to rejection of plaint. Said provision reads as under:-

“ORDER VII

PLAINT

11. Rejection of plaint. - The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by

the Court, fails to do so;

- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of R.9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

8. During the course of hearing before this court, it was submitted that in view of the consenting written statement submitted and admission by the respondent of the appellant's contention, there is no other option left with the court to pass a decree in view of provisions of Order

XII Rule 6 of C. P. C. Rule 6 of Order XII reads as under:-

“ORDER XII

6. Judgment on admissions.-(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

9. We are of the view that the judgment on admissions is not a matter of right. It is a matter of discretion of the court to be exercised judiciously and depending upon the facts and circumstances of the case.

10. The admission in a pleading or an affidavit must be clear and unequivocal, indicating that the plaintiff is clearly entitled to the order

asked for.

11. We may refer to the judgment of the Apex Court in the case of Jeevan Diesels and Electricals Limited vs. Jasbir Singh Chadha (HUF) and anr. [(2010) 6 SCC 601]. Paras 13, 14 and 15 of the said judgment read as under :-

“13. In this connection reference may be made to an old decision of the Court of Appeal between Gilbert v. Smit. Dealing with the principles of Order 40 Rule 11, which was a similar provision in English Law, James, L.J. Held: (Ch D p. 687)

“..... if there was anything clearly admitted upon which something ought to be done, the plaintiff might come to the court at once to have that thing done, without any further delay or expense.”

14. Mellish, L.J. Expressing the same opinion in Gilbert case made the position further clear by saying:

“it must, however, be such an admission of facts as would shew that the plaintiff is clearly entitled to the order asked for”.

The learned Judge made it further clear by holding: (Gilbert case, Ch D p. 689)

“... The rule was not meant to apply when there is any serious question of law to be argued. But if there is an

admission on the pleadings which clearly entitles the plaintiff to an order, then the intention was that he should not have to wait, but might at once obtain any order”

15. In another old decision of the Court of Appeal in *Hughes v. London, Edinburgh and Glasgow Assurance co.*, similar principles were laid down by Lopes, L.J. wherein His Lordship held:

“judgment ought not to be signed upon admissions in a pleading or an affidavit, unless the admissions were clear and unequivocal”.

Both Esher and Fry, L.JJ. Concurred with the opinion of Lopes, L.J.”

12. We may also refer to the judgment of the division Bench of this court in the case of *Beryl (Mrs.) Murzello and ors. vs. Ramchandra Bhairo Mane and ors.* [2007 (5) **Mh.L.J.** 708]. Para 7 of the said judgment reads as follows :-

“7. The provisions of law comprised under Order XII, Rule 6 of the Code of Civil Procedure are enabling provisions. Undoubtedly, the same confer wide powers on the Court to pronounce judgment on admission at any stage of the proceedings. However, it does not mean that the decree always be granted in terms of prayers in the suit on the basis of admission. The Court has duty to ascertain whether the

plaintiff is entitled under the law to get the relief asked for. The Court has to guard itself from allowing the parties to play fraud upon the Court by entering into collusion to defeat not only the provisions of law but even the rights accrued in favour of any other party, whether before the Court or not, but one disclosed from the records before it. The judgment on admission is not a matter of right. It is a matter of discretion of the Court to be exercised judiciously and depending upon the facts and circumstances of the case.”

13. In the facts of the case, we find that the Family Court, if not satisfied, ought to have framed proper issues and called upon the parties to lead evidence. Even the observations made by the Family Court relating to the fact that the appellant did not show any cause of action for filing the present petition are not convincing in view of the pleadings on record.

14. In the facts, we are of the view that the Family Court shall deal with the issues arising out of the pleadings and the affidavit filed by the appellant herein for passing decree on admission strictly in accordance with law and the facts placed before the court. Order on admission is discretionary relief. Therefore, the Family Court shall exercise its discretion in accordance with law and the facts present before it. The court,

in the facts, is entitled even to frame appropriate issues.

15. In the facts and in view of the reasons stated above, we are of the view that the matter requires to be remanded back to the Family Court. After remand, the Family Court shall deal with the matter in view of the observations made by us as above and in accordance with law.

ORDER

- (i) Appeal is partly allowed.
- (ii) The impugned judgment and decree passed by the Family Court No.6, Bandra, Mumbai, dated 8/7/2015 in Petition No.B-56 of 2014 is quashed and set aside.
- (iii) The matter is remanded back to the Family Court, Bandra, Mumbai. The Family Court shall deal with the petition on its own merits, in accordance with law, and dispose of the same as expeditiously as possible.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL,J.)