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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.02.2018

MAT.APP.(F.C.) 24/2018, CM No.4270/2018 & CM No.4271/2018

R **Appellant**

versus

J **Respondent**

Advocates who appeared in this case:

For the Appellant : Mr. Osama Suhail, Advocate with Ms. Samona Suhail, Advocate
For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal instituted belatedly assails a judgment and order dated 19.09.2017, whereby, the petition instituted on behalf of the respondent husband under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA'), being HMA No.905/2011

titled as '*J* vs. *R*'(hereinafter referred to as 'subject petition'), for the dissolution of marriage was allowed.

2. On the pleadings of the parties, the learned Family Court vide its order dated 26.03.2013 framed the following issues:-

- “(i) Whether the petitioner was treated with cruelty, as per the events mentioned in the petition? (OPP)
- (ii) Whether the respondent has withdrawn from the society of the petitioner without any justifiable cause? (OPP)
- (iii) Whether the petition has been filed without unnecessary delay? (OPP)
- (iv) Relief.”

3. The respondent husband examined himself in support of his case and was cross-examined at length on behalf of the appellant wife. Admittedly, the appellant wife despite opportunity did not lead any evidence. Although, the evidence of the appellant wife was closed as far back as on 15.04.2017 and, further, an application seeking recall of the respondent husband as a witness was dismissed on 24.04.2017; the appellant wife did not carry those orders in appeal during the pendency of the proceedings before the learned Family Court and, consequently, the same have now attained finality.

4. Insofar as issue No.1 is concerned, apart from other allegations of acts amounting to cruelty, it was observed from the written statement filed on behalf of the appellant wife that she has made serious allegations of the

respondent husband having extra-marital affairs with other women; which have remained unsubstantiated.

5. Needless to state that in terms of the dictum of the Hon'ble Supreme Court in Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar reported as AIR 2003 SC 2462, as well as, of this Court in Sahana Pal vs. U.K. Samanta reported as 2015 (4) Crl.L.J.204 Del, and Jayanti vs. Rakesh Mediratta dated 27.10.2016 in MAT.APP.(F.C.) No.129/2016, unsubstantiated allegations of infidelity are by themselves sufficient to constitute cruelty.

6. On this ground alone, the subject petition for dissolution of marriage instituted on behalf of the respondent husband had to be allowed.

7. Insofar as, the other issue struck in relation to whether the appellant wife had withdrawn from the society of the respondent husband without any justifiable cause, is concerned; it was found by the learned Family Court that the appellant wife had admittedly of her own accord left the matrimonial home in the year 2000 to live separately in a nearby locality and despite the institution of a petition on behalf of the respondent husband under Section 9 of the HMA, seeking restitution of conjugal rights, steadfastly refused to live with the latter.

8. In view of the foregoing, we are of the considered view that there is no warrant for this court to interfere with the conclusion arrived at by the learned Family Court, insofar as it dissolves the marriage between the parties with immediate effect; since in our opinion the respondent husband had been able to establish all the essential ingredients for the grant of that relief.

9. The appeal is, therefore, without any merit and is accordingly dismissed. The pending applications also stand disposed of.

10. No costs.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 12, 2018

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