

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 175/2018

GIRIJA JHUNJHUNWALA

..... Petitioner

Through: Ms. Akriti Tyagi, Adv.

Versus

SHREEKANT JHUNJHUNWALA

..... Respondent

Through: Mr. Pradeep Narula & Ms. Bhawna
Khanna, Advs.

Ms. Anu Narula, Amicus Curiae/Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

15.10.2018

1. This petition under Article 227 of the Constitution of India *inter alia* seeks the following relief:

“(i) Pass directions to the Family Judge, Ms. Madhu Jain, Family Court Saket to grant divorce decree in the matter titled as Girija Jhunjhunwala Vs. Shreekant Jhunjhunwala being HMA no 556 of 2017, in light of the marriage having irretrievably broken down, since maintenance and custody are not an issue, and to put an end to the prolonged and unnecessary litigation. The divorce can be granted on the fault of unreasonable irrational litigious conduct amount to cruelty under Section 13 of HMA.”

2. The petition came up first before this Court on 12th February, 2018 when arguments were partly heard, perhaps on admissibility of the petition, from the counsel for the petitioner and Ms. Anu Narula, Advocate was appointed as Amicus Curiae to assist this Court.

3. On the next date of hearing i.e. 7th March, 2018, though notice of the petition had not been issued, but the counsel for the petitioner / wife stated that she had informed the counsel for the respondent / husband of the listing of the present petition. On the next date i.e. 2nd May, 2018, the counsel for the respondent / husband also appeared. The Hon'ble Judge who had heard part arguments, vide order dated 8th August, 2018 released the matter from part heard.
4. Today, Ms. Akriti Tyagi, Advocate for the petitioner / wife appears and states that she is the proxy counsel.
5. The counsel for the respondent / husband has also appeared.
6. The proxy counsel for the petitioner / wife has not urged any arguments.
7. Ms. Anu Narula, Amicus Curiae states, without citing any judgments, that there are some judgment of the Supreme Court where the Supreme Court, though has dissolved the marriage on the ground of irretrievable breakdown but has observed that except the Supreme Court, no other Court is entitled to do so. She further states that there are some other judgments where the Courts have held that if it is found that one of the parties to the matrimony, without any fault of the other, is holding on to the marriage without intending to live with the other spouse, the said conduct can also amount to cruelty.
8. The counsel for the respondent / husband states that the evidence of the petitioner / wife, who is the petitioner in the petition for dissolution of marriage before the Family Court, is underway.

9. Even if the Courts in some judgments have held that the action of one of the spouse of denying divorce without any fault of the other can also amount to cruelty, the same would not entitle this Court to, while exercising supervisory jurisdiction, issue any direction which is contrary to law. Moreover, such an order cannot be passed without evidence being recorded and without the entire picture emerging before the Court.

10. The petition, for the relief claimed was misconceived in law and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 15, 2018

‘gsr’..