

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 12th July, 2018**

+ **MAT.APP. 116/2009, CM No.16501/2009 (for stay) & CM No.44597/2017 (for directions).**

M.K.

..... Appellant

Through: Ms. Suman Chauhan, Adv.

Versus

M.P.S.

..... Respondent

Through: Dr. (Maj.) J.C.Vashista & Ms.
Yashika Sood, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 impugns the judgment and decree [dated 21st July, 2009 in HMA No.525/2006 of the Court of Additional District Judge (ADJ)-01, North District, Delhi] of dissolution of marriage of the parties under Section 13(1)(ia)&(ib) of the Act.

2. The appeal came up first before this Court on 18th November, 2009 when it was adjourned to 1st December, 2009. Notice of the appeal was ordered to be issued and vide *ex parte* order dated 1st December, 2009, the respondent / husband restrained from re-marrying.

3. On 19th January, 2011, the appeal was admitted for hearing and thereafter has been listed repeatedly and adjourned from time to time. Attempts made on several occasion for amicable settlement remained unsuccessful.

4. Trial Court record, though requisitioned and received, but has been sent back. The order dated 17th July, 2017 records that the respondent has been paying maintenance of Rs.1800/- per month to the

appellant / wife and that there is a 17 year old daughter born out of the wedlock of the parties.

5. On the last date of hearing i.e. 4th May, 2018, none appeared for the appellant and in the interest of justice, the appeal was not dismissed in default and posted for today.

6. Today also, on first call none appeared for the appellant / wife. However, when the appeal was about to be dismissed in default, the counsel for the respondent / husband pointed out that the appellant / wife is present in Court in person. The appellant / wife was asked to get her advocate and after another passover, the counsel for the appellant / wife has finally appeared.

7. The advocate for the appellant / wife sought adjournment stating that she was under the impression that the matter is pending for mediation. However attention of the advocate is drawn to the order dated 9th March, 2018 recording that the mediation between the parties has failed. Since the appeal has already been pending for the last nine years, the matter was yet again passed over to enable the counsel for the appellant to collate her thoughts and argue the appeal.

8. The counsel for the appellant has only argued that the respondent / husband, in the petition for dissolution of marriage from which this appeal arises, stated that at the time of marriage with the appellant / wife he was a divorcee; however the respondent / husband has not proved the dissolution of his earlier marriage.

9. I have enquired from the counsel for the appellant / wife, whether not the impact of the contention aforesaid of the counsel for the appellant

/ wife would be to render void the marriage which admittedly took place between the parties and how the same would benefit the appellant.

10. The counsel for the appellant / wife states that if marriage is void, the impugned judgment and decree of dissolution thereof would be liable to be set aside.

11. However, upon the implications thereof being told to the counsel for the appellant / wife, she has not pressed the said aspect.

12. Else, no other argument has been urged.

13. However, at the time of dictation, when this is recorded, the counsel for the appellant / wife again seeks adjournment.

14. Though the Trial Court record has been sent back but copies of the relevant Trial Court record have been filed with the Memorandum of appeal and have been perused.

15. The respondent / husband applied for dissolution of marriage, pleading (i) that the parties were married on 11th April, 1999 at New Delhi according to the Sikh rights and ceremonies; (ii) that a daughter was born to the parties on 17th June, 2000; (iii) that the marriage was solemnized pursuant to a matrimonial advertisement inserted on behalf of the respondent / husband, inviting matrimonial proposals from working girls and the parties or their families otherwise did not know each other earlier; (iv) that the appellant / wife, after the marriage, was residing with the respondent / husband; (v) that though the appellant / wife was employed as a school teacher but would go in the morning and come back late in the evening and sometimes not come back at all,

leaving the respondent / husband and his family members worrying for the appellant / wife and compelling them to look for the appellant / wife; (vi) that the appellant / wife also used to abuse and threaten the respondent / husband and his family members; (vii) that the appellant / wife left the matrimonial home at 11 A.M. on 16th November, 1999 and did not return; (viii) though the respondent / husband on 15th November, 1999 enquired of the appellant / wife whether she was in the family way but the appellant / wife denied; (ix) that the appellant / wife was unwilling to adjust to the life which the respondent / husband and his family were leading and never considered the house of the respondent as her own house and always considered her parents house as her house; (x) that the respondent / husband visited the house of the parents of the appellant / wife on 3rd September, 1999 when he was asked to pay Rs.10,000/- to the father of the appellant / wife; on the next visit on 18th December, 1999, the respondent / husband found the appellant / wife and her parents drunk and unable to talk; on the next day, again money was demanded from the respondent / husband and on his inability to pay, he was abused; (xi) that though the respondent / husband asked the appellant / wife to return but she refused; (xii) that the birth of the daughter was never intimated to the respondent / husband and the appellant / wife has deprived the respondent / husband of bestowing fatherly love and affection on his daughter; and, (xiii) that the appellant / wife also lodged FIR No.91/2001 under Sections 498A and 406 of the IPC against the respondent / husband and six family members who all had to take anticipatory bail.

16. Needless to state, the appellant / wife contested the petition

aforesaid for dissolution of marriage, by filing written statement pleading (a) that the petition for dissolution of marriage was a counterblast to the application filed by her under Section 125 of the Cr.P.C and the FIR aforesaid; (b) that all the dowry articles have been retained by the respondent / husband and his family members; (c) that the respondent / husband, at the time of marriage had concealed from the appellant / wife and her parents that he was a divorcee; (d) that the daughter of the parties was born while the appellant / wife was staying with her parents and the entire expenses of birth were borne by the parents of the appellant / wife even though they have no means therefor; (e) that the appellant / wife or her parents did not know of any matrimonial advertisement published by the respondent / husband or his family members but the families were strangers prior to the “so called marriage or of its talks”; (f) denying that the appellant / wife had treated the respondent / husband with cruelty or deserted the respondent / husband; (g) that the respondent / husband turned out the appellant / wife from the house when she was pregnant; (h) that the appellant / wife is a qualified girl and belongs to a respectful family; (i) that it is the respondent / husband who is a drunkard; and, (j) that the appellant / wife had never refused cohabitation.

17. On the aforesaid pleadings of the parties, on 3rd August, 2006, the following issues were framed:

- “1. Whether the Respondent has treated the petitioner with cruelty since the solemnization of marriage? OPP
2. Relief.”

18. The learned ADJ, in the impugned judgment and decree, has granted the decree of divorce, finding / reasoning (i) that the respondent / husband and the two witnesses examined by him had proved the conduct of the appellant / wife as pleaded and their testimony could not be shattered inspite of lengthy cross-examination; rather no material question was put by the appellant / wife to the respondent / husband or his witnesses in cross-examination; (ii) that though the respondent / husband had deposed that the appellant / wife left the matrimonial house on 16th November, 1999 without his consent but this statement was not controverted in cross-examination and thus is deemed to have been accepted by the appellant / wife; (iii) that similarly there was no cross-examination of the respondent / husband on his efforts to get the appellant / wife back to his house; (iv) that the two other witnesses being the relatives of the respondent / husband have also supported the grounds on which dissolution of marriage was sought; (v) that though the appellant / wife, in written statement had pleaded that she wants to live with the respondent / husband, but in cross-examination clearly stated that she was not willing to live with the respondent / husband; (vi) that though the appellant / wife deposed that she had been thrown out of the matrimonial home on 16th November, 1999 when she was pregnant but the said deposition did not inspire confidence inasmuch as no complaint thereof was made by the appellant / wife or her family members and no family member of the appellant / wife was examined; (vii) that the appellant / wife had not even deposed that she had attempted re-conciliation; (viii)

that it thus stood proved that the appellant / wife left the matrimonial house without reasonable cause and with intent not to return and never attempted to return thereafter and in evidence also showed unwillingness / refusal to return; and, (ix) that the appellant / wife had not shown any reasonable cause for living separately. Hence dissolution of marriage by a decree of divorce.

19. I have perused the affidavits by way of examination-in-chief of the witnesses examined and their cross-examination and am unable to find that the conclusions drawn by the learned ADJ therefrom are erroneous or such which no reasonable person could have reached.

20. Rather, the lackadaisical manner in which the appellant / wife is found to be conducting this appeal, also confirms the same.

21. Though the counsel for the appellant / wife also argued that the respondent / husband is continuing to pay maintenance at the rate of Rs.1800/- per month when the daughters of the parties, in the custody of the appellant / wife is of 18 years of age but the appellant / wife, for the last nine years since when this appeal is pending, has not filed an application in this proceeding for any additional maintenance or enhancement of maintenance. Today however the counsel for the appellant / wife has raised the said aspect.

22. Though I have again tried for resolution of disputes on monetary terms but the counsel for the respondent / husband has stated that the respondent / husband is not earning anything and is himself living at the mercy of his family members and is not in a position to pay any lumpsum amount to the appellant / wife or to his daughter and / or for settling the

daughter.

23. The appellant / wife can always, even after the disposal of this appeal, if entitled to any additional maintenance, seek the same.

24. It is also quite evident from the aforesaid that the parties are living separately for the last about two decades and even today no possibility of the parties residing together can be found.

25. In the aforesaid state of affairs, I am of the opinion that no case for interference with the impugned judgment and decree is made out.

Dismissed.

No costs.

26. The counsel for the respondent / husband at this stage states that the application of the respondent / husband under Section 24 of the Act seeking maintenance from the appellant / wife is pending consideration.

27. Considering the fact that the appellant / wife is single handily bringing up the daughter of the parties and the respondent / husband has been paying maintenance for the last two decades of only Rs.1800/- per month, no case for awarding any maintenance to the respondent / husband from the appellant / wife is made out and the application under Section 24 of the Act is dismissed.

RAJIV SAHAI ENDLAW, J.

JULY 12, 2018

‘gsr’..