$~38

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

% *Date of Judgment: 12th October, 2018*

\+ MAT.APP(F.C.)269/2018

KAILASH CHANDRA SHARMA ..... Appellant

Through Mr. Randhir Singh and Mr. S.K. Gupta, Advocates

versus

SMT. RAGINI ..... Respondent

Through Mr. Manee Mridul, Mr. Achintya Dvivedi and Mr. B.P. Pandey, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. ***(ORAL)***

CM APPL 42806/2018 (exemption)

1. Exemption is allowed, subject to all just exception.

2. The application stands disposed of.

MAT.APP(F.C.)269/2018

3. Challenge in this appeal is to the order dated 24.09.2018 passed by the Family Court, by which a petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights has been rejected on the ground of territorial jurisdiction. The impugned order dated 24.09.2018, reads as under:

> "Ms. Rajkotia submits that this court has wrongly taken a view in another previously filed petition, between the present parties bearing No.794/17, that territorial jurisdiction does not lie in this court.

However, the present being a petition under section 9 of HMA, the court may assume the jurisdiction for the reason that respondent in her WS in the previous petition, in para 13 had pleaded that she is ready to join the company of the petitioner. It is argued that the aforesaid pleading of the respondent indicate that she is willing to join the company of the petitioner at Delhi, therefore, the matrimonial home was Delhi. Ms. Rajkotia, therefore, submits that this court has the territorial jurisdiction to entertain the petition.

I have given my thoughtful consideration to the submission made by Ms. Rajkotia. However, the court still holds the view which it has expressed in order dated 18.07.2018, while allowing the application under Order 7 Rule 11 CPC in HMA No.794/17. This court, therefore, does not have the territorial jurisdiction.

The petition is rejected under Order 7 Rule 11 CPC.

File be consigned to record room."

4. Learned counsel for the appellant submits that, in fact, both the parties are interested in residing together, i.e., both the parties wish to seek restoration of conjugal rights under Section 9 of the Hindu Marriage Act. It is contended that since the appellant resides in Delhi, he has invoked the territorial jurisdiction of this Court.

5. The reasons for rejecting the petition finds mentioned in an earlier order between the same parties dated 18.07.2018. Paras 5, 6, 7 and 8 read as under:

"5. I have heard ld. Counsels for both the parties and with their assistance, I have perused the record and the statement of the petitioner.

6. From the statement of the petitioner, which is recorded on oath, it can be gather that both the parties were working at

different stations and had not made up mind for a particular place to be their matrimonial home. None of them had planned to seek transfer to the place of posting of the other. Respondent visited the husband for the first time in February 2017, after about 2 months of marriage, when they both went to Haridwar, Uttarakhand. Thereafter, respondent visited Delhi in March 2017 to sit for a competitive exam. Both of these visits can not be held to be for the purpose of residing or living together. In her first visit, they had both gone to Haridwar, Uttarakhand together and the second visit was for taking an exam.

7. It is respondent's last visit from 27.04.2017 to 03.05.2017, on which petitioner invokes the jurisdiction of this court. In his statement, petitioner has stated that she had stayed with him after taking leave from the office. It is, therefore, not his case that respondent had shifted base, to start living with him. For a party to invoke jurisdiction u/sec.19 (iii) of the HMD, it has to be established that the parties resided together with the intention of giving the place some semblance of permanency. Short visit, after taking leave of the office would only qualify to be a casual visit. This 5-6 days long visit, which was the first by the respondent to the house of petitioner would not clothe this court with the territorial jurisdiction, when no permanency was sought to be attached to this place of visit. It is not the case of the petitioner that respondent intended to seek a job in Delhi or a transfer in Delhi or that she intended to take a long leave from her office. This court is, therefore, of the opinion that petitioner can not invoke the round of 'last resided together' as provided for u/sec.19(iii) of the HMA to invoke territorial jurisdiction of this court.

8. In the aforesaid facts & circumstances, application u/o 7 Rule 11 CPC is allowed. Present petition is, thus not maintainable before this court. The same is rejected exercising power u/o 7 Rule 11 CPC with liberty to the

petitioner to file the same before the court of competent jurisdiction."

6. At this stage, learned counsel for the appellant submits that the parties are interested to stay together and the appellant would approach the respondent and, therefore, no further orders are required to be passed in this appeal.

7. Accordingly, the appeal is dismissed as not pressed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

OCTOBER 12, 2018
pst

HIGH COURT OF DELHI
सत्यमेव जयते