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

+ **MAT.APP.(F.C.) 205/2019 & CM APPL. 34190-34191/2019**

JAMES SHAW

..... Appellant

Through Mr. Manu Sishodia and Mr. Hitesh
Saini, Advocates

versus

NUTAN PURI

..... Respondent

Through None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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30.07.2019

1. The appellant is aggrieved by the judgment dated 14.05.2019, passed by the learned Judge, Family Court, District Central, Tis Hazari dismissing a petition filed by him for grant of divorce under Section 10(1) (ii) and (ix) of the Indian Divorce Act, 1869.
2. Twin grounds are taken by the appellant for seeking divorce from the respondent. Firstly, that during the subsistence of their marriage that was solemnized on 25.07.1981, at the Baptist Church, Idgah, Delhi according to the Christian Rites, she has performed a marriage with someone else and has changed her 'religion' from 'Christianity' to 'Puri' and thus ceased to be a 'Christian'. The second plea taken is that the respondent has deserted the appellant and the parties have been living separately since the year 1988.

3. The averments made by the appellant in the divorce petition are that the respondent did not pay due respect to him and his family members as was expected from a newly wedded bride; that she was rude and callous, that she harassed the appellant mentally and physically, to the point that in the year 1988, when his parents fell ill, he left for his native place at Palampur, Himachal Pradesh but she refused to accompany him.

4. Notice was issued by the learned Family Court on the petition filed by the appellant whereafter, the respondent had entered appearance. Efforts were made to resolve the dispute between the parties which did not bear any positive result. Thereafter, the respondent had filed a written statement taking certain preliminary objections as to the maintainability of the petition. On merits, the respondent stated that the appellant used to take drugs and return home late at night and he used to harass and torture her. In view of the aforesaid circumstances, she was constrained to take employment as an LDC in the Teachers Training Institute, Darya Ganj, Delhi but the appellant used to insist that she hand over her entire earnings to him and on her refusing to do so, assaulted her. Due to the said conduct of the appellant, his parents had also thrown him out of the joint family house and on 23.11.1986, the parties had to move to a premises in Mayur Vihar, Delhi. In less than 3 months thereform i.e. in February, 1987, the appellant had deserted the respondent and her children and never returned thereafter.

5. It is an undisputed position that the marriage of the parties was performed on 25.07.1981 in Delhi according to Christian rites and ceremonies and two children were born from the wedlock. Both the children

have all along remained with the respondent and by now have attained majority.

6. It is a matter of record that sometime in the year 1989, the respondent had filed a petition seeking judicial separation from the appellant (HMA. 187/1989). Pertinently, notice was issued on the said petition to the appellant. Despite service, he elected to stay away from the said proceedings. Resultantly, he was proceeded against ex-parte on 27.04.1989. After the ex-parte evidence was led by the respondent, the learned ADJ passed the judgment dated 05.07.1989 granting a decree of judicial separation in favour of the respondent herein and against the appellant, on the ground of cruelty and desertion. On enquiring from the learned counsel for the appellant as to whether his client had taken any steps to challenge the judgment dated 05.07.1989, he states that no steps were taken by him.

7. After the pleadings were completed in the divorce petition, the respondent had stopped appearing and she was proceeded against ex-parte vide order dated 23.04.2018. The appellant was permitted to lead ex-parte evidence. He entered the witness box and deposed but did not produce any other witness. After examining the evidence on record and upon considering the pleas taken by the parties, the Family Court rejected the claim of the appellant that the respondent has ceased to be a 'Christian', had converted herself to another religion and had got remarried. A reference was made to the petition for dissolution of marriage jointly filed by the appellant and the respondent on 17.01.2018, under Section 10A (1) of the Indian Divorce Act, 1869, i.e., after the date the appellant had filed the divorce petition, wherein

the respondent/wife has been shown to be 'Christian'. The said petition was duly signed by both the parties and is supported by their respective affidavits. It was therefore held that the appellant had failed to prove that the respondent had converted from Christianity to some other religion and therefore the said ground was not available to him for seeking dissolution of the marriage. We do not find any error in the conclusion drawn by the learned Family Court. Till last year, when both the parties had filed a joint petition for divorce, the respondent's religion has been mentioned therein as "Christian". This was five years after the appellant had filed the divorce petition before the Family Court where he claimed that she had converted her religion. This itself falsifies the first plea taken by the appellant for seeking divorce from the respondent.

8. As for the second ground taken in the divorce petition to the effect that the respondent had deserted the appellant for a period of 2 years prior to filing of the divorce petition, the Family Court has rightly observed that the onus was on the appellant to prove the said fact but on perusing the averments made in para 13 of the petition, it transpired that it was the appellant who had left the company of his wife in the year 1988 and had proceeded to his native place at Palampur, Himachal Pradesh, purportedly to look after his ailing parents. The appellant never turned back to join the company of the respondent and his two minor children who remained in Delhi.

9. The Family Court held that no evidence was brought on record by the appellant to demonstrate that the respondent had created such circumstances

that had forced him to leave her company. Rather, the evidence brought on record amply demonstrates that it was the appellant who had abandoned the respondent and his two minor children as long back as in the year 1988, and had never returned. Now the appellant wants to take advantage of his own wrong doing and lay the blame at the door of the respondent, which is impermissible.

10. Having perused the impugned judgment and the documents referred to by the learned counsel for the appellant, we are of the opinion that there is no error or infirmity in the impugned judgment that deserves interference in appeal. While upholding the impugned judgment, the present appeal is dismissed alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

JULY 30, 2019/rr