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

Decided on: 20th May, 2019

+ **CONT.CAS(C) 387/2018**

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..... Petitioner

Through: Petitioner in Person

versus

P.B.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The petitioner is present in person and states that he wishes to argue the petition without the assistance of counsel.
2. In the present petition, the allegation of the petitioner-husband is that the respondent-wife has committed contempt of an order passed by the Family Court dated 02.05.2014 by which their marriage was dissolved under Section 28(1) of the Special Marriage Act, 1954. The argument is that the respondent has filed proceedings against the petitioner under the Protection of Women from Domestic Violence Act, 2005, in which she has made statements contrary to those which were recorded at the time of dissolution of marriage.
3. The marriage of the parties were solemnized in 24.08.2011 under the Special Marriage Act, 1954. They filed the petition for divorce on 23.04.2014 wherein it was *inter alia* stated as follows:-

“1. That the marriage between the parties was solemnized on 24/08/2011 under Section 13 of the Special Marriage Act, 1954. The said marriage was consummated thereafter and the parties co-habited as husband and wife at the matrimonial home i.e. WZ 1033 GALI NO. 13 SADH NAGAR PALAM.”

4. Before the Court, the parties made the following statement recorded on 02.05.2014:-

“Joint Statement of Dr. Mukul, S/o. Sh. Piyush, R/o.A 9, Neeti Bagh, New Delhi-49, petitioner no.1 and Smt. Preeti Bhatia, W/o. Dr. Mukul, R/o. WZ 1130, Sadh Nagar Palam, New Delhi-45, petitioner no.2.

On SA

We the petitioners were married on 24.08.2011 under Section 13 of the Special Marriage Act, 1954 Copy of Marriage Certificate is Ex.P 2(OSR). No child was born from the union. We have been living separately since inception due to temperament differences and attitude and there is no cohabitation between us. Efforts for reconciliation had been made by the parties, relatives, friends and the Court, but all in vain. We undertake to abide by terms and conditions enumerated in the petition. There has not been any cohabitation between us from the date of our separation. We have settled all our disputes and claims with regard to the dowry, stridhan and the past, present and future maintenance amicably, as per the terms and conditions mentioned in the petition i.e. Ex.P-1, which bearing signature of petitioner No.1 and 2 at points A and B.

We further undertake that we shall abide by our statement made in the Court and the terms and adhere to conditions mentioned in the petition i.e. Ex.P-1, which bears signature of petitioner No.1 and 2 at points A and B. For identification, petitioner No.1 has placed photocopy of his Voter I-card, same is Ex. P 3(OSR). For identification, petitioner No.1 has placed photocopy of her I-card, Ex.P-4 (OSR). There is no collusion between the parties in filing of this petition. Our consent has not been obtained by threat,

pressure or coercion, force, fraud or undue influence. Full and final settlement of all our disputes has been made. We pray that our petition u/s.28 (1) of the Special Marriage, 1954 may be allowed as compromise has been effected between us as we have resolved all our differences and have decided to part ways and seek divorce, consequently our marriage may be dissolved by a decree of divorce by mutual consent.

*Sd/-
Petitioner No.1*

*Sd/-
Petitioner No.2”*

5. After recording the aforesaid statement, the Family Court passed an order dissolving the marriage. It was recorded *inter alia* that the parties had been living separately “since inception due to temperament differences and attitude and there is no cohabitation between them.” It was also recorded that the parties have undertaken to abide by the terms and conditions set out in the petition.

6. The respondent has thereafter filed proceedings under the Protection of Women from Domestic Violence Act, 2005, wherein she has tendered an affidavit of evidence which, according to the petitioner, contains statements which are contrary to the statements recorded at the time of settlement and thus violate the undertaking given by the respondent to the Court. In particular, the petitioner refers to the paragraphs 4 and 7 of the affidavit of evidence tendered by the respondent in those proceedings. They are reproduced below :-

“4. That the deponent states that the Respondent No.1 and his family members again hatched a conspiracy against the complainant by not performing the marriage of the deponent and the Respondent No.1 as per the social norms and preferred to clandestinely hush-up the marriage within the four corners of the office of the marriage registrar. The deponent had already fallen from grace and had no other choice but to

follow the dictate of the Respondent No.1 and his family members, with a solace in mind that ultimately she will have a loving husband and a family of in-laws to provide social and emotional security. That immediately after the marriage the deponent was taken to matrimonial home i.e., A-9, Niti Bagh, Delhi and marriage was consummated between the parties at the said address on 24.08.2011. The deponent was suave and naïve and did not know the game plan of the Respondents.

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7. *That the deponent further submits that both the deponent and the Respondent No.1 lived in tenanted premises and the Respondent No.1 has been strolling the deponent from one tenanted premises to the other, without paying for its rent or making any provision for the deponent to survive. In the process he has been playing as a melodramatic husband by his histrionics before the deponent with crocodile tears only to procure the blanket signatures on the blank documents, i.e. white papers, non-judicial stamp papers, promissory notes, complete booklet of cheque books of the complainant's bank account, property related papers, filing the colluded documents in the court of law without the knowledge of the complainant etc., to name a few as the list is not exhaustive (Charge sheet filed in FIR 25/15, is exhibited as Ex.CW1/6)."*

8. The contention of the petitioner is that, in view of the joint statements of the parties recorded on 02.05.2014 that they have been living separately since inception and their undertaking to abide by the settlement made in Court, the assertion of the respondent that she was taken to her matrimonial home at A-9, Neeti Bagh, Delhi, is false and contumacious in character. According to the petitioner, it is also contradictory to the divorce petition.

9. The contempt petition is in respect of evidence tendered by the respondent herein, in proceedings which are still pending. It is stated by the petitioner that the respondent has not yet been cross-examined in those

proceedings. In my view, the appropriate course in such a situation is for the petitioner to cross-examine the respondent on her evidence rather than for the Court to proceed in contempt. As noted above, the joint petition for divorce filed by the parties itself recorded that the marriage had been consummated and the parties cohabited as husband and wife at the matrimonial home at WZ 1033, Gali No. 13, Sadh Nagar Palam.

10. The statement of the parties recorded in Court does not refer specifically to any address of cohabitation but to a general assertion that the parties had been living separately since inception and that, as on the date of the making of settlement, there was no cohabitation between them. It is this statement that has also been recorded in the judgment of the Family Court and the parties' undertaking to abide by their settlement has been accepted. To the extent that the evidence subsequently tendered by the respondent refers to the fact that, after the marriage, the deponent was taken to her matrimonial home at A-9, Neeti Bagh, Delhi and the marriage was consummated between the parties at the said address on 24.08.2011, it is not, in my view, a breach of the undertaking given to the Court in the context of the statement made in the divorce petition.

11. Similarly, in paragraph 7 of the affidavit of evidence also, the respondent's statement that the parties live in tenanted premises and that the petitioner herein "has been strolling the deponent from one tenanted premises to another" is not *ex facie* contrary to the said undertaking. The veracity of the statement otherwise will, as stated above, have to be decided in the pending proceedings.

12. The petitioner has also drawn my attention to the order passed by this Court on 29.11.2018 in an prior contempt petition filed by the petitioner. The order of the Court in that case was as follows:-

“Based on joint statement of parties, first motion has been granted by the matrimonial court vide judgment of 2nd May, 2014. Respondent, during first motion in the joint statement recorded on 2nd May, 2014, had categorically stated that she has settled all disputes and claims with regard to dowry, instridhan and the past, present and future maintenance amicably. However, she has thereafter chosen not to come forward for second motion and instead thereof, lodged an FIR against petitioner in year 2015 and in proceedings before the criminal court, she has stated on oath on 3rd October, 2017 that after first motion, petitioner had asked for ₹25,00,000/- while undertaking to return this money before second motion, but sum of ₹25,00,000/- has not been returned by petitioner.

On a query put to petitioner, it is disclosed that respondent is yet to be cross-examined before the criminal court.

Upon hearing, this Court finds that instead of entertaining this contempt petition, it would be appropriate if petitioner cross-examines respondent before the criminal court while relying upon the joint statement of 2nd May, 2014 as there is change in fact situation subsequently.”

13. In my view, like the first contempt petition filed by the petitioner, the present petition also does not disclose a case for contempt proceedings.

14. The contempt petition is therefore dismissed. However, it is clarified that the observations in this order are only for the purpose of deciding the present petition.

PRATEEK JALAN, J.

MAY 20, 2019/‘pv’