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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAT.APP.(F.C.) 21/2020 & C.M. APPL. 2199-2202/2020**
ARNOLD ANIL DANIEL Appellant
Through: **Mr. Shahbaz Ahmad, Advocate**

versus

CHHAYA RANI SINGH Respondent
Through: **None**

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

ORDER
% **20.01.2020**

1. The appellant/husband is aggrieved by an order dated 09.12.2019 passed by the learned Principal judge, Family Court, Patiala House Courts, New Delhi whereunder the application moved by him for seeking recall of the order dated 20.08.2019 has been dismissed as meritless.

2. This is the second appeal filed by the appellant/husband against the order of the Family Court. Previously, the appellant had filed MAT. APP. (F.C.) 246/2019 assailing a consent order dated 20.08.2019 passed by the learned Family Court whereby an application moved by the respondent/wife for seeking amendment to the title of a divorce petition filed by her against the appellant on the grounds of cruelty and desertion, from "Special Marriage Act, 1954" to "Indian Divorce Act, 1869", on the ground that both the parties were Christian at the time when their marriage was solemnized,

was allowed. The captioned appeal was dismissed by this Bench with the following observation:-

“MAT.APP.(F.C.) 246/2019 & C.M. No. 42171/2019 (stay) and C.M. No. 42172/2019 (exemption)”

1. Learned counsel for the appellant states that the impugned order dated 20.8.2019, has wrongly recorded the consent given of the counsel for the appellant/husband to the amendment suggested by learned counsel for the respondent/wife in the petition. He states that Mr. G. Ali Khan, Advocate, who was appearing on behalf of the appellant before the learned Family Court, has filed his personal affidavit (placed at page 148 to 150 of the appeal paper book) stating inter alia that he had never given any consent that the petition filed by the respondent/wife be decided as per the Indian Divorce Act.

2. If this is the stand of the counsel appearing for the appellant/husband, then nothing prevented him from filing an application before the learned Family Court pointing out that he had not given any consent to the change of the title of the petition from one filed under the Special Marriage Act to one under the Indian Divorce Act. It is not for the Appellant Court to go behind the order dated 20.8.2019, more so, when the presence of counsel on both sides has been duly reflected in the said order.

2. We are not inclined to entertain the present appeal on the ground sought to be urged before us to the effect that no such consent was given by the appellant as recorded in the order dated 20.8.2019. If the appellant has a grievance that the Family Court had made an error in recording the consent of his counsel when none was given, then it is for him and his counsel to approach the learned Family Court by filing an appropriate application.

3. *At this stage, learned counsel for the appellant seeks leave to withdraw the present appeal while approaching the learned Family Court by filing an appropriate application.*

4. *Leave as prayed for is granted. The appeal is dismissed along with the pending applications.”*

3. Learned counsel for the appellant states that after the order dated 20.09.2019 was passed by this Bench, the appellant/husband moved an application before the learned Family Court on 01.11.2019, for seeking recall of the order dated 20.08.2019, claiming *inter alia* that his counsel had not given any consent / no objection for amendment of the title of the divorce petition filed by the respondent/wife from one under Section 27 of the Special Marriage Act, 1954 to one under Section 10 of the Indian Divorce Act, 1869.

4. Though, learned counsel for the appellant has not filed the order sheet of 01.11.2019, he orally submits that on the said date, counsel for the respondent/wife had sought time to file a reply to the application and the same was adjourned to 09.12.2019. On 09.12.2019, learned counsel for respondent/wife had submitted that she did not wish to file any reply. However, proxy counsel appearing for the counsel for the appellant/husband had sought an adjournment on the ground that the arguing counsel was not available, but he was not accommodated. The learned Family Court, on perusing the contents of the application for recall of the order dated 20.08.2019 opined that in view of the clear no objection given by the counsel for the appellant/husband, there was no merit in the said application.

Aggrieved by the order dated 09.12.2019, the appellant has filed the present appeal.

5. Learned counsel for the appellant/husband states that the learned Family Court had ignored the settled legal position that an application for seeking amendment of a petition at a belated stage of trial, is not maintainable. He seeks to explain that by the time the respondent/wife had filed an application for amendment of the title of the divorce petition, her evidence had already been concluded and the appellant/husband was appearing in the witness box as DW-1, after he had filed his affidavit by way of evidence. In fact, he was under cross examination when the said application was allowed. He submits that converting the petition, originally filed by the respondent/wife under Section 27 of the Special Marriage Act, 1954 to a petition under the Indian Divorce Act, 1869, would be to the detriment of the appellant/husband, more so when the evidence of the respondent/wife has already been concluded. Learned counsel further states that a preliminary objection was taken by the appellant/husband in the reply filed by him in reply to the divorce petition filed by respondent/wife stating *inter alia* that the marriage between the parties was solemnised as per the Christian ceremonies and rites. Therefore, the respondent/wife could not have invoked the provisions of Section 27 of the Special Marriage Act, 1954, to maintain a divorce petition against the appellant/husband.

6. A perusal of the pleadings before the Family Court does show that the respondent/wife had originally filed the divorce petition under Section 27 of the Special Marriage Act, 1954 and had stated in the title itself that the said

petition was being filed on the grounds of cruelty and desertion on the part of the appellant/husband. In para No.2 of the divorce petition, the respondent/wife had stated that she was a Christian before the marriage and at the time of the filing of the divorce petition and has described the appellant/husband as a Christian at the time of the marriage and a Hindu at the time of filing the divorce petition. Learned counsel for the appellant/husband points out that in the corresponding paras of the reply it was specifically averred by the appellant/husband that he continues to remain Christian by faith, but despite that the respondent/wife did not take necessary steps to amend the divorce petition.

7. We are of the view that once the grounds on which the divorce petition was filed by the respondent/wife originally under Section 27 of the Special Marriage Act, 1954 are the very same grounds that are available under Section 10 of the Indian Divorce Act, 1869, for seeking dissolution of marriage of persons professing Christian religion, no prejudice has been caused to the appellant/husband only on the ground that the title of the divorce petition filed by the respondent/wife was permitted to be rectified by describing the same as one filed under the Indian Divorce Act, 1869, more so when it has not been disputed by the appellant/husband that the parties are Christian by faith and they had solemnized their marriage on 19.11.1997, under the signatures of the Pastor-in-Charge, Methodist Church, Delhi Cantt.

8. In view of the aforesaid position and having regard to the fact that the order dated 20.08.2019 passed by the Family Court, specifically records that

the learned counsel for the appellant/husband had given ‘No Objection’ for the rectification of the title of the divorce petition from ‘Special Marriage Act, 1954’ to ‘Indian Divorce Act, 1869’, we see no reason to entertain this appeal which is accordingly dismissed in *limine* along with the pending applications.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 20, 2020

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