

18 02.03.2021
as

**S.A.18 of 2020
With
CAN 1 of 2018 (Old CAN 7086 of 2018)**

**Abdul Hamid Mir
Vs.
Arjubanu Khatun**

Mr. Debashis Roy,
Mr. Bidyut Baran Biswas.

...for the Appellant.

The concurrent findings of fact recorded by both the courts below is sought to be challenged in the instant second appeal solely on the ground that the appellate court before admitting the additional evidence and marking the document as exhibit must afford an opportunity to cross-examine the defendant/respondent.

At the first blush, we thought that the aforesaid point appears attractive but after going through the materials available on the record and the certified copy of the depositions of the plaintiff/appellant, we do not think that such point takes a front seat. The entire matter can be decided without looking or taking any clue from the additional evidence.

The plaintiff/appellant filed a suit for negative declaration that the defendant/respondent is not his married wife. It is alleged that he was employed in Delhi and could

come in contact with the respondent/defendant who offered better employment within the State of West Bengal. In pursuit of better future, the plaintiff/appellant gave his photographs and some documents to the brother-in-law of the defendant/respondent and also put the signature on the blank paper which has now been utilised for the purposes of the marriage with the defendant/respondent. In reality, there was no marriage performed between the parties and the claim of the respondent/defendant is fabricated and/or concocted.

On the other hand, the defendant/respondent contested the said proceeding and it is all along the specific stand of the said respondent/defendant that the marriage was solemnised according to the Muslim Rites and Customs and a joint application was made to the Marriage Registrar and the marriage certificate was subsequently issued. The said certificate was filed in the case and marked exhibit. She further contended that the complaint was lodged with the local police station which was registered as first information report and a case was started under Sections 376/417 of the Indian Penal Code against the plaintiff/appellant which upon submission of

the charge sheet was committed to sessions trial. The judgement of the criminal sessions case was also tendered in evidence and was marked exhibit without any objection.

The trial court held that the story set up by the plaintiff/appellant is unbelievable and found that there was, in fact, the solemnisation of the marriage between the parties. Before the appellate court, the defendant/respondent took out an application for additional evidence seeking to rely upon the depositions in the criminal sessions case where there was an admission on the part of the plaintiff/appellant on the solemnisation of the marriage.

Mr. Roy, learned Advocate appearing for the appellant heavily relies on the portion of the findings made by the first appellate court on the acceptance of the additional evidence and marking the certified copy of the depositions in the criminal sessions case as exhibit. According to Mr. Roy, the judgment of the appellate court is based upon the new document produced as an additional document without affording an opportunity to cross-examine the witness and also to give an evidence on the clarification and explanation to such depositions made therein.

It is no doubt true that while permitting the parties to produce additional evidence at the appellate stage, the court must permit the other side to have its version on such additional evidence. If the document is sought to be received in evidence for the purposes of marking exhibit, such document unless admitted by the other side should be tendered by the witness and an opportunity to cross-examine such witness should also be afforded.

There is no fetter on the part of the appellate court to take additional evidence itself without relegating the matter to the trial court. However, while we gave second thought over the matter, we find that the ultimate decision of the appellate court cannot be faulted with even on disregarding the additional evidence. The judgment of the criminal sessions case was tendered in evidence in the trial court and was exhibited. The relevant excerpts recorded therein exemplify the nature of the evidence as well as the stand of the accused and the victim.

It was all along the specific stand of the respondent/defendant that though the element of cohabitation came before the marriage but subsequently they married each other and the

sessions court found that there is no illegality in the cohabitation of the husband and wife. The civilised society permit so. Subsequently the criminal case was dismissed leading to an acquittal order of the plaintiff/appellant.

We are not unmindful of the proposition of law, that the judgement of the criminal court does not bind the civil court. Even we disregard the same, the evidence of the plaintiff/appellant is required to be seen for the purpose of ascertaining the correctness of the statement made in the plaint. In the cross-examination, the plaintiff/appellant himself admitted that he applied for registration of the marriage between him and the defendant before the Muslim Marriage Registrar. He further deposed that his parents did not agree to the marriage with the defendant/respondent and also admitted the joint photographs put on the marriage certificate.

This part of the evidence goes directly in conflict with the stand taken in the plaint. If the plaintiff/appellant himself has admitted that he applied for registration of the marriage, it runs counter to the story set up by him that the brother-in-law of the defendant/respondent took the photographs and the signature on some blank

documents for the purpose of his employment within the State of West Bengal. If such evidence is taken, it belied the stand of the plaintiff/appellant that the marriage was never solemnised and the certificate issued by the Marriage Registrar is a manufactured document. Such admission cannot be overlooked and, therefore, we find that the decision of the appellate court in dismissing the appeal cannot be said to be infirm and/or illegal. We do not find any substantial question of law involved in the instant appeal.

Accordingly, the appeal is dismissed at the stage of Order XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal, connected application is also dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Kausik Chanda, J.)

