

\$~10.

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

+

Date of Decision: 15.09.2021

% **MAT.APP.(F.C.) 87/2021**

AJAY DUBEY

..... Appellant

Through: Mr. Pradeep Kumar, Advocate.

versus

ANNAPURNA

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

VIPIN SANGHI, J. (ORAL)

1. At the outset, learned counsel for the appellant states that the respondent is also present with him during the virtual hearing in his office. She has also appeared.
2. The present appeal is directed against the orders dated 08.10.2020 and 19.11.2020 passed by Ms. Ruby Alka Gupta, learned Single Judge, Family Court, East District, Karkardooma Courts, Delhi in HMA 1701/2020 jointly preferred by the parties under Section 13-B of the Hindu Marriage Act, 1955 to seek Divorce by mutual consent. The impugned orders were passed by the Family Court while dealing with the Second Motion Petition under

Section 13B(2). The First Motion Petition under Section 13B(1) had been entertained and allowed by the same Family Court vide order dated 13.12.2019.

3. The two impugned orders read as follows:-

“08.10.2020

File perused.

As per jurisdiction para noted in the petition, the present court does not have jurisdiction. Ld. Counsel seeks time to move an amendment application.

Matter be listed for further proceedings on 19.11.2020.

19.11.2020

No amendment application has been filed. Sh. Pradeep Kumar Yadav, Ld. Counsel for petitioner no. 2 states that there is no need for amendment application. It is stated that this is a petition of second motion and follows the petition for the first motion and therefore it need not specify how this court has jurisdiction.

The present petition states in para 23 “that the petitioners submit that the Hon’ble court has the jurisdiction to entertain and try this petitioner”. The petition does not give to the court any ground whatsoever on which the present court is stated to have jurisdiction. As regards the contentions of Mr. Pradeep Kumar Yadav, every petition stands on its own legs. Since both the Ld. Counsel are unwilling to amend the present petition and the present petition, as it stands today, does not tell the court how the court has jurisdiction, the court is constrained to dismiss the present petition.

Present petition thus stands dismissed. File be consigned to record room.”

4. The submission of learned counsel for the appellant is that the appellant/ Ajay Dubey is residing at House No. 610, Top Floor, G.D. Colony, Mayur Vihar, Phase-3, New Delhi-110096, which falls within the territorial jurisdiction of the Family Court concerned. He submits that while moving the First Motion Petition, an error had crept in the para relating to the territorial jurisdiction of the Family Court.

5. Learned counsel for the appellant has shared the First Motion Petition during the hearing of this appeal. The said relevant para of the First Motion Petition, being paragraph No. 21, reads as follows:

“21. That the marriage was solemnised at Railway colony, Rafiganj, Bihar and lastly cohabited at but petitioners No. 2 is residing at Shweta PG, Rjiva Nagar, Gurgaon presently within the legal limits of the ordinary original Jurisdiction of this Hon’ble Court. Thus, the Hon’ble Court has jurisdiction to try this petition.”

6. Learned counsel submits that the Family Court, considering the fact that the appellant is residing within the territorial jurisdiction of the said Family Court, assumed jurisdiction and allowed the First Motion Petition on 13.12.2019. No objection to the territorial jurisdiction was raised – either by the parties, or by the Court.

7. The parties thereafter moved the Second Motion Petition, and the same error crept into the Second Motion Petition, inasmuch, as, with regard to the territorial jurisdiction, it was stated in para 22 as follows:-

“22. That the marriage was solemnised at Railway colony, Rafiganj, Bihar and lastly cohabited at but petitioners No. 2 is residing at Shweta PG, Sector 14, Gurgaon presently within the legal limits of the ordinary original Jurisdiction of this Hon’ble

Court. Thus, the Hon'ble Court has jurisdiction to try this petition."

8. Learned counsel submits that when the Second Motion Petition was taken up by the Family Court, the Family Court raised a hyper technical objection to the territorial jurisdiction of the Court, by observing that as per the jurisdiction para noted in the petition, the present Court does not have the jurisdiction.

9. The appellant pointed out that he was residing within the jurisdiction of the Family Court and, therefore, the Family Court had jurisdiction. It was also pointed out that the Court had already assumed jurisdiction and allowed the First Motion Petition, and, therefore, to raise such an objection at this stage was not permissible. Despite that, the matter was adjourned to 19.11.2020 for filing of an amended application. On 19.11.2020, once again, the Court was informed that the Court had territorial jurisdiction inasmuch, as, the appellant was residing within the jurisdiction of the Court, as also the fact that the Family Court had already assumed jurisdiction and allowed the First Motion Petition. Yet, the Family Court proceeded to dismiss the Second Joint Motion Petition on the ground of territorial jurisdiction.

10. We have perused both the First and Second Motion Petitions. There is no doubt that there was a drafting error – as extracted hereinabove, in both these petitions, with regard to the territorial jurisdiction of the Family Court. The relevant paragraph was not drafted with application of mind. At the same time, in both these petitions, the appellant had disclosed his address 04 Mayur Vihar Phase-3, New Delhi. There was no dispute in this regard.

However, the Family Court chose to ignore the said fact and despite the fact that the same Court had already assumed jurisdiction without any objection from any quarter, and the First Motion Petition had been allowed by the same, it proceeded to dismiss the Second Motion Petition.

11. In our view, the approach of the Family Court was narrow, pedantic and mechanical. The Family Court is obliged to function so as to relieve the parties of the suffering that they are going through on account of matrimonial disputes. It is expected to act with due application of mind and without being hypertechnical about matters brought before it. The Family Court should have a litigant friendly approach, and function in the spirit of helping parties resolve their disputes – either mutually, or through the Courts determination. We may also note that senior and experienced Judicial Officers are posted as Principal Judges of the Family Courts, with the expectation that they will display legal acumen and maturity in dealing with matrimonial and custody disputes.

12. We are not suggesting that the Family Court will assume territorial jurisdiction, if it does not have it, whether, or not, an objection is raised by one or the other party. However, the objection to the territorial jurisdiction must be raised at the earliest opportunity. The Court having assumed jurisdiction, cannot at a later stage, refuse to exercise its jurisdiction by raising the said objection, when neither party raises it.

13. The two motions under Section 13B(1) and 13B(2) of the Act form part of the same petition, as is evident from the language of Section 13B(1). It states that “...*a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a*

*marriage together.....” (emphasis supplied) and Section 13B(2) states “On the motion of both the parties made not earlier than six months **after the date of the presentation of the petition referred to in sub-section (1).....”** (emphasis supplied). Raising of objection to the territorial jurisdiction of the Court is generally barred, unless initially raised. On this aspect, we may only refer to a recent judgment of the Supreme Court in ***Sneh Lata Goel Vs. Pushplata & Ors.***, (2019) 3 SCC 594. In this case, the objection to the territorial jurisdiction of the Court was raised before the Executing Court. The Supreme Court, *inter alia*, held as under:-*

“12. In assessing the merits of the rival submissions, it would, at the outset, be necessary to advert to the provisions of Section 21 CPC.

“21. Objections to jurisdiction.—(1) No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing court with reference to the local limits of its jurisdiction shall be allowed by any appellate

or Revisional Court unless such objection was taken in the executing court at the earliest possible opportunity, and unless there has been a consequent failure of justice.”

13. *Sub-section (1) of Section 21 provides that before raising an objection to territorial jurisdiction before an appellate or revisional court, two conditions precedent must be fulfilled:*

- (i) The objection must be taken in the court of first instance at the earliest possible opportunity; and*
- (ii) There has been a consequent failure of justice.*

This provision which the legislature has designedly adopted would make it abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied.

x x x x x x x x x x

23. *The objection which was raised in execution in the present case did not relate to the subject-matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. An executing court cannot go behind the decree and must execute the decree as it stands. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1970) 1 SCC 670], the petitioner filed a suit in the Court of Small Causes, Ahmedabad for ejecting the defendant tenant. The suit was eventually decreed in his favour by this Court. During execution proceedings, the defendant tenant raised an objection*

that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was a nullity. The court executing the decree and the Court of Small Causes rejected the contention. The High Court reversed the order of the Court of Small Causes and dismissed the petition for execution. On appeal to this Court, a three-Judge Bench of this Court, reversed the judgment of the High Court and held thus: (SCC pp. 672-73, paras 6 & 8)

“6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

*

*

*

8. ... If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.”

24. In this background, we are of the view that the High Court was manifestly in error in coming to the conclusion that it was within the jurisdiction of the executing court to decide whether the decree in the suit for partition was passed in the absence of territorial jurisdiction.” (emphasis supplied)

14. Nothing prevented the Family Court from noticing the fact that the appellant was residing at Mayur Vihar, Phase-3, New Delhi, which fell in its territorial jurisdiction. It is not uncommon to find parties representing

themselves before the Family Court, who may not be well aware of the procedures. It is precisely for this reason, that the strict rules of evidence and procedure are not made applicable to Family Courts. In a proceeding under Section 13B of the Act, both parties are in the same position i.e. in the position of Petitioners, or Respondents. Therefore, merely because the party residing within the territorial jurisdiction of the Family Court was arrayed as the Petitioners, and not the Respondent, would not make any difference. The Family Court has also not considered and taken cognizance of the fact that the same Court had assumed jurisdiction and even exercised it, when the petition under Section 13B was first entertained, and the First Motion was allowed by it. Therefore, it had jurisdiction in the matter, and an objection to the territorial jurisdiction of the Court could not have been raised by anyone – including by the Court, at the stage of the Second Motion. The order passed by the same Family Court on the Petition during the First Motion continues to remain on the file, and that has not been set aside or recalled. With the passing of the impugned orders, the Family Court has, therefore, created an anomaly, inasmuch, as though the First Motion in the Petition has been allowed by the same Family Court, the Second Motion in the same Petition has been dismissed, on account of assumed lack of territorial jurisdiction.

15. In our view, the Family Court has failed to exercise its jurisdiction which it was bound to. We, therefore, allow the present appeal and set aside the impugned orders. We restore HMA No. 1701/2020 before the Family Court, Karkardooma Courts, Delhi. The parties shall appear on 22.09.2021 before the Family Court for consideration of the Second Motion Petition.

16. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

JASMEET SINGH, J

SEPTEMBER 15, 2021

kd

