



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 13th September, 2022
Pronounced on: 28th September, 2022

+

MAT.APP.(F.C.) 108/2021, CM APPL. 40621/2021 (Stay)
& CM APPL. 40622/2021 (Delay)

SMT. POOJA DUBEY

..... Appellant

Through: Mr. Mahesh Srivastava with
 Mr. Vaibhav Manu Srivastava,
 Advocates

versus

SH. MANISH KUMAR

..... Respondent

Through: Mr. Manjeet Singh Bhamra,
 Advocate (through video
 conferencing)

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

CM APPL. 40622/2021 (Delay)

The present application under Section 5 of the Limitation Act has been filed on behalf of the appellant, seeking condonation of delay of 35 days in filing the present appeal. In view of the facts and circumstances of the case and averments made in the application, the delay is condoned and the application is allowed.

The application is disposed of accordingly.

**MAT.APP.(F.C.) 108/2021 & CM APPL. 40621/2022 (Stay)**

1. The present matrimonial appeal under Section 19 of The Family Courts Act, 1984 has been preferred against judgment dated 19.12.2019 passed by Shri Dinesh Bhatt, Judge, Family Courts (West), Tis Hazari, Delhi in HMA No. 1124/2014, whereby petition filed by respondent under Section 9 of The Hindu Marriage Act was allowed and a decree for restitution of conjugal rights was passed in favour of the respondent and against the appellant.

2. Necessary facts for determination on the present appeal are as follows:-

(i) The respondent herein (hereinafter referred to as husband) had preferred a petition under Section 9 of The Hindu Marriage Act 1955 seeking restitution of conjugal rights. It was the case of the husband that marriage between the appellant and the former was solemnized on 03.03.2012 at Shri Bharat Mandir, Jamuna Bazaar, Delhi-110006 according to hindu rights and rituals. It was stated in the petition by the husband that the said marriage was against the wishes of their respective parents, but they were hopeful that after disclosure of their marriage, their respective parents might approve and accept them as husband and wife. Although the husband was able to convince his parents, but the parents of the appellant did not approve of the same and did not allow the appellant to join the husband at their matrimonial home. Consequently, the husband initiated necessary steps, including a writ petition in the nature of *habeas corpus* which was disposed of by Division Bench of this Court by recording the fact



that the appellant had refused to accompany the husband. It is also on record that the appellant had filed a writ petition seeking to restrain the husband from publishing, circulating and using photographs and documents with respect to their marriage which was disposed of by learned Single Judge of this Court, on the statement made by the learned counsel for the husband that the photographs and documents regarding marriage would not be circulated in public except that they may be used by the husband in any litigation before a Court of law. As per the petition under Section 9 of The Hindu Marriage Act, 1955 preferred by the husband, the appellant was under pressure from the family members and refused to join his company as his wife and therefore, the remedy available to him under Section 9 of The Hindu Marriage Act, 1955 was sought by way of the aforesaid petition.

(ii) In the written statement filed by the appellant before the Family Court in response to the aforesaid petition, under Section 9 of The Hindu Marriage Act 1955, the appellant primarily took a stand that there was no valid marriage. The marriage photographs and her signatures on the documents were forcibly obtained. It was also the case of appellant that marriage was performed in absence of essential ceremonies like “saptapadi” and therefore, it was not solemnized as per Hindu Law.

(iii) After completion of pleadings in the aforesaid petition bearing no. HMA 1124/2014, the learned Family Court framed following three issues:-



“i) Whether the Court has got jurisdiction to entertain the present petition. Onus on respondent?”

ii) Whether legal and valid marriage was solemnized between the parties. Onus on the parties?”

iii) Whether the petitioner is entitled to restitution of conjugal rights U/s 9 of HMA. Onus of petitioner?”

(iv) The learned Family Court, after examining the evidence on record including the testimony of the witnesses and the documents exhibited, returned the finding on all issues in favour of the husband. With regard to issue no. (ii), the learned Family Court, in the impugned judgment dated 19.12.2019, records as under:-

“Petitioner's case is that he was knowing respondent; they had long courtship period and had been meeting secretly and talking on phone with each other. They, without involving or informing their parents, on 03.03.2012 solemnized their marriage at Arya Samaj Mandir according to Hindu rites and customs at Bharat Mandir, Jamuna Bazar, New Delhi. Thereafter, both the parties went to their respective homes without disclosing this fact to their parents and decided that they would disclose the same to their parents in a conducive manner and try to win them over for their decision of marriage. However, on 05.03.2012, petitioner received a phone call from respondent at 11:00PM, where he heard screams of respondent and he could make out that she was being beaten mercilessly. Thereafter, he could not contact respondent at any point of time. He tried his level best but found that respondent had been missing. He got worried and therefore, filed a complaint with the police and subsequently filed writ petition before the Hon'ble High



Court which was withdrawn with liberty to approach the appropriate court for seeking remedy as per law.

Respondent's case is that she had never married petitioner. Petitioner in connivance with some persons called her from her house on 3rd March 2012 at about 11:00AM and asked her to accompany him to meet her uncle in AIIMS hospital with her Aadhaar and Rations cards for entering in the hospital. She believed petitioner and therefore, accompanied him but on route petitioner threatened her and under pressure, she followed petitioner's instructions and allowed him to take photographs with garlands in the Mandir. There, she was also forced to put thumb impressions and signatures on blank papers. Thereafter, petitioner dropped her at her house and after about one month when petitioner circulated their marriage photographs and marriage certificate, her family members decided to file writ petition before the Hon'ble High Court, wherein petitioner was restrained from circulating the photographs and documents relating to marriage except for using the same before Court of law. Petitioner in this regard deposed as per his petition and produced the marriage certificate (Ex.PW1/1), marriage photographs (Ex.PW1/2) and the affidavits filed by both the parties (Ex.PW3/A collectively) in respect of the marriage and also examined the Purohit as PW3, who had performed the marriage as well as produced the original records relating to the marriage of the parties of Arya Samaaj Vedic Pracharak Samiti, Bharat Mandir, Yamuna Bazar, Delhi.

The marriage photographs as well as the certificate in question are not disputed though respondent's plea is that she had never given her consent for marriage, her marriage photographs were taken under petitioner's pressure and threat and that marriage certificate was not valid as no legal marriage was performed nor essential



ceremonies like 'Saptapadi' had been performed for the marriage. In this regard, on the issue of marriage ceremonies and photographs, there was no cross-examination of Pandit (PW3) to this effect, who specifically stated that he performed marriage of parties as per Shashtra and had performed large number of marriages. There was no specific cross-examination relating to performance of saptapadi of this witness. He was merely given suggestions that he had not performed the marriage ceremony between the petitioner and respondent or that there was no legal or valid marriage performed by him. Respondent has taken a specific stand that she is not an Arya Samaji and the marriage ceremony as per Hindu customs had not been carried out but there is also no specific cross-examination of the witness on this aspect. Thus, PW3's version in regard to marriage as per Hindu rights and customs stands substantiated on record. Further, even PW1 specifically mentioned in his cross-examination mentioned that he had taken steps before the sacred fire, sindoor was poured in the Maang of respondent and he also exchange garlands with respondent for fulfilling the requirement of marriage ceremony as per Hindu rites. Marriage photographs (Ex.PW2/2) are also clear to the extent that petitioner and respondent are seen performing ceremonies near the sacred fire. The marriage certificate of the parties is Ex.PW1/1 which is proved by PW1, PW3 and PW4. Thus petitioner has reasonably proved that necessary ceremony as per Hindu rites and customs had been performed between the parties on the date of marriage i.e. 03.03.12.

Respondent's second plea is that the marriage in question was carried out under pressure and threat of the petitioner, therefore, there was no legal marriage between the parties. Petitioner denied the plea and stated that they were in love relationship and had decided to marry but had concealed this fact from their parents and



therefore, they had secretly gone from their homes along with all documents and. returned back after the marriage and had decided that they would try to win the hearts of their parents and make them agree for their marriage and thereafter tell them about the actual facts. However, before this could happen, respondent's parents gave beating to respondent and forced her to leave their house and did not allow respondent to meet petitioner. PW1 supported his case and similarly RW1 also deposed in terms of the her abovesaid defence but in her the cross-examination admitted that she had been residing at her native village and had recently come to Delhi to live with her parents, brother, sister and uncle. Thus it is difficult to believe that respondent without much acquaintance completely believed on the petitioner and decided to go to hospital to see her uncle that too without asking or informing her family about this. Further, even, if the respondent's version is believed to be correct, then there is no explanation as to why respondent did not immediately inform her parents about the petitioner's conspiracy, when she return back to her home after few hours of the marriage in question. There is also no explanation, why no complaint was lodged with the police or any steps had been taken In this regard. Respondent should also have been aware that petitioner could misuse her documents, photographs, signature etc. which admittedly had been taken in her presence but no steps were taken by her in this regard. Respondent even failed to examine any of her family members or Uncle to prove her defence that she had gone to visit her uncle on the said date. There is also no documents filed on record to prove this fact.

Respondent also stated that she had filed a writ petition before the Hon'ble High Court, wherein petitioner was stopped from circulating or using the marriage photographs/documents except for legal proceedings. Petitioner also stated that he had also filed



writ petition and during the proceedings of the writ petition filed by both the parties and parties were called to the chamber of the Hon'ble Judges and respondent had denied to go with the petitioner and both the writ petition was disposed off. Respondent has mentioned the sum and substance of her writ petition in para no.2 of her evidence affidavit (Ex.RW1/A) and also placed on record the copy of the order dated 16.08.2012 of the said writ petition (Ex.RE1/A) wherein it is clearly mentioned that the "Hon'ble Judges had called the parties to the chamber and it is recorded that they had spoken to Pooja in the chamber in the presence of Ms. Rakhi Dubey, Advocate. Subsequently, Manish Kumar was also called in the Chamber and he spoke to them and tried to speak to Pooja. Pooja clearly stated that she does not want to go and reside with Manish Kumar". The matter was thereafter withdrawn by the petitioner with liberty to take appropriate legal steps. The aforesaid proceedings are silent about respondent's plea of forcible marriage. There is also no explanation, why this fact was not brought to the notice of Hon'ble Court at the first instance. Further, in any case, if respondent's plea is taken to be correct, there is no explanation, why respondent had not taken any steps for declaring the marriage, marriage certificate as null and void at any point of time. RW1 in cross-examination also mentioned that her father, uncle and brother were working but her mother and sister used to reside at home in the year 2012. Thus, there is no explanation, why respondent had not informed any of her family members before leaving the house on the date in question or had not informed her family members even when she had returned back to her home after the alleged forcible marriage in question. The photographs (Ex.PW1/2) also show respondent to be normal and is seen exchanging sweets with the petitioner. Thus respondents contention that she was forcibly made to perform marriage ceremony is even not supported from the photograph in question. She also admitted in her



cross-examination that she had never lodged any complaint in the year 2012 or any point of time thereafter against the petitioner or his family members in this regard. She was also shown copy of statement (Mark-E), which she denied but mentioned that her thumb impression was taken on a blank paper by the petitioner in a temple in Delhi. Respondent's conduct in this regard clearly suggest that she was a willing party when she left her house with the petitioner and performed marriage ceremony and returned back to her home.

The entire facts in question support petitioner's version and there is nothing on record to substantiate respondent's plea of her forcible marriage. Accordingly, issue no (ii) is decided in favour of the petitioner and against the respondent.”

(v) Since the aforesaid issue no. (ii), wherein the marriage of the parties was held to be legal and valid was held in favour of the husband, issue no. (iii) was accordingly decided in favour of the husband and against the appellant as the Family Court held that the appellant was residing separately from the husband, without justification.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant has reiterated the same issues raised before the learned Family Court, i.e. the validity of the marriage, both with respect to the non-performance of essential ceremonies and her forcible consent.

5. Learned counsel for the appellant, however, could not demonstrate from the pleadings and the documents on record that the findings of the Family Court were erroneous or that the



appreciation of the evidence in the impugned judgment suffers from any illegality or perversity.

6. We have gone through the impugned judgment and the material on record and concur with the findings of the Family Court as reproduced hereinbefore. It is pertinent to note that the appellant in her evidence by way of affidavit, in paragraph 4, has stated; *“The petitioner is not entitled to live with me because the petitioner is not my husband.”* We agree with the findings of the learned Family Court that the appellant did not lead any evidence to support her claim with respect to the marriage between the parties being invalid, nor did she lead any evidence to prove reasonable excuse for her residing separately from the respondent.

7. Section 9 of The Hindu Marriage Act, 1955 reads as follows:-

“9. Restitution of Conjugal right.- *When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

Explanation — Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.”



A bare perusal of the explanation to Section 9 shows that the burden of proving reasonable excuse would be on the person who has withdrawn from the society of her/his spouse.

8. It is also an admitted situation that the appellant till date has not filed any proceeding challenging the marriage between the parties under The Hindu Marriage Act, 1955 or under any other provision of law in support of claims made in the written statement filed before the learned Family Court.

9. In view of the above, we see no reason to interfere with the impugned judgment dated 19.12.2019 passed by Shri Dinesh Bhatt, Judge, Family Courts (West), Tis Hazari, Delhi in HMA No. 1124/2014 filed by the respondent under Section 9 of The Hindu Marriage Act, 1955.

10. Accordingly, the present matrimonial appeal is dismissed and disposed of accordingly. Pending applications, if any, also stand disposed of.

AMIT SHARMA
JUDGE

SIDDHARTH MRIDUL
JUDGE

SEPTEMBER 28, 2022/ab