



\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decided on: 11th April, 2022

+

MAT.APP.(F.C.) 123/2021**MOHIT MITTAL**

.....Appellant

Represented by: Appellant in person.

versus

KANIKA JAIN

..... Respondent

Represented by: Mr. Yakesh Anand & Ms.
Deepshikha Sansanwal, Advocates.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****NEENA BANSAL KRISHNA, J. (ORAL)**

1. The present appeal has been filed by Mr. Mohit Mittal (*hereinafter referred to as 'appellant'*), against the order dated 05th December, 2020 of learned Principal Judge, Family Court, East District, Karkardooma, Delhi dismissing the appellant's application under Order VI Rule XVII of Civil Procedure Code (*hereinafter referred to as 'CPC'*) for impleading Sh, Vijaydeep Siddharth, the alleged adulterer and parents of Ms. Kanika Jain (*hereinafter referred to as 'respondent'*) as the party to the proceedings.
2. Facts in brief are that the appellant got married to respondent on 27th April, 2016 at Delhi and got separated on 02nd July, 2016. A petition for annulment of marriage under Section 12 (1) (c) read with Section 13(1) (ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'the Act, 1955'*) was filed by the appellant essentially on the grounds that the respondent was



having pre-marital affair with one of her colleagues which continued after her marriage and even after the respondent left the matrimonial home. The respondent's behaviour reflected that she had planned for a divorce even before the marriage and had played a fraud.

3. During the trial, the appellant moved an application under Order VI Rule XVII of CPC, which was orally requested to be treated under Order I Rule X of CPC. The appellant had sought to implead Mr. Vijaydeep Siddharth, the colleague of the respondent, along with Mr. Surya Kant Jain and Mrs. Kamlesh Jain, the parents of the respondent being necessary and proper party to the petition.

4. The learned Principal Judge, Family Court observed that the main relief sought is under Section 12 (1) (c) of the Act, 1955. Though in the alternative, a prayer had been made for divorce on the ground of cruelty under Section 13(1) (ia) of the Act, 1955 but no specific grounds of adultery have been pleaded. In the circumstances, the alleged adulterer cannot be added as a party. Furthermore, in the entire petition, there were no specific allegations against the parents of the respondent being a party to the alleged fraud in getting the marriage of the respondent performed with the appellant. The application was dismissed by observing that neither the adulterer nor the parents of the respondent, are necessary parties to adjudicate the petition.

5. The appellant filed CM (M) No. 1026/2021 against the Order dated 05th December, 2020 but the same was dismissed by the learned Single Judge on 16th November, 2021 by observing that the impugned order passed by the Family Court was not an interlocutory order and, therefore, it was amenable to appeal under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as the Act, 1984). Moreover, learned Senior Counsel



appearing on behalf of the respondent submitted that the question whether the impugned order is an interlocutory order or not is to be determined by the Division Bench of this Court, as the jurisdiction to hear appeals under Section 19 of the Act, 1984 lies with the Division Bench. Consequently, the appellant withdrew his CM (M) No. 1026/2021 petition.

6. The present appeal under Section 19 of the Act, 1984 has now been filed by the appellant against the impugned Order which is essentially under Order I Rule 10 C.P.C.

7. Submissions heard.

8. The object of Order I Rule 10(2) CPC is to bring on record all persons in order to determine the dispute completely without any protraction, inconvenience and also to avoid multiplicity of proceedings. In this context, the application of the appellant for impleadment has to be considered.

8. The appellant had filed a petition for annulment of marriage under Section 12(1) (c) of the Act, 1955, subsequently, by way of amendment dated 13th November, 2018, he had taken an alternative plea of divorce on the ground of cruelty under Section 13(1) (ia) of the Act, 1955. The appellant has placed reliance on **Clause 12 of Gazette Notification No. 262/Gaz./OSD (R) dated 06th October, 1980 of High Court Rules and Orders, Volume-II**, which reads as under:

“12. Necessary parties—(a) In every petition for divorce/judicial separation on the ground that the respondent has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall make the alleged adulterer or adulteress a co-respondent to the petition. The petitioner may, however, apply to the Court, on application supported by an affidavit, for leave to dispense with the joinder of such person



as a co-respondent on any of the following grounds:

(i) That the name of such person is unknown to the petitioner although he/she has made due efforts for discovery;

(ii) That such person is dead;

(iii) That the respondent being the wife is leading a life of a prostitute and that the petitioner knows of no person with whom voluntary sexual intercourse has been committed; or

(iv) Any other reason that the Court considers sufficient.

9. The appellant has sought divorce on the ground of cruelty; adultery as a ground for divorce was never pleaded. The alleged adulterer is, therefore, neither necessary nor proper party and Clause 12 of Delhi High Court Rules is not applicable to the facts in hand.

10. The appellant has placed reliance on the decisions of Karnataka High Court in Arun Kumar Agarwal vs. Radha Arun & Anr. ILR 2004 KAR 808 and Lt. Col. Rajiv Shankar vs. Soumya Nair & Another, W.P. (C) 12336/2014 and the decision of Allahabad High Court in Udai Narain Bajpai vs. Smt. Kusum Bajpai reported in 1974 AIR 1975.

11. In Arun Kumar Agarwal (supra) it was held that in a divorce petition under Section 13(1)(i) on the ground of having voluntary sexual intercourse with any person other than the spouse, the presence of the adulterer would enable effective and complete adjudication to settle all questions involved in the petition. It was further observed that the adulterer is only a proper and not a necessary party. Similarly, in Uday Narain Bajpai (supra) and Lt. Col. Rajiv Shankar (supra), the divorce petition had been filed on the ground of adultery besides other grounds. These judgments do not help the appellant



since the divorce in the present case has not been sought on the ground of adultery.

12. In the present case the learned Principal Family Judge has observed that there are no specific allegations of adultery and the divorce is sought on the ground of cruelty. Therefore, the alleged adulterer is neither necessary nor a proper party.

13. The appellant has also sought annulment of marriage under Section 12(1) (c) on the ground of fraud having been perpetrated upon him by the respondent while entering into the marriage. The annulment of marriage is an issue between the appellant and the respondent; whether the respondent committed fraud in connivance with her parents is a matter of evidence. As also noted by learned Principal Judge, Family Court, there are no specific averments in the petition in regard to the role of the parents of the respondent in the alleged fraud and hence, have rightly been held as neither necessary nor proper party to the present appeal.

14. We do not find any merit in the present appeal and the same is dismissed in the aforesaid terms.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 11, 2022
S.Sharma