

\$~4

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

%

Judgment delivered on: 12.12.2022

+ **MAT.APP.(F.C.) 187/2022**

BHIM SEN

..... Appellant

versus

MUKUL KUMAR & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr.A.K.Bakshi, Advocate.

For the Respondent: None

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 52083-2022

1. Exemption is allowed, subject to all just exceptions.

MAT.APP.(F.C.) 187/2022

2. The petition filed by the Appellant under Section 7(1) (b) of the Family Courts Act, 1984 seeking declaration that Respondent no.1 remains legally and validly married to respondent no.2 as on the date of the application, has been rejected as not being maintainable.

3. The Appellant had filed the subject petition under Section 7(1) (b) of the Family Courts Act contending that he is a retired Lieutenant

Colonel, and his daughter aged 28 years got married to Respondent no.1 on 16.08.2016 without his consent, and on the premise that he was not married.

4. It is contended in the petition that he subsequently learnt that Respondent no.1 had filed a petition seeking restitution of conjugal rights against Respondent no.2 wherein he had contended that he was married to Respondent no.2 as per Hindu Rites and Customs. It is submitted that in the said petition it is contended that Respondent nos.1 and 2 have continued to remain as husband and wife in the eyes of law as no decree of dissolution of marriage had taken place. In these circumstances, a declaration was sought that respondent no.1 was legally and validly married to Respondent no.2 as on date.

5. An application was filed by Respondent no.1 under Order VII Rule 11 CPC on the ground that petition was filed without any cause of action. In reply to the application, Appellant had contended that his daughter was subjected to deceitful and unlawful marriage ceremonies by way of suppression of fact and inducement and has forced his daughter to cohabit with Respondent no.1, which was an offence under Section 493 IPC.

6. The Family Court has noticed the contention of the Appellant that his daughter had married without his consent. The court also held that the daughter of the Appellant was a necessary party to the proceedings and she had not approached the court or pleaded any disability which prevented her from approaching the court, and despite

opportunity, Appellant had failed to implead his daughter as a party, and accordingly, the court held that petition as made out was not maintainable and, accordingly, rejected the same.

7. Before us, learned counsel for the Appellant contends that explanation (b) to Section 7(1) of the Family Courts Act, 1984 was not maintainable at the behest of third party also, and it was not necessary for the parties to the marriage to be impleaded in the proceedings.

8. The main grievance of the Appellant, as emanating from the pleadings is that his daughter has married without his consent to an already married man. Petition discloses that daughter was aged 28 years when she got married.

9. Appellant has filed an application under Order XLI Rule 27 CPC. Along with the application, a statement of the daughter of the appellant recorded on 24.02.2022 has been placed on record. The statement is recorded in criminal proceedings initiated by the wife of the Appellant i.e., the girl's mother against Respondent No. 1.

10. In her statement, the daughter of the Appellant, has categorically stated that she got married with Respondent no.1 in August 2016, and after their marriage, she has been living with her in-laws and has given birth to a baby boy in 2018. She has specifically stated that on the date of her marriage, she was aware that her husband was already married. She had stated that after her marriage she had made a complaint to the concerned Deputy Commissioner of Police against her parents as she had got married as per her own wishes and

had sought police protection for herself, her husband and his family members.

11. The tenor of the petition as well as the statement of the daughter shows that the real grievance of the Appellant, which is that his daughter has married against his wishes. The daughter of the Appellant is living with her in-laws and has also been blessed with a baby boy. The whole purpose of this petition is to seek a declaration qua the marriage of the husband of the daughter with another woman with the sequitur that the Appellant shall thereafter seek a declaration of nullity of the marriage of his daughter. As noticed by the Family Court, the daughter is not coming forward making any complaint or grievance against Respondent No.1. Appellant has no locus to seek a declaration qua the marriage of third parties.

12. Subject petition has been filed under Section 7(1) (b) of the Family Courts Act. The Family Courts Act is a procedural statute and not a statute determining the rights and obligations of parties. The Family Courts Act is a statute primarily laying down the setting up of Family Courts, and procedure to be followed by the Family Courts.

13. Section 8 of the Family Courts Act confers exclusive jurisdiction on the Family Court in respect of proceedings referred to in Section 7 of the said Act. Section 7, lays down that Family Court shall have exclusive jurisdiction to entertain any suit or proceeding of the nature referred to in the explanation thereto. The explanation to

Section 7 merely lays down the various types of suits or proceedings that are to be exclusively tried by the Family Court.

14. Explanation to Section 7 of the Family Court Act does not lay down the rights or obligations of the parties but it is merely an indication of the types of Suits or Proceeding which would lie before the Family Court.

15. Since Explanation to Section 7 of the Act does not lay down the rights or obligations of parties, a substantive petition under Section 7 would not be maintainable. A petition filed seeking enforcement or protection of rights or obligation conferred by a substantive statute shall be tried by a Family Court set up under the Family Courts Act.

16. Accordingly, in the absence of Appellant having any legal right or obligation conferred by a substantive statute, subject petition filed by the Appellant simplicitor under Section 7 of the Family Courts Act would not be maintainable.

17. Appellant has not specified either before the Family Court or this Court as to which is the legal right or obligation and under which substantive statute that he is seeking enforcement of.

18. As noticed hereinabove subject petition has been filed by the father seeking a declaration qua the marital status of a person who his daughter has married against his wishes with another woman. Appellant is clearly a stranger to this relationship and has no locus. None of his rights and obligations are affected.

19. During arguments, learned counsel for the Appellant conceded that a substantive petition would not be maintainable at the behest of the Appellant under Section 9 to 13 of the Hindu Marriage Act, which petition would be maintainable only by the parties who are in a marital relationship.

20. Reliance placed by learned Counsel for the Appellant on the judgment of the High Court of Judicature at Bombay in the case of '*Nayana M Ramani Vs. Fizzah Navnitlal Shah*', 2021 SCC Online Bom 385 to contend that a third party can file a petition under Explanation to Section 7(1) of the Family Courts Act is clearly misplaced. Said judgment is clearly not applicable to the facts of the present case.

21. The petition in *Nayan M Ramani (supra)* was filed by a daughter after the demise of her father seeking a declaration qua the alleged marriage of her father with the respondent therein who had allegedly married her father after the demise of her natural mother. The respondent therein had allegedly got executed various documents from her late father and wanted to usurp all his properties after his demise. In those circumstances, the Court considered the provisions of Explanation to Section 7(1) and held that the petition would be maintainable.

22. The facts of the said case are completely at variance. The High Court of Judicature at Bombay was not considering a situation like the present one where the daughter of the Appellant who is living with her

husband and in-laws and also has a child, is not coming forward to challenge the status of marriage but her father in an indirect manner wants determination of the status of her marriage.

23. Further, reliance placed by learned counsel for the Appellant on Order dated 15.03.2019 in a petition filed by respondent nos. 1 and 2, whereby the declaration sought by them that their marriage is null and void has been declined, is of no consequence. It in fact reveals the true intention of the Appellant and that is to somehow get a declaration that the marriage of his daughter with Respondent no. 1 is a nullity, when such a declaration is not being sought by his daughter. It may also be kept in mind that the Appellant's daughter had filed a complaint to the Police seeking protection for herself, her husband and his family from her parents. Even her mother had filed a criminal complaint against Respondent No. 1 in which she had supported her husband and his family and deposed against her own parents.

24. Learned counsel is also not able to inform as to whether any appeal has been filed by the Respondents against the said order, and if so, what was the fate thereof. In any event, said order does not call for any comment from this court in these proceedings.

25. Appellant is a complete stranger to the relationship between Respondent No. 1 and 2 and he cannot be permitted to spoil the martial relationship between his daughter and Respondent No. 1 particularly when there is also a child from the said relationship.

26. In view of the above, we are of the opinion that there is no infirmity in the view taken by the Family Court in holding that the petition in the present form is not maintainable, particularly, at behest of the Appellant.

27. Accordingly, we find no merit in the appeal, and the appeal is consequently, dismissed.

CM APPL. 52086-2022

28. Since we have already taken into account the said documents, the application is allowed.

CM APPL. 52084/2022 and 52085/2022

29. Since we have dismissed the petition on merits, the applications stand disposed of.

SANJEEV SACHDEVA, J

RAJNISH BHATNAGAR, J

DECEMBER 12, 2022/ib