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

% ***Date of decision: 22nd September, 2023***

+ **MAT.APP.(F.C.) 15/2022**

VIJAY SHARMA Appellant

Through: Mr. Sumit Kaushik, Advocate.

versus

KUMKUM SHARMA Respondent

Through: Mr. P.K. Bhardwaj & Mr. Anshu
Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 7750/2022 (Condonation of delay)

1. The present Application under Section 5 of the Limitation Act has been filed on behalf of the applicant/appellant seeking condonation of 21 days' delay in filing the present appeal.

2. For the reasons and grounds stated in the present application, the application is allowed. The delay of 21 days in filing the present appeal is condoned.

3. Accordingly, the present application is disposed of.

MAT.APP.(F.C.) 15/2022

4. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant (who was the petitioner/ husband in the petition) against the Judgment dated 07.03.2020 passed by the learned



Family Judge, Dwarka Courts, New Delhi, wherein the Petition of the appellant under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights, was dismissed.

5. The appellant got married to the respondent/ wife on 17.07.2014 at Arya Samaj Mandir, Sector-7, Naharpur, Delhi according to Hindu customs and rites for which a Certificate of Marriage was issued by the Arya Samaj Mandal. The respondent being aware that her family members were not agreeing to the marriage, gave an intimation/complaint to the SHO, Tatarpur, District Alwar, Rajasthan stating that her parents were not permitting to get married with the appellant.

6. According to the appellant, after the marriage, they started living together as husband and wife, but on the very next day i.e., 18.07.2014, the father of the respondent came to their house and took the respondent away on the pretext that he would himself perform their marriage with pomp and show in the presence of relatives and friends. Since the respondent did not return, the appellant requested the father of the respondent many a times to organize their reception and send back the respondent, so that they could continue in their matrimonial life. However, all the efforts of the appellant went in vain, as the father of the respondent refused to send her back. The appellant was shocked to know that the respondent had also refused to join his company and wanted to forget about the marriage. Threats were extended by the family of the respondent to implicate him in false cases. Thus, the appellant was left with no option but to file the Petition under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights.

7. The respondent/ wife in her Written Statement claimed that there was



no marriage performed between the appellant and the respondent and her signatures were forcibly obtained on some papers by the appellant under threat. It was asserted that she had been abducted from her residence in Alwar, Rajasthan on gunpoint and brought to Delhi by the appellant where she was raped. Subsequently, she was recovered by the Rajasthan Police and FIR No. 89/2014 under Section 366/376 IPC (*hereinafter referred to as* “IPC, 1860”) was registered on 22.07.2014 in which the appellant is facing trial.

8. The respondent denied having given any intimation to the SHO, Police Station Tatarpur, District Alwar, Rajasthan. She denied not only her factum of marriage but also that she and the appellant ever lived together as husband and wife for one night. It was thus, claimed by the respondent that the Petition under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights, be dismissed.

9. The issues, on the basis of pleadings, were framed on 25.01.2017 which read as under: -

“1. Whether the respondent has withdrawn from the society of the petitioner without any reasonable excuse? OPP.

2. Relief.”

10. The appellant examined himself as PW1 and proved the marriage photographs Ex. PW1/1, the copy of the Marriage Certificate Ex. PW1/2, the copy of the Matriculation Certificate of the respondent Ex. PW1/3, the copy of the letter written to SHO Police Station Tatarpur, District Alwar, Rajasthan Mark X, the copy of self-written note Mark X1 and the copy of Driving Licence of the appellant Ex. PW1/6.

11. The testimony of the appellant was corroborated by PW2/Honey



Bhutani, President of Arya Samaj Marriage Mandal, Naharpur, Rohini, New Delhi, who had produced the documents presented by the parties at the time of solemnization of marriage, which are Ex.PW2/1 (Colly).

12. PW3/Geeta Yadav and PW4/Vinod Sharma were the two witnesses to the marriage and had corroborated the testimony of the appellant.

13. The respondent in her testimony as RW1 had denied the factum of marriage.

14. The **learned Judge, Family Court** considered the evidence of the witnesses of the appellant and concluded that the testimony of PW2/Honey Bhutani coupled with that of the two witnesses to marriage i.e., PW3/Geeta Yadav and PW4/Vinod Sharma did not inspire confidence and held that the factum of marriage was not proved. Consequently, the Petition under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights, was dismissed.

15. Aggrieved by the Judgment dated 07.03.2020, the present Appeal has been preferred by the appellant/ husband.

16. **Submissions heard from learned counsels for the parties and the documents perused.**

17. The appellant claiming himself to be the husband of the respondent, has sought the restitution of conjugal rights. In order to be successful, the appellant has to prove "*the factum of marriage*" and that the respondent has withdrawn from his society without "*any reasonable excuse*".

18. In order to prove that the appellant had got married to the respondent, he has deposed in his affidavit of evidence Ex.PW1/A that he and the respondent had known and liked each other and thus, wanted to marry. He deposed that they got married in the Arya Samaj Mandir, Sector-7, Naharpur



from their own will and wish and without any coercion or pressure. As they were aware that the family members of the girl were not agreeable to this marriage, the respondent gave an intimation to the SHO Police Station Tatarpur, District Alwar, Rajasthan which was Ex.PW1/4 (also Ex.PW1/R-2) but the same was de-exhibited and marked X, since the original was not produced. *Vide* this letter, it was informed that she got married to the appellant on 17.07.2014 according to the Hindu rites and customs, out of her own will. She expressed an apprehension that since her parents were against the marriage, they may take aggressive steps against her and the appellant and may lodge a complaint against them.

19. The appellant was confronted with the said Intimation in his cross-examination when it was marked as Ex PW1/R2. The appellant was unable to either produce the Postal Receipt *vide* which the said complaint was sent to SHO Police Station Tatarpur, District Alwar, Rajasthan and admitted that the complaint had no date. Though the appellant submitted that he had the Postal Receipt *vide* which he could establish the date on which the Intimation was sent and prove the same, but the said Receipt was never produced.

20. The appellant had also relied on a hand-written Note by the respondent marked as X1, at the back of Ex. PW1/R2 but again neither was this document proved nor the date and to whom it was submitted. In this Note as well, it was stated that she had got married to the appellant without any coercion or pressure on 17.07.2014 in the presence of the witnesses. However, the respondent in her testimony denied the hand-written note and asserted that it was not in her writing, but she admitted her signatures and thumb impression on the same by stating that they were obtained forcibly.



21. The Intimation and handwritten Note which were allegedly sent by the respondent were not proved by the appellant. Moreover, the respondent in her testimony has denied having written any intimation to the SHO Police Station Tatarpur, District Alwar, Rajasthan, but she had claimed that her signatures were obtained forcibly on some documents and a blank sheet.

22. Be that as it may, though the appellant may not have been able to prove the Intimation given to the SHO Police Station Tatarpur, District Alwar, Rajasthan by the respondent, what is most significant for consideration is whether they indeed got married on 17.04.2014.

23. According to the testimony of the respondent as RW1, she had been forcibly abducted in the midnight of 16.07.2014 by the appellant. She deposed that in the night, she was going to the toilet when the appellant from behind put his handkerchief on her mouth due to which she became unconscious. Thereafter, the appellant put the respondent in the car and brought her to Delhi. Significantly, in her statement under Section 161 of Cr.P.C., 1973 recorded in FIR No. 89/2014, she had asserted that she was brought to Delhi by the appellant on the motorcycle. Had she become unconscious, she could not have been brought to Delhi on motorcycle. Even if for the sake of arguments, it is believed that she may have become unconscious, it is difficult to accept that she remained unconscious throughout, considering the distance between Delhi and Alwar, Rajasthan or to accept that she had no opportunity to protest along the way.

24. It is pertinent to observe that in the statement under Section 313 Cr.P.C., 1973 of the respondent which is Ex.RW1/1, the question that was put to the appellant that when the father of the respondent found her to be missing, he took the mobile number of the father of the appellant from



the neighbour and called him, but when the father of the respondent did not give any response, he became suspicious. Thereafter, the father of the respondent went to the Police Station and reached the house of the father of the appellant with the Police and recovered the respondent. The respondent was then brought to Tatarpur, District Alwar, Rajasthan, where the FIR was registered under Sections 363/366/376 of IPC, 1860.

25. In this regard, it would be pertinent to refer to the testimony of PW1 who also deposed that the father of the girl had reached their house on 18.07.2014 and on the assurance of getting them married, had taken the respondent back. Though the respondent has narrated in her statement that the police was involved by her father to find her, no missing complaint on the relevant dates of 17.07.2014 or 18.07.2014 have been brought on record by the respondent. Pertinently, the FIR against the appellant for kidnapping and rape was registered only on 22.07.2014 i.e., after about 5 days of the alleged abduction of the respondent.

26. The testimony of the appellant and the statement under Section 313 Cr.P.C., 1973 Ex.RW1/1 proves that the appellant was working in Alwar District and met the respondent at the place of work and developed love. Being conscious that the father of the respondent may not agree to the wedding, they both came to Delhi in the night of 16.07.2014 with an intent to get married. This is corroborated by the testimony of PW3/Geeta Yadav, witness to the marriage who had deposed that she had been approached in the morning on 17.07.2014, both by the appellant and the respondent who lived in her neighbourhood, to become a witness to their marriage. On their request, she agreed and attended their marriage which was performed at Arya Samaj Mandir, Sector-7, Naharpur, Delhi. She also deposed that on



meeting the respondent she had enquired from her who told her that she was an orphan and was knowing the appellant for the last four to five years as they were working together. It thus, emerges from the testimony of PW3/Geeta Yadav, that the appellant and the respondent were known to each other for the last about four years as they both were working together. Pertinently, there has not been any cross examination on this aspect by the respondent.

27. The appellant claims that their marriage was solemnized at Arya Samaj Mandir, Sector-7, Naharpur, Delhi on 17.07.2014 according to the Hindu customs and rites. To corroborate the marriage, the appellant proved the photographs of the marriage which are collectively Ex.PW1/1, the copy of the Marriage Certificate is Ex.PW1/2 and the copy of the Matriculation Certificate of the respondent issued by the Alwar High School is Ex.PW1/3.

28. PW3/Geeta Yadav also deposed that she reached Arya Samaj Mandir, Sector-7, Naharpur, Delhi where the ceremony of Jaimala and Saptapadi was performed and they got married according to Hindu customs and rites. The photographs were taken which are Ex.PW1/1 (collectively). The appellant and the respondent submitted their ID Proofs and so did she as well as the other witness PW4/Vinod Sharma who was also present at the time of marriage. The Marriage Certificate Ex.PW1/2 was also issued.

29. The testimony of PW3/Geeta Yadav is fully corroborated by the second witness PW4/Vinod Sharma who had deposed on similar lines.

30. Their testimony assumes importance in the light of testimony of PW2/Honey Bhutani, the President of Arya Samaj Mandal Naharpur, who produced the summoned record i.e., copy of marriage certificate, original affidavit of the appellant and the respondent and the



respondent given at the time of marriage, self-attested copy of the Driving Licence of the appellant and the Matriculation Certificate of the respondent, self-attested copy of the Aadhar Card of PW3/Geeta Yadav and the Election Card of PW4/Vinod Sharma. All the documents are collectively Ex.PW2/1. It was deposed by PW2/Honey Bhutani in his cross-examination that he is the Head Priest and the marriage of the appellant and the respondent was performed in his presence by another Priest, Mr. Diwakar Mishra, who had left the Temple in 2016. PW2/Honey Bhutani reaffirmed that all the documents had been presented by the parties at the time of solemnization of the marriage. No significant cross-examination was done and nothing emerged to show that the marriage was not performed.

31. It may be observed that the affidavits of the appellant and the respondent submitted at the time of their marriage had been duly attested and notarised at Rohini Courts. She had ample opportunity to resist and raise hue and cry. Her silence and her participation defies her claim of not only abduction but also that she did not get married to the appellant. Not only this, the documents of identification had also been submitted by the parties. If the respondent had actually been abducted in the night of 16.07.2014 as claimed by her, she definitely could not have been carrying her Matriculation Certificate with her. Clearly, the submission of Matriculation Certificate before the Arya Samaj Mandal proves the truth of the testimony of the appellant. Also, the affidavits of both the appellant and respondent were got prepared and attested.

32. The comprehensive reading of the testimony of all the witnesses i.e., PW1 to PW4 as well as that of the respondent clearly brings out that the ceremony of Jaimala and Saptapadi was performed for solemnization of



marriage of the parties.

33. In this context, we may refer to the statement under Section 313 of Cr.P.C., 1973 Ex.RW1/1, where in all the questions, a suggestion was given that the marriage was duly performed, though it was asserted that it was done under force and coercion. First and foremost, the entire circumstances do not show that there was any force or coercion in the marriage which was validly performed. Even if for the sake of arguments, her contention is accepted, then too, it is a valid marriage; the alleged force and coercion may entitle her to get the marriage annulled, but till then, it is a valid marriage between the appellant and the respondent.

34. The Judge, Family Court, therefore, fell in error in giving undue significance and importance to inconsequential contradictions and missing out the essential admissions which prove the marriage between the appellant and the respondent. The findings of the learned Family Judge, Family Court that there was no valid marriage, is hereby found to be totally fallacious and the same is hereby set aside.

35. Having held the marriage to be valid, the next question which arises is whether the respondent has withdrawn from the company of the appellant without any reasonable excuse.

36. Admittedly, an FIR No.89/2014 under Sections 363/366/376 of IPC, 1860 was got registered by the respondent against the appellant alleging abduction and rape. Consequently, the appellant was arrested on 11.11.2014 and he was released on bail *vide* Order dated 19.07.2016. The appellant has faced the full criminal trial for alleged rape. In these circumstances, it cannot be held that the circumstances are conducive for the parties to live together. Also, the respondent had been admittedly taken away by her father forcibly.



Also, there is a Certificate of Sarpanch, Gram Panchayat, Bansur, Alwar, Rajasthan dated 18.11.2015 mentioning that respondent has got married to one Krishan Kumar on 27.04.2015.

37. In the final analysis, for the reasons as narrated above, it cannot be said that the withdrawal of the respondent from the company of the appellant was from her free will and without any reasonable excuse.

38. Accordingly, we dismiss the present appeal, but for the different reasons as discussed above.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 22, 2023
S.Sharma