



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

% Date of decision: December 05, 2023

+ MAT.APP.(F.C.) 353/2023 & CM APPL. 62597-62601/2023

(53) RINKU PATEL @ RITU Appellant
Through: Mr. Rajeev Sood, Adv.

versus

DINESH KUMAR Respondent
Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 62598/2023 & 62599/2023

Allowed, subject to just exceptions.

Application disposed of.

MAT.APP.(F.C.) 353/2023, CM APPLs. 62597/2023, 62600/2023 & 62601/2023

1. This appeal has been filed by the appellant challenging the order/decreed dated August 08, 2023 passed by the Judge, Family Court, Central, Tiz Hazari Courts, Delhi, whereby the Family Court has in paragraphs 9 and 10 stated as under:-

“9. Thus, there is a clear and unequivocal admission on the part of the respondent that she got married to the petitioner on 29.11.2020 even while her marriage with Sanjay Hirani was legally subsisting.



10. This Court in the exercise of its jurisdiction under Order XII Rule 6 of CPC allows this petition under section 11 of Hindu Marriage Act. It is held that marriage solemnised between petitioner Dinesh Kumar and respondent Ms. Rinku Patel @ Ritu on 29.11.2020 is null and void under section 11 of Hindu Marriage Act. No order as to costs. Decree sheet be drawn up. File be consigned to record room."

2. The respondent herein has filed a petition under Section 11 of the Hindu Marriage Act, 1955 r/w Section 7 of the Family Courts Act, 1984 seeking declaration to the effect that the marriage solemnised between the appellant and the respondent on November 29, 2020 is void as it contravenes clause (i) of Section 5 of the Hindu Marriage Act, 1955.

3. The Family Court had examined the appellant herein on oath under Section 165 of the Evidence Act, 1872 in the following manner:-

"Q. Did you get marry to Sanjay Hirani?

A. Yes.

Q. When did you get marry to Sanjay Hirani?

A. I do not remember.

Q. Was the marriage with Sanjay Hirani registered?

A. Yes. It was registered in District Amreli, Gujarat.

Q. What is the present status of your marriage with Sanjay Hirani?

A. It was dissolved on 18.01.2023 by the judgment/decreed of Family Court, Rajkot, Gujarat."

4. The Family Court decreed the suit in exercise of its jurisdiction under Order XII Rule 6 of CPC, by holding that the marriage is void on the ground of unequivocal admission on the part of the appellant that she got married on November 29, 2020 to the respondent, while her marriage with Sanjay Hirani was legally subsisting.



5. On a query to the learned counsel for the appellant to point out the infirmity in the order, he states that it is a fact that the marriage between the parties was solemnised during the subsistence of the marriage of the appellant with Sanjay Hirani, but the respondent being aware of the marriage of the appellant with Sanjay Hirani, the impugned decree is untenable. The submission is not appealing for the reason that this aspect was also considered by the Family Court in paragraph 8 of the impugned order which we reproduce as under:-

“8. It is the contention of respondent's counsel that respondent's subsisting marriage with Sanjay Hirani, and their separation as also the fact that a divorce case between them was sub judice was already petitioner's knowledge. In this regard, he invites attention of the Court to averments in the written statement. However, this is not defence to a petition under section 11 of Hindu Marriage Act. The law is that even if the petitioner got married to the respondent despite knowing that the latter was already in the subsisting marriage, yet their marriage would be void under section 11 of Hindu Marriage Act. Reference in this regard can be had to the judgments of Vinod Sehgal v. Santosh Kumari, Dheeraj v. Kavita, Sawaranjit Kaur v. Lt. Col. Avtar Singh & Ors, B. Vasundhara v. A. Aswarthanarayana Rao.”

6. The submission of the learned counsel for the appellant is also by pointing out to the alternative prayer (d) which we reproduce as under, to state that this Court may consider the prayer for return of the articles and cash taken in dowry:-

“In the alternate, Remand the matter to Ld. Judge Family Court, District Central, Tis Hazari to accord opportunity to the Appellant and also allow the Applicant to lead witness and also adjudicate on return of articles and cash taken in Dowry of



worth 25 lacs by the Respondent from the Appellant's father at the time of the marriage.”

(emphasis supplied)

7. Suffice to state, the prayer does not arise from the proceedings before the Family Court culminating in the impugned order. We also note that the proceedings before the Family Court were initiated by the respondent herein.

8. In view of the above, we do not find any merit in the appeal. The appeal and the connected applications are dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 05, 2023/ds