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

% *Date of decision: 29th August, 2023*

+ **MAT.APP.(F.C.) 180/2018**

SABA AZMI Appellant

Through: Mr. L.S. Chaudhary, Advocate with
appellant in person

versus

PARVEZ ALAM @ JOLLY Respondent

Through: Mr. Surbhit Nandan and Mr. Vivek
Jaiswal, Advocates with respondent in
person

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present **Appeal under Section 19 of the Family Courts Act, 1984** has been filed on behalf of the appellant against the impugned Judgment dated 19.03.2018 passed by learned Judge, Family Courts, Shahdara District, Karkardooma Courts, Delhi in CS No. 3/2017, a Suit for declaration and consequential relief, whereby the said Civil Suit was dismissed on the ground that the Nikahnama dated 12.09.2005 was forged and fabricated document.



2. **The facts in brief are** that the parents of the appellant had shifted to Saudi Arabia when she was 7 or 8 years old, since then, she has been residing with her uncle i.e., father's younger brother.
3. The appellant after passing Class XII joined a Fashion Designing Course in an institute situated at Lajpat Nagar. On 29.03.2004 at about 07:00 A.M. while the appellant was going to her Institute, the respondent, whom she knew that he was related to her aunt, came on the motorcycle and befriended her. He started dropping her to her Institute many a times.
4. It was claimed by the appellant that in September, 2004 while taking her from her Institute in Lajpat Nagar to her house in Trilokpuri, the respondent took her to House bearing No. C-8/236, Yamuna Vihar, Delhi, where he administered the appellant a laced cold-drink and raped her. Thereafter, the respondent threatened the appellant not to disclose the incident to anyone as he had taken her photographs which he would show to his relatives. The respondent also extorted money from the appellant on various occasions.
5. The appellant became pregnant and on 22.12.2004 and the respondent got her abortion done from Rashmi Maternity Home.
6. The appellant has further asserted that the respondent along with his mother and uncle, came to her house on 12.09.2005 and forcibly obtained her signatures on blank Nikahnama. On the next day, two persons came to her house and showed her a photocopy of Nikahnama to the effect that she had got married with the respondent. Thereafter, the appellant disclosed the entire incident to her parents and a criminal case against the respondent and his mother and uncle was registered *vide* FIR No. 213/2006 under various



sections of I.P.C. i.e. for rape, extortion, cheating etc. at Police Station Mayur Vihar and the respondent was subsequently arrested by the police.

7. The respondent sent the Legal Notice dated 17.10.2006 to the appellant asking her to join his company. Thereafter, the Civil Suit was filed by the appellant/wife for declaring Nikahnama dated 12.09.2005 as null and void and not binding upon her.

8. The said Civil Suit was contested by the respondent/husband who asserted that the appellant had an affair with him for the last 9 years and she duly got married to him which was witnessed by Nikahnama dated 12.09.2005. However, the appellant made false allegations of rape, extortion and cheating etc. The respondent admitted sending of Legal Notice dated 17.10.2006 to the appellant to join him. The respondent further claimed that Nikahnama is a genuine and valid document.

9. The issues on the pleadings were framed by the learned Judge, Family Court on 15.07.2009 which read as under: -

“1. Whether the Nikahnama dated 12.09.2005 is null and void and whether the plaintiff is entitled for the relief of declaration as prayed? OPP

2. Whether the plaintiff is legally wedded wife of the defendant? OPD.

3. Relief.”

10. The appellant tendered her evidence by way of affidavit.

11. Though the respondent filed his affidavit of evidence, but he never appeared to tender the affidavit in evidence and also did not submit any written arguments.

12. The learned Judge, Family Court on the evidence as led by the



appellant, held that she was unable to prove that Nikahnama dated 12.09.2005 was not genuine. Therefore, the learned Judge, Family Court concluded that the marriage between the appellant and the respondent was valid and consequently dismissed the Suit of the appellant herein.

13. Being aggrieved by the impugned Judgment dated 19.03.2018, the present Appeal has been preferred by the appellant.

14. **Submissions heard.**

15. The appellant had claimed that she had befriended the respondent as he was a relative of his aunt and used to drop her to her Institute at Lajpat Nagar frequently.

16. The appellant levelled allegations of rape and extortion on the basis of which the FIR No. 213/2006 was registered under various sections at Police Station Mayur Vihar. However, admittedly, the respondent was acquitted in the aforesaid FIR and the Appeal was preferred by the appellant before this Court, wherein the matter was settled whereby the respondent agreed to accept the marriage and to annul it by pronouncing the *Talaq* as per Muslim Law/Custom. However, the appellant retracted from the Settlement and moved the Application bearing No. CRL.M.A. 12499/2011 seeking recall of Order dated 16.09.2011, which is still pending adjudication.

17. The only issue to be ascertained is whether a valid marriage was performed between the appellant and the respondent according to Muslim customs which was witnessed *vide* Nikahnama dated 12.09.2005.

18. The appellant had appeared in support her allegations and deposed that she never appeared before *Qazi*, but two persons had come to her house and forcibly obtained her signatures on a blank Nikahnama. The appellant's



testimony has remained totally unchallenged.

19. The respondent though had claimed that the marriage was validly performed but has failed to adduce any evidence to prove his defence that the appellant had, in fact, appeared before the *Qazi* or that her signatures were obtained on a blank Nikahnama which was subsequently made into the Nikahnama dated 12.09.2005.

20. Significantly, Sh. Mohd. Haneef, the Maulvi who prepared the nikahnama of the marriage of the prosecutrix with accused Parvez was examined as PW 3 in FIR No. 213/06 before Ld. District Judge Shri P.S. Teji, Karkardooma Court, Delhi wherein he in his examination in chief had deposed that “*the bride, Saba Azmi had not come before me*”. The Respondent, who was the accused, did not challenge the testimony and no cross examination was done. Since the respondent has failed to adduce any evidence to disapprove the testimony of the appellant, it is hereby held that the appellant had been able to prove that she did not appear before the *Qazi* or gave consent for marriage. Her testimony which is neither rebutted nor countered proves that her signatures were obtained on a blank Nikahnama when in fact no marriage was performed between her and the respondent. She had not appeared before the *Qazi* and the Nikahnama dated 12.09.2005 is proven to be a procured document which is held to be null and void.

21. Accordingly, the present Appeal of the appellant is hereby allowed. The marriage is held to be *non-est* and the Nikahnama dated 12.09.2005 is declared null and void.

22. At this stage, upon interaction with the parties in the open Court, they have agreed to settle their disputes in the following terms and conditions: -



- (i) That the appellant shall withdraw the Application bearing No. CRL.M.A. 12499/2011 seeking recall of the Order dated 16.09.2011 moved by her in CRL.M.C. 831/2009 and the other petition being CRL.M.C.1518/2009 [petitions already disposed of].
- (ii) That the appellant shall also withdraw CRL.A.912/2010 and move an application for withdrawal of the same within three days.
- (iii) That the appellant tenders her unconditional apology to respondent which has been accepted by him.
- (iv) That both the parties undertake that they shall neither file any case/complaint against each other nor against their family members; and also not spread any defamatory news or statement *qua* each other or their family members.
- (v) That the respondent on withdrawal of the aforesaid applications, shall either withdraw the Complaint Case No.8925/2008 filed by him under Section 494 of IPC, 1860 within 5 days thereafter, or shall tender his no objection if appellant takes steps to get the said complaint quashed.
23. The aforesaid undertaking furnished on behalf of both the sides is taken on record. In view thereof, the present Appeal is disposed of.
24. Accordingly, re-notify on 22.09.2023 for reporting compliance.

(SURESH KUMAR KAIT)
JUDGE



(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 29, 2023

S.Sharma

Signature Not Verified

Digitally Signed By: VIKAS
ARORA

Signing Date: 11/09/2023
17:06:30

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