



2024:DHC:5060-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 08.07.2024

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MAT.APP.(F.C.) 173/2024 & CM APPL. 30691-30692/2024

DEEPIKA SINGH

.....Appellant

Through: Mr Akil Rataeeya with Mr Aroma
Rataeeya and Mr Harsh Gulia,
Advocates.

versus

SANDEEP YADAV

.....Respondent

Through: Mr Vishal Gera and Ms Yashmin,
Advocates.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. : (ORAL)**

1. This appeal is directed against the order dated 15.04.2024 passed by Mr Vipin Kumar Rai, learned Additional Principal Judge, Family Court, South West, Dwarka, New Delhi.
2. Via the impugned order, the Family Court allowed the application for amendment under Order VI, Rule 17 of the Code of Civil Procedure [in short, "CPC"] preferred by the respondent/husband concerning the divorce petition instituted by him.
3. The record discloses that the divorce petition was filed by the respondent/husband on the ground of cruelty, and in that context, Section 13(1)(ia) of the Hindu Marriage Act, 1955 [in short, "HMA"] was invoked.
4. Concededly, the unamended divorce petition was filed on 24.10.2018.

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By: DINESH KUMAR
Signing Date: 09.07.2024
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Furthermore, the respondent/husband, in the unamended petition has made, even according to the counsel for the respondent/husband, an assertion that the appellant/wife, along with their child, left the matrimonial home on 06.07.2017.

5. Given this position, even as per the learned Family Court Judge, the prerequisite for seeking divorce on the ground of desertion was not available as the appellant/wife should have deserted the respondent/husband for a minimum continuous period of two (2) years immediately preceding the date of institution of the divorce petition. However, having recognized that this legal impediment was in the way of the respondent/husband, the learned Family Court Judge allowed the amendment on the ground that if a fresh petition were to be filed, it would lead to a multiplicity of proceedings.

6. The learned Family Court Judge went on to say that since issues had not been framed and quite obviously, trial had not started, in the fitness of things, the amendment can be permitted.

7. Counsel for the appellant/wife says that the language of Section 13(1)(ib) of the HMA plainly rails against the conclusion arrived at by the learned Family Court Judge.

8. We tend to agree with the submission advanced by the learned counsel for the appellant/wife. Given this position, we have put to the counsel for the respondent/husband as to whether the respondent/husband would like to file a fresh petition based on the allegation that the appellant/wife had deserted the respondent/husband.

9. Seeing the legal impediment to the sustainability of the impugned order, counsel for the respondent/husband says that requisite steps would be taken to file a fresh petition provided liberty is given in that behalf.



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10. Having regard to the above, the appeal is allowed. The impugned order is set aside, with liberty to the respondent/husband to file a fresh petition based on the allegations of desertion in terms of Section 13(1)(ib) of the HMA.

10.1. If such a petition is filed, the concerned Family Court Judge will decide the same, *albeit*, in accordance with the law.

11. We are also told that in the existing petition, although six (6) years have passed, issues have not been framed.

12. The concerned Family Court Judge is requested to frame issues at the earliest and issue direction for trial of the petition so that the matter can be concluded with due expedition.

13. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 8, 2024

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