



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 14th September, 2023
Pronounced on: 27th February, 2024*

+ MAT.APP.(F.C.) 186/2018 & CM APPLs. 31521/2018,
30069/2022, 30149/2022

CAPT DINESH AHLUWALIA

..... Appellant

Through: Mr. Vipul Ganda, Mr. Zorawar Singh,
Mr. Jayant Rastogi, Ms. Nirti Dua &
Mr. Ishan Upadhaya, Advocates.

versus

ROOPA AHLUWALIA

..... Respondent

Through: Counsel (appearance not given).

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 39(2) of the Special Marriage Act, 1954 (*hereinafter referred to as the "Act, 1954"*) read with Section 19(1) of the Family Courts Act, 1984 (*hereinafter referred to as the "Act, 1984"*) has been filed on behalf of the appellant/husband assailing the Order dated 10.04.2018 *vide* which the Application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as the "CPC, 1908"*) filed on behalf of the respondent/wife has been allowed and the *ex parte* Judgment dated 24.03.2005 granting divorce in favour of the appellant/husband, has been set aside.



2. **The facts, briefly stated** are that the appellant/husband, a Pilot and the respondent/wife, Air Hostess with Air India, got married on 28.02.1992 at Calcutta under the Act, 1954. From their wedlock, one son and one girl were born on 28.09.1993 and 12.09.1995 respectively.

3. In November, 2003, the Appellant filed a Petition for Divorce under Section 27(1)(d) of the Act, 1954 before the Additional District Judge, New Delhi in which Notice dated 24.11.2003 was issued to the respondent/wife for 08.01.2004. The Trial Court noted on 08.01.2004, that no Notice could not be issued to the respondent/wife due to non-filing of the requisite process fee. The learned Judge then directed a fresh Notice to be issued to the respondent which was returnable for 26.02.2004.

4. The process fee was filed on behalf of the Appellant and notice of the Petition was issued through summons as well as registered post, however, the respondent failed to appear. Thereafter, on 15.03.2004, the learned Judge observed as under: -

“None has appeared on behalf of the respondent despite several calls being given at different intervals. It is already 2:10. pm. Hence, responded is proceeded ex parte. For ex parte evidence of the Appellant by way of affidavit on 16.5.04”.

5. The respondent/wife was thus, proceeded *ex parte* and the *ex parte* evidence was led by the appellant/husband. The *ex parte* Judgment dated 24.03.2005 consequently followed.

6. After grant of divorce, the appellant/husband got married with one Ms. Anshu Pahwa on 14.12.2006 who had a daughter from her first marriage and the parties along with the daughter started residing together. The two children of the parties also reside with the appellant/husband and Ms. Anshu



Pahwa since 2005 and they are being taken care of by the appellant/husband.

7. **The respondent/wife then filed an Application under Order IX Rule 13 CPC dated 17.03.2007** for setting aside the *ex parte* Divorce Decree. She had asserted before the learned Principal Judge, Delhi that she never got served with the summons/notice of the Divorce Petition, either through process server or through A.D. Card which also does not bear her signatures.

8. The respondent/wife had further asserted that she came to know that on 17.02.2007 through somebody in the Department of Personnel that her husband i.e., appellant herein, had married with one lady, Ms. Anshu Pahwa. On enquiry, she came across the Circular No. DPE/STF/166 dated 09.02.2007, whereby *vide* his Application dated 30.12.2006 to the Department for deleting the name of the respondent from the Service Record as he had taken divorce from his first wife, on 24.03.2005. The appellant/husband had later submitted his Application dated 22.01.2007 wherein he declared that he was married to Ms. Anshu Pahwa on 14.12.2006 who had a daughter, Akanksha from her first marriage and that the name of his second wife i.e., Ms. Anshu Pahwa be added in the Service Record.

9. The respondent/wife had asserted that *she came to know about the facts of second marriage only on 17.02.2007*. She also stated that she was residing with the appellant/husband on 18.02.2004 and was on duty at the time when she was allegedly served and the Service report on the summons as well as on the A.D. Card had been manipulated by the appellant/husband.

10. Therefore, it was claimed that the respondent/wife was never served with the Notice of the Divorce Petition on 18.02.2004, as was observed by the Id. A.D. J., Delhi.



11. The respondent/wife has further asserted that on coming to know about the aforementioned Circular, she filed an Application under Section 7(1) of Right to Information Act, 2005 with GM (P) on 22.02.2007 and got information about the Divorce Decree and also obtained the Marriage Certificate of the second marriage.

12. The respondent/wife thus, engaged a Lawyer on 12.03.2007, who on 13.03.2007 inspected the court record and applied for certified copies thereof on 14.03.2007 which were made available on 16.03.2007. The respondent/wife thus moved an Application under Order IX Rule 13 read with Section 151 of CPC, 1908 for setting aside the *ex parte* Judgment dated 24.03.2005.

13. The respondent/wife examined herself as PW1 in support of her assertions. She also examined *PW2/Deepak Jain, the Handwriting Expert* to prove that the summons and the A.D. Card did not have her signatures.

14. **The Application Order IX Rule 13 CPC, 1908 was contested by the appellant/husband** who had taken a preliminary objection that by setting aside the Decree of Divorce, adverse order would be made against the interest and legal status of Ms. Anshu Pahwa, his second wife and Akanksha, daughter of Ms. Anshu Pahwa, without affording them any right of hearing and the same is in violation of the Principles of Natural Justice. Therefore, Ms. Anshu Pahwa and Akanksha were necessary party to the present proceedings.

15. **On merits**, it was asserted that the respondent/wife was throughout aware of second marriage and her claim brooks no credibility for want of necessary details about the person who informed her on 17.02.2007 about the second marriage of the appellant/husband.



16. It is asserted that the respondent/wife was duly served with the summons of the Divorce Petition and she deliberately did not defend the Divorce Petition as she did not want to live with the appellant/husband. The respondent/wife had been living separately from the appellant/husband and the two children, who all throughout had been in his care and custody.

17. It is asserted that the respondent/wife was duly served through registered A.D. Card and also with the summons of the Divorce Petition through the process server which bear her signatures. It is claimed that the respondent/wife used different signatures at different places for different purposes, as per her own convenience. It is denied that the parties were residing together or that the respondent/wife was not present at her house on 18.02.2004, when the summons was served upon her.

18. It is asserted that the respondent/wife, on receiving the summons in the morning, got so infuriated that she called up the mother of the appellant/husband at her residential telephone No. at 11:00 A.M. and soon thereafter, she called the appellant/husband on his mobile number, hurling abuses which fact can be verified from the telephone records of the parties.

19. It is further submitted that the respondent/wife was assigned duty on the night flight on 18.02.2004 implying thereby that during the whole day she was available at her residence on the said day.

20. It was thus, asserted that despite due service, the respondent/wife intentionally did not contest the Divorce Petition and her Application Order IX Rule 13 read with Section 151 of CPC, 1908 was liable to be dismissed.

21. **Learned Principal Judge, Family Court.** after due appreciation of the averments made on behalf of both the parties and the evidence as led by respondent/wife, observed that the A.D. Card did not bear the complete



address and had only the Pincode No. 110057. Therefore, there could not be presumption of service through A.D. Card. Also, the purported signatures on the summons was her name written in capital letters. It was thus, held that it was difficult to hold that the respondent/wife was duly served with the summons of the Divorce Petition. Consequently, the *ex parte* Judgment dated 24.03.2005 was set aside *vide* Order dated 10.04.2018. The Divorce Petition was listed to be tried on merits, after filing of the Written Statement on behalf of the respondent/wife.

22. Aggrieved by the Order dated 10.04.2018 allowing the application under Order IX Rule 13 CPC and setting aside the *ex parte* Divorce Decree, the present Appeal has been preferred by the appellant/husband.

23. Submissions heard from counsel for the parties and the documents as well as the evidence perused.

24. Admittedly, Divorce Petition was filed on 22.11.2003 by the appellant/husband under the Act, 1954. The service of the divorce petition on the respondent/wife through summons and registered cover, was directed to be served *vide* Order dated 13.02.2004 returnable on 26.02.2004.

25. The perusal of the record shows that the summons were duly served upon the respondent/wife on 18.02.2004 as the summons had her name though in capital letters. The service report was written by the Process Server on the summons, which was received in the Court. However, the Registered Cover was returned with the endorsement that the addressee was not found at home, on 19.02.2004. The respondent was proceeded *ex parte* *vide* Order dated 15.03.2004 and it was followed by the *ex parte* Divorce Decree dated 24.03.2005.



26. The first aspect for consideration is whether the respondent/wife was duly served with the summons on 18.02.2004 and she had acknowledged the summons by putting the letters of her name in capital as “*Roopa Ahluwalia*”.

27. Undeniably, the report on the A.D. Card of the Registered Cover was that the respondent/wife was out of station on 19.02.2004. There is no challenge that she was on flight duty from the night of 18.02.2004 and thus, would not have been available at her residence on the said date. The report on the Registered Cover is correct and not under challenge; the respondent was thus, not served through the Registered Cover.

28. The service may have not been effected on the respondent/wife through Registered Cover, but the moot question is whether the respondent/wife was served by the Process Server with the summons and the copy of Divorce Petition on 18.02.2004, which had been challenged by the respondent. She had claimed that she was on duty on 18.02.2004 and was not available at her residence.

Whether Respondent was Available at her residence in Vasant Kunj on 18.02.2004:

29. What thus, needs to be considered is whether she was available at her residence on 18.02.2004, when the summons was allegedly served upon her. The respondent/wife had deposed in her testimony that she was not in Delhi and was on flight duty, but later, she admitted that she had been kept on *stand-by* and she did not remember if she has taken the night flight for Jeddah, Saudi Arabia. Rather, her indecisive and wavering answer establishes that she was not on the flight duty during the day, on 18.02.2004



as claimed by her. On the other hand, the appellant/husband has clarified that the respondent/wife had taken a night flight on 18.02.2004. Therefore, it has emerged from the evidence that in the morning of 18.02.2004 on which date the summons were served upon the respondent/wife, she was available at her residence, as has also been concluded by Ld. Principal Judge, Family Court.

Fraud: Whether Parties were Residing Together and Report on Summons manipulated by the Appellant/Husband:

30. The respondent/wife had further asserted that a fraud had been committed upon her as during that time, she was cohabiting with the appellant/husband. However, it has been noted by the learned Principal Judge, Family Court that this assertion of the respondent/wife was belied from the fact that marital discord had surfaced between the two sometime in 1997-1998 and the appellant/husband had been allotted an official accommodation at C-2/26, Indian Airlines Colony, Vasant Vihar, New Delhi, while the respondent/wife had moved to the tenanted accommodation at Flat No. 7463, Sector-10, Pocket B, Vasant Kunj, New Delhi, as is evident from the Memo of Parties annexed with the Petition where the address of the appellant/husband and the respondent/wife had been given differently as is indicated above. Thus, the assertion of the respondent/wife that the parties were residing together in Vasant Kunj Flat at that time or that there was a fraud committed by the appellant/husband in manipulating the service report is not tenable.

31. The respondent/wife had further relied upon a *Form* which had been filled up by the appellant/husband on 20.02.2004 for and on behalf of the



respondent/wife, to corroborate her assertion that they were having cordial relations and were residing together at that time. Merely because the appellant/husband volunteered to render assistance to the respondent/wife by filling up the Form for her on 20.02.2004 especially when admittedly they both were working the same office, it cannot be a basis to conclude that the parties were residing together.

32. It is specifically averred by the appellant/husband that the respondent/wife had separated and he along with the children, was living separately from her. This fact has not been controverted by the respondent/wife that the children have been in the care and custody of the appellant/husband and that after his second marriage, his second wife and her daughter have also started residing with the appellant/husband. *The evidence as brought on record, clearly reflects that the parties at the relevant time in 2004 were not residing together as has also been the conclusion of the learned Principal Judge, Family Court.*

Signatures of Summons of the Respondent in Capital Letters:

33. The next question which arises is whether the respondent/wife was in a habit of writing and signing differently as capital 'ROOP' or 'R Ahluwalia' or 'Roopa Ahluwalia' or running 'Roop Ahluwalia', as had been claimed by the Appellant.

34. The respondent/wife was confronted in her cross-examination with the Crew Baggage Declaration Form Ex.PW1/R1 to PW1/R3 and also Ex.PW1/R4 which had the signatures at Points 'A', 'B', 'C' and 'D' respectively. In the document PW1/R1 and PW1/R2, her name was written in capital, while in Ex.PW1/R3 and Ex.PW/R4, it was written as 'R Walia'.



35. The learned Principal Judge observed that that PW1 testified without any challenge, that this was the practice prevalent during the relevant time whereby implying that writing their names in full in the Declaration Form to supply details of personal baggage or belongings, the Forms were signed or initialled by the incumbent concerned. It was thus, observed that as per the practice, the Crew Baggage Declaration is meant to be an undertaking or declaration by the Air Hostesses/Crew Attendants regarding their personal belongings viz., mobile, wallet, money, cosmetics etc. that they carry at the time of embarking on flight outside India. The Embarkation Crew Baggage Declaration contained the name of the respondent/wife as “*Roopa Ahluwalia*” in full, but while signing she had just put her initials.

36. Learned Principal Judge, Family Court observed that in her affidavit Ex. PW1/A and also her testimony in the Court on 18.03.2009 and on 06.01.2010, aside from the *vakalatnama* in favour of her lawyer, the respondent had signed her name in **Capital letters as “Roopa Ahluwalia”**.

37. This clearly reflects that the respondent/wife had signed differently on different documents. *Thus, we observe that the evidence of the respondent corroborated that at times she used to sign her name in Capital Letters.*

Report of Handwriting Expert:

38. The next aspect for consideration is whether the signature of the respondent/wife on the summons on which her signatures are by way of her name written in capital letters, had been manipulated. The respondent had claimed that her name had been written by the appellant/husband and not by her.

39. In this regard, the respondent/wife had also examined PW2/Deepak



Jain, the Handwriting Expert who in his Report, Ex. PW2/C had opined that the questioned handwriting on the summons (of the name of the respondent/wife) in caps to be in the handwriting of the appellant/husband. The learned Principal Judge disbelieved the testimony of the PW2/Deepak Jain, the Handwriting expert, by observing as under: -

“PW-2 was nailed in his cross-examination since he did not examine the questioned signatures/writings of the applicant wife from any document bearing the signatures/writings of the applicant wife executed, written or signed in the past in the ordinary course of business, and bare perusal of the material examined by PW-2 would show that the applicant wife had signed differently while giving her specimen signatures, and thereby attempting to substantiate her case that the notice / summons marked 'B' did not bear her signatures. Though PW-2 tried to wriggle out of such situation, on the Ld. Judge asking him a pointed query, it came out that the letter 'R' in Roopa and 'A' in Ahluwalia were signed by her differently. Moreover, it is clearly deciphered from his testimony and the documents on the record that the letters 'PA' in “Roopa” and ‘Hluwalia’ in “Ahluwalia” were signed starkly differently from her previous hand writing in the Crew Baggage undertaking PW 1/R-1, PW1/R-2 & PW-1/R-4.”

40. What emerges from his testimony is that the Handwriting Expert had picked up the admitted signatures of respondent/wife from a photocopy. It is the fundamental principle that the signatures for the purpose of comparison, must be taken from the original document. A weak explanation is sought to be given by PW2/Deepak Jain who has submitted that while the disputed signatures are required to be taken from the original document, however, in case of an undisputed signature, there is no possibility of any deviation of the distortion/deviation even from a Photostat copy.

41. From the testimony of PW2/Deepak Jain, the Handwriting expert, it is



evident that the admitted signatures of the respondent/wife had been picked up from a document which was a photocopy. *Thus, the report of PW2 is not reliable and has also been rightly discarded by the Ld. Principal Judge, Family Court.*

Incomplete Address on the Summons:

42. The only aspect which was held to be against the appellant/husband was that the summons did not bear the complete address as the name of the Locality *Vasant Kunj* was not indicated on the summons.

43. In this regard, we may observe that the summons had the complete details of Flat and Block number except that the name of locality ‘Vasant Kunj’ was not mentioned. The respondent/wife also in her testimony had admitted that the address was complete. What was however, mentioned was Pincode-110057.

44. In this regard, it may be observed that the process servers are dedicated for effecting the services for particular area. Moreover, even though the name of the colony Vasant Kunj was not specifically mentioned, but the Pincode-110057 is a sure indicator of the locality where the house is situated. The summons also mentioned that the copy of the CA annexed with it, was delivered. Moreover, the summons had the endorsement of the service of the process server which is supported by his oath. There is a presumption of correctness of the act done by an official in discharge of his official duty in terms of Section 114 of the Indian Evidence Act, 1872, which has not been rebutted by the respondent.

Conclusion:

45. The Learned Principal Judge had accepted all the factors in favour of



the appellant including that the respondent was living separately at Vasant Kunj and was available at her residence at the time of service of summons on which duly had her name written by her in acknowledgement of having received the summons, but faltered on the ground of the name of the locality had not been mentioned but overlooked that Pin Code is the sure indicator of the locality. The respondent/wife has not been able to dislodge the service of summons through Process Server at her residence which had been received by her. The overwhelming circumstances establish by preponderance of evidence, that the summons had been duly served upon the respondent.

46. We conclude that the summons of the Divorce Petition was served to the respondent on 18.02.2004 despite which she failed to appear and had been rightly proceeded *ex parte*.

47. Accordingly, the present Appeal is allowed and the Order dated 10.04.2018 *vide* which the Application under Order IX Rule 13 read with Section 151 of CPC, 1908 filed by the respondent/wife has been allowed is set aside thereby restoring the *ex parte* Judgment dated 24.03.2005 granting divorce in favour of the appellant/husband.

48. Accordingly, the present Appeal along with pending applications is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 27, 2024
S.Sharma