Alka Vs. Ashok Kumar

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SooperKanoon Citation : sooperkanoon.com/1171692

Court : Delhi

Decided On : Nov-14-2014

Judge : Gita Mittal

Appellant : Alka

Respondent : Ashok Kumar

Advocate for Pet/Ap. : Ms. Suman Malhotra, Mr. Sheetesh Khanna

Judgement :

$~2 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

14. h November, 2014 % + MAT.APP.(F.C.) 71/2013 ALKA Through : versus ASHOK KUMAR Through : ..... Appellant Ms. Suman Malhotra, Adv. ..... Respondent Mr. Sheetesh Khanna, Adv. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MR. JUSTICE J.R. MIDHA GITA MITTAL, J.

(Oral) 1. We have heard learned counsel for the parties.

2. The appellant has challenged the order dated 15 th October, 2013 disposing of her two applications filed under Order 16 Rule 14 read with Section 151 CPC for the purposes of adjudication on her application for maintenance under Section 24 of the Hindu Marriage Act, 1955.

3. The first application was filed by the appellant pointing out her husbands stand in his affidavit dated 6 th August, 2013 that he does not have any documentary proof relating to his employment during the last five years and is not having the salary slips. It is further pointed out that the respondent - husband had taken a categorical stand that though he had been issued a PAN Card but MAT.APP.(F.C.)No.71/2013 page 1 of 4 the same has been misplaced by him. The husband had also stated that he did not have any proof showing his income tax deductions at sources with regard to his income. This application was decided by the Additional Principal Judge, Family Courts, Rohini, New Delhi by passing an order dated 15th October, 2013 holding that it was incumbent upon the present appellant to produce some evidence to substantiate that the respondent had such record in his possession therefore, it was not expedient to issue any directions or compel him to produce the record.

4. The second application was filed by the appellant seeking summoning of the record relating to the respondent from his employer, M/s. Legrand India as well as from the Income Tax authorities relating to PAN Card No.AWSPK5643F.

5. It is pointed out by Ms. Suman Malhotra, learned counsel for the appellant that in the reply dated 4th September, 2013 to the application dated 21st August, 2013, the respondent had not denied the factum of his employment. Furthermore, in the same reply the respondent had not denied that the PAN Card detailed by the appellant had been issued to him.

6. We find substance in the submission of learned counsel for the appellant that the entire evidence with regard to income of the respondent was in the power and possession of the respondent and it was incumbent upon him to produce the same inasmuch as he was a person in possession of the best evidence with regard to these matters. MAT.APP.(F.C.)No.71/2013 page 2 of 4 7. Given the aforenoticed admissions, certainly the directions which the appellant was seeking in her first application were warranted and the respondent should have been compelled to make a fair and complete disclosure with regard to the matters relating to his employment as well as income.

8. Given the prevarication and the refusal of the respondent to disclose the same in his reply to the application filed under Section 24 of the Hindu Marriage Act, 1955 as well as application under Order 16 Rule 14 read with Section 151 CPC filed by the appellant, there was really no other option but for the court to accept the prayer of the appellant to summon the witness.

9. In view of the above, we direct as follows: (i) The respondent is directed to file an affidavit within four weeks from today giving the details of the following: (a) name of his employer during the last five years; (b) position which was held by him and dates of employment as well as salary/wages which he was receiving; (c) the detail of his PAN Card; (d) Form-16/16A as well as income tax returns and assessment order for the last five years; (e) Form-26A issued by the Income Tax authorities reflecting tax deduction at sources and deposits under various heads under the respondents PAN Card for the last five years; (f) details of the bank account maintained by him with statement of account; MAT.APP.(F.C.)No.71/2013 page 3 of 4 (ii) The order dated 15th October, 2013 is hereby set aside and quashed. (iii) The appellant is permitted to summon the witness from the income tax authority for producing the records relating to PAN Card No.AWSPK5643F as well as a witness from M/s. Legrand India to produce the record relating to the employment of the respondent and his income. (iv) The appellant shall disclose the full particulars of the employer on the process fee form which shall be filed by the appellant. (v) The witnesses be summoned for a date which shall be fixed four weeks after filing of the affidavit by the respondent. (iv) The learned Family Court shall consider the material brought on record as per the directions which have been issued today and if necessary, consider the matter of maintenance which has been awarded to the appellant afresh in light thereof and pass orders after hearing the parties. This appeal is allowed in the above terms. Dasti. GITA MITTAL, J J.R. MIDHA, J NOVEMBER14 2014 mk MAT.APP.(F.C.)No.71/2013 page 4 of 4