

Kiran Pal Vs. Kamla Devi

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Court : Delhi

Decided On : Nov-10-2014

Judge : Sunil Gaur

Appellant : Kiran Pal

Respondent : Kamla Devi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

10. h November, 2014 + MAT.APP. 67/2007 KIRAN PAL Appellant Through: Mr.Arun Baali, Advocate versus KAMLA DEVI Respondent Through: Nemo
CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL) The appellant had sought divorce from respondent on the ground of cruelty and desertion and vide impugned judgment of 14th January, 2005, appellants petition for divorce has been dismissed by the trial court with the finding that appellant had condoned the act of cruelty on the part of the respondent. The factual background of this case already stands noticed in the opening paragraph of the judgment and needs no reproduction. In this appeal, the respondent was served by way of publication but had chosen not to appear and was proceeded ex-parte vide order dated 22nd September, 2008. At the hearing, it was urged by learned counsel for appellant that the finding of appellant condoning the cruelty on

the part of the respondent is not supported by the evidence on record. Attention of MAT.APP. No.67/2007 Page 1 this Court was drawn to paragraphs 8 and 13 of the ex-parte evidence to point out that appellant had not condoned the cruelty inflicted upon the appellant by respondent and appellant had sought divorce on the ground of desertion as well but no finding has been returned by trial court on the ground of desertion and so impugned judgment deserves to be set aside and appellant deserves to be granted divorce because respondent is living away from appellant for the last 13 years. Reliance is placed on the Apex Courts decision in Naveen Kohli v. Neelu Kohli (2006) 4 SCC558 wherein it is ruled as under:

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentiality more prejudicial to the public interest than a dissolution of the marriage bond.

Respondent has chosen not to contest the appeal. Upon hearing and on perusal of the evidence on record and the impugned judgment, I find that the findings returned by the trial court in the impugned judgment are not borne out by the evidence on record. There is un-rebutted evidence on record that the appellant was subjected to cruelty by the respondent and there is nothing on MAT.APP. No.67/2007 Page 2 record to indicate that appellant had condoned the acts of cruelty meted to appellant by the respondent. On the ground of desertion also, in view of the dictum of Apex Court in Naveen Kohli (supra), appellants petition for divorce deserves to be allowed. Consequentially, the impugned judgment is set aside and appellants petition for divorce is allowed and the appellant is granted divorce. (SUNIL GAUR) Judge NOVEMBER10 2014 mb MAT.APP. No.67/2007 Page 3