

Nisha S. Kumar Vs. Shailesh Kumar

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Court : Karnataka

Decided On : Aug-27-2015

Judge : A.S. Bopanna

Appeal No. : Writ Petition No. 7681 of 2015 (GM-FC)

Appellant : Nisha S. Kumar

Respondent : Shailesh Kumar

Judgement :

(Prayer: This writ petition is filed under Articles 226 and 227 of the Constitution of India, with a prayer to quash the order dated 31.01.2015, on I.A.No.XVI, in M.C.No.226/2012 on the file of family court at D.K., Mangalore, vide Ann-G.)

1. The petitioner is before this Court assailing the order dated 31.01.2015 passed on I.A.No.16 in M.C.No.226/2012.

2. The relationship between the parties is not in dispute. The petitioner herein is the wife of the respondent. The respondent has filed a petition in M.C.No.226/2012 seeking dissolution of marriage solemnized between the petitioner and the respondent by invoking Section 13(1)(i) and (ia) of the Hindu Marriage Act, 1955 ('the Act' for short). In the said proceedings, the petitioner herein having filed the objection statement to the petition has raised a counter claim as provided under Section 23(A) of the Act seeking restitution of conjugal rights under Section 9 of the Act.

3. In that light, the petitioner contends that in order to controvert the case as put forth by the respondent before the Court below and also to establish the case of the petitioner herein seeking for restitution of conjugal rights, the documents as sought in I.A.No.16 are necessary and as such, the application under Order XI Rule 12 R/w Section 151 of CPC was filed. The respondent herein objected to the said application. It is in that view, the Court below after taking into consideration the rival contentions has passed the order dated 31.01.2015 which is impugned herein.

4. Heard the learned counsel for the petitioner and the learned senior counsel for the respondent and perused the petition papers.

5. From the contentions as put forth and from the petition papers, it is seen that the petitioner herein at an earlier instance had filed a similar application which was registered as I.A.No.2 and the Court below had rejected the same. The petitioner therefore claiming to be aggrieved by the order dated 26.03.2013 dismissing I.A.No.2 was before this Court in W.P.No.52880/2013. This Court by the order dated 06.03.2014 was of the opinion that the documents as sought for by the petitioner in the application filed in I.A.No.2 would not be necessary to be produced by the respondent since the case as put forth by the respondent herein before the Court below was under Section 13(1)(i)(ia) of the Act. Hence, it is for the respondent herein to prove the case therein.

6. Subsequent to the said order, the objection statement has been filed to the main petition before the Court below and the petitioner herein has raised the counter claim seeking restitution of conjugal rights under Section 9 of the Act. Therefore in the said circumstance, the question is as to whether merely because the objection has been filed subsequently and a counter claim has been raised, whether it has changed the position so as to enable the petitioner to once again file an application under Order XI Rule 12 R/w Section 151 of CPC and seek for production of documents as has been done therein.

7. In that light, a perusal of the order impugned herein dated 31.01.2015 would disclose that the Court below has not only kept in view the position of law relating to the exercise of discretion by the Court below while considering such application,

but has also adverted to the rival contentions to come to the conclusion that the application is liable to be rejected.

8. This Court at the first instance while considering the order passed on I.A.No.2 had indicated that in a proceedings of the present nature instituted by the respondent herein, the prayer made for production of such documents was not justified. If such observation made by this Court is kept in view, even if in the present circumstance the petitioner herein has made a counter claim and sought for restitution of conjugal rights under Section 9 of the Act, the documents as sought to establish that aspect of the matter cannot be considered as a changed circumstance for the petitioner to establish her case by relying upon the documents that have been indicated in the application.

9. Firstly, the Court below while deciding the main matter would have to take note of the grounds urged by the respondent herein seeking dissolution of marriage for the reasons stated therein, then only if the respondent herein fails before the Court below in establishing the said grounds, the need for the Court below to arrive at a conclusion with regard to restitution of conjugal rights would arise.

10. Therefore, in the circumstance which arises in the instant case if the respondent fails to establish cruelty, in such event, the issue relating to the restitution of conjugal rights would also arise. Hence, the relief as prayed in the counter claim cannot in the present facts be considered as an independent relief to be granted as it would depend on the relief that has been sought by the respondent in the petition filed by him.

11. Therefore, if these aspects of the matter are kept in view and the reasoning assigned by the Court below to reject the application is taken into consideration, it cannot be said that the Court below has committed an error so as to be corrected by this Court. If that be the position, I am of the opinion that the prayer made in the petition cannot be granted.

Accordingly, the petition being devoid of merit stands disposed of.