

Dharam Kaur Vs. Narender

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Court : Delhi

Decided On : May-05-2016

Judge : The Honourable Ms. Justice Gita Mittal & I.S. Mehta

Appeal No. : MAT. APP. (F.C.) 13 of 2015 & CM No.2611 of 2015

Appellant : Dharam Kaur

Respondent : Narender

Advocate for Pet/Ap. : Mr. M. Shamikh

Judgement :

Gita Mittal, J.

Oral:

1. The appellant in the present appeal has assailed the judgment and decree dated 15th December, 2014 passed by the Principal Judge (North-West, Rohini), Family Court in HMA No. 218/2014. By this judgment and decree, the Family Court has accepted the petition under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 filed by the respondent-husband against his wife, the present appellant, dissolving their marriage by a decree of divorce on grounds of cruelty and desertion.

2. The facts giving rise to the present appeal are within a narrow compass and to the extent necessary are briefly noted hereafter. A marriage in accordance with Hindu Rites and Ceremonies was solemnised on 27th April, 2008 at Delhi. It is an admitted position that the marriage was consummated and the parties were blessed with two children firstly a son Jai and thereafter, a daughter, Komal. The parties admittedly stayed together till 23rd September, 2010.

3. On or about 15th October, 2012, the respondent-husband filed the petition under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 against the appellant contending that right from the date of the marriage, at the instance of her father, the wife had abused him in filthy language, threatened to implicate the husband and in-laws in false cases; mentally tortured the husband to do things as per the dictates of her father which were against the public and as the husband refused to accept these proposals, the wife left the residence on 23rd September, 2010 with the male child and did not join his company.

4. Amongst the acts of cruelty attributed to the wife, it was alleged by the husband that the wife used to go the residence of her sister s husband without informing him. The respondent-husband has also alleged in his petition that when she returned to the matrimonial home on her own, she had cast aspersions on the appellant s potency. These assertions have been made in the petition by the respondent without making any specifications of date or time at all.

5. The respondent-husband has also imputed two statements to the wife, one challenging his strength and potency and alleging that her brother-in-law was stronger than him. By the second statement, husband alleges that his wife defamed him stating that the children were not sired by him and that he had no concern with her interaction with her brother-in-law.

6. In para 11 of the petition, statements are attributed to sisters of the appellant-wife. Statements and threats are attributed to the sisters and father of the appellant without either specifically naming them or giving any place, date or time.

7. In the petition, the husband had also contended that the appellant-wife made a false complaint on which a FIR under Sections 406 and 498A of the IPC was

registered against him as well as the petition under Section 125 of the Cr PC. The submission is that the appellant has suffered because of these allegations.

8. The respondent-wife filed a written statement contesting all allegations made in the petition clearly stating that the petition consisted of a bundle of sheer concocted stories, false and frivolous events; that the allegations were far from the truth; that there was no desertion on her part and that the husband himself had backed out from joining her company lawfully with malafide intention. The appellant-wife has also made allegations of inhuman and cruel behaviour of the husband and his family members on account of dowry cum monetary demands. She also alleges that she was forcibly kicked out from the matrimonial home with the child on 23rd September, 2010. It is the case of the appellant-wife that she shared relationship as that of a brother with her brother-in-law and that her husband had made false allegations of an illicit relationship with him. Reliance is placed on the admission by the husband in the petition to the effect that the appellant's father had told him that since her childhood, the appellant-wife had shared a brother-sister relationship with her brother-in-law.

9. On these averments, the Family Court framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty, as alleged, after the solemnization of marriage? OPP

2. Whether the respondent has deserted the petitioner for a continuous period of two years immediately preceding the presentation of this petition? OPP

3. Whether the petitioner is entitled to the decree of dissolution of marriage u/s 13(1)(ia) and (ib) of HMA? OPP

4. Relief

10. The petitioner examined himself as the sole witness in support of his case. No evidence was led by the respondent-wife.

11. It is trite that the onus to prove these claimed grounds of cruelty and desertion rested squarely on the respondent-husband. The learned Trial Judge has also

correctly noted this fact in para 15 of the judgment. It is also correctly noted that the nature of proof required in matrimonial matters is different from what would be the standard on which evidence is required to be tested by the prosecution in a criminal case. In a matrimonial case, the burden of proof would stand discharged on the test of preponderance of probabilities and not on the standard of proof beyond reasonable doubt.

12. However, it cannot be denied that the petitioner alleging infidelity by the wife in the present case as his primary ground of cruelty for dissolution of their marriage, has to establish the same by cogent and undisputed evidence. His other allegations of misbehaviour by the appellant-wife also had to be authoritatively established by clear pleadings proved by cogent evidence.

13. It is also well settled that a party can lead evidence only with regard to allegations of fact clearly set out in the pleadings. In the present case, completely vague and general allegations have been made in the pleadings in his petition by the respondent-husband without any reference of date, time or place. The husband has used expression as whenever and often without giving any dates, place or time. It is noteworthy that in the entire petition, there is not a single specification of the date and time with regard to either the statements attributed to the appellant-wife or her father or with regard to any of the alleged incidents.

14. We find that his examination in chief, which was filed by way of an affidavit, is equally vague and non-specific.

15. The assertions that the appellant-wife used filthy language or made threats have to be disbelieved for the reason that the same is lacking in all material particulars of date or time.

16. So far as the allegation of the wife's infidelity is concerned, the respondent-husband places reliance on no material at all other than two statements which he attributes as having made by the wife to him with regard to his potency and the comparison of his masculinity vis-à-vis that of her brother-in-law. We are of the view that admissibility of these statements is hit by the prohibition to hearsay evidence and would not be admissible under any established principle of the law

of evidence. Even if they could be admitted, these statements by themselves do not establish any infidelity. On the contrary, the respondent-husband in his petition as well as in his evidence has also attributed a statement to his father-in-law (i.e. the appellant's father) to the effect that appellant shared a relationship akin to that of a brother-sister with the said brother-in-law. This statement, if admissible, completely demolishes the respondent's allegation of infidelity on the part of his wife with her brother-in-law (her own sister's husband).

17. The irresponsibility of the respondent in making such reckless allegations against his wife is writ large on the face of his pleadings. Rules stand framed by the Delhi High Court regarding frame of a petition for divorce. Rule 7 of Rules to Regulate Proceedings Under The Hindu Marriage Act, 1955, (Central Act No. 25 of 1955) High Court of Delhi is concerned with contents of such a petition and sub-rule (e) thereof requires a divorce petition to specify the following :-

7. (e) The names of children, if any, the marriage, their sex and their dates of birth or ages.

18. In compliance of the above Rule 7(e), the respondent-husband has made the following disclosures:-

1. That the deponent has filed petition for dissolution of marriage by a decree of divorce, the same is true and correct and petition bears my signatures. After solemnization of the marriage, both the parties lived together as husband and wife, and boy named Jai was born on and Baby girl named Komal was born on .

The marriage was solemnized in simple manner.

19. The respondent has reproduced this very material in para 1 of his affidavit of evidence. the same averments as his substantive evidence. However, these are categorical admissions by the respondent-husband that the children are his.

20. We further find that in his petition as well as his evidence, apart from attributing the two aforesaid statements to the appellant-wife, the respondent-husband has merely claimed that he had doubt on the wife that she had illicit relations with her brother-in-law as well as doubt on the paternity of the two children. Certainly, his

doubt and suspicion cannot replace substantive proof.

21. It is noteworthy that in the entirety of the petition or his evidence, the respondent-husband does not dispute that he had access to his wife and they were sharing normal relations and cohabiting as husband and wife till the date when she left the matrimonial home on 23rd September, 2010. In fact, in para 15 of his divorce petition, the respondent-husband has made an allegation that the appellant-wife defamed him to the effect that children born from her are not of the petitioner . It is implicit therefrom that the respondent-husband has admitted that they are his children.

22. Undisputedly, the respondent-husband is the father of the two children.

23. In view of the above, the respondent-husband has completely failed to discharge the onus placed on him to prove any of his allegations.

24. Mr. M. Shamikh, learned counsel for the appellant has drawn our attention to para 13 of the impugned judgment wherein the Family Court has observed that the counsel for the wife had failed to impeach the husband s testimony on any point and that no contradictions on any material point could be brought out. The Family Court has observed that no suggestions have been put to the case of the husband. Reliance has been placed in para 14 on the pronouncement of this court in Smt. Shashi Bala v. Rajeev Arora in FAO No. 185/2001 and held that failure to put suggestions to rebut the testimony of the witness is deemed to be admissions to that extent. These observations and findings of the Family Court are not supported by the cross examination of the respondent-husband. The respondent-husband has been cross examined on every allegation made by him. A perusal of the husband s cross examination shows that specific suggestions have been put to him that he has harassed her by levelling false allegations; that he has thrown out the respondent from the matrimonial home; that he had concocted the entire story to get divorce; that the respondent had never inflicted any cruelty upon him and general suggestions that he has deposed falsely.

25. It also needs no elaboration that legally inadmissible evidence is not rendered admissible merely because no cross examination thereon has taken place. Placing

reliance on inadmissible statements attributed to his wife, the husband had stated that he had drawn the conclusions on her immorality on which the petition was filed.

26. We find that even in the cross examination, the respondent-husband refers to doubt on his wife that she had some illicit relations and that he had doubt on the paternity of the two children. It is, therefore, apparent that the respondent-husband himself is not sure about the correctness of his allegations and has miserably failed to prove any of his allegations.

27. So far as the ground of desertion is concerned, the respondent-husband had to establish that the petitioner left the matrimonial home on 23rd September, 2010 with the animus of permanently living separately from him and that she had no intention of returning to the matrimonial home. We find that the wife was pregnant from the parties cohabitation when she left the matrimonial home on 23rd September, 2010. The daughter of the parties was born about five months thereafter on 15th February, 2011.

28. The callousness of the husband is writ large on the face of the proceedings in as much as he does not even know the dates on which his son and daughter were born, either when he filed the petition on 15th October, 2012 or even on 3rd May, 2014 when he filed his affidavit of evidence. The respondent has left blanks where dates were to be filed in both places.

29. The intention of the respondent-husband to get rid of his wife and two children is glaring from the fact that he does not give a single specific instance of a date when he tried to reconcile his matrimonial home or when he went to her parents house to request them to return.

30. In answer to our query, we are informed that after 23rd September, 2010, the respondent-husband did not pay a single penny of maintenance to his pregnant wife or their son after she was compelled to leave their home on 10th September, 2010. He also did not support his newly born daughter after she was born in February. The first time when he met the appellant was after the orders were passed in the petition under Section 125 of the Cr PC. This fact by itself

establishes that the husband had completely abandoned his wife and children.

31. In view of the above discussion, the respondent has failed to make out that after the solemnization of their marriage, the appellant-wife has treated him with cruelty. The respondent-husband has also failed to establish that the appellant-wife had deserted him on 23rd September, 2010. Therefore the respondent-husband has failed to substantiate the grounds of Section 13(1)(ia) and (ib) of the Hindu Marriage Act.

32. There is substance in the primary contention of the appellant that the Family Court has in fact shifted the burden of proof to the wife erroneously, completely oblivious of the fact that the petitioner had approached the court with a specific case of cruelty and desertion and was bound to prove the several facts and grounds relied upon by him with cogent and clear evidence which had to be tested on the standard of preponderance of possibility.

33. Suspicion and doubt cannot replace the requirements of law nor can well settled established principles of the law of evidence be given a complete go bye. General statements attributed to the other side cannot be utilized as a substitute for proof as has been done in the instant case.

34. We may note one more distressing fact in the instant case and also point out the responsibility of the Family Court. The appellant-wife is single handedly supporting two children, a daughter presently aged about 5 years and a son who is presently aged about 7 years. There is nothing on record to show that the appellant-wife has any means of support. Her lack of means is established by the fact that an order has been passed in her favour under Section 125 of the Cr PC. After the passing of this order, the respondent-husband is paying a paltry sum of Rs.4,700/- which is a mere pittance. As a result, before the Family Court, the appellant-wife would have been hard pressed for proper legal assistance and guidance by a lawyer of standing and ability.

35. The record reflects that no evidence was led on behalf of the appellant-wife. It is fortunate for her that the pleadings of the appellant in the present case as well as his evidence were hopeless and insufficient to establish any case against her.

Otherwise, grave prejudice would have resulted to her defence if evidence was not led on her behalf in a case where there were clear pleadings and cogent evidence from the other side. It is, therefore, a prima duty and responsibility of the court to ensure that there is a level playing field for both parties so far as legal assistance is concerned that one party's case does not suffer for lack of proper legal assistance as he/she is not guided by proper legal assistance for want of necessary finances.

36. The Family Court took the view that proper suggestions were not put to the husband. We have held to the contrary.

37. The appellant had hopelessly failed to prove his case and therefore, the respondent was not required to rebut anything. However, if this was not so, courts must examine as to whether the litigant is being guided properly and the reasons for the lack of guidance. The courts must take the initiative which law permits and mandates under Section 165 of the Cr PC and ensure that all litigants before it have complete access to justice. [Ref : (2004) 4 SCC 158, Zahira Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors.]

38. In view of the above discussion, the judgment and decree dated 15th December, 2014 is hereby set aside and quashed.

39. The appellant shall be entitled to costs of Rs. 11,000/- for the present proceedings. The appellant shall also be entitled to costs of Rs. 11,000/- with regard to the proceedings before the trial court. These costs shall be paid with the maintenance for the months of June and July, 2016.

Application Allowed.

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