

S O vs.p O

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Court : Delhi

Decided On : Feb-28-2019

Appellant : S O

Respondent : P O

Judgement :

§~11 IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:

28. 02.2019 S O * % + MAT.APP.(F.C.) 53/2018 & CM APPL. 47888/2018
Through: Appellant in person. versus P O Appellant Through: Mr.Prashant
Respondent Mendiratta and Mr.Aayush Agarwal, Advocates along with respondent
in person. CORAM: HON'BLE MR. JUSTICE G.S. SISTANI HON'BLE MS.
JUSTICE JYOTI SINGH G.S. SISTANI, J.

(ORAL) 1. In this appeal challenge is to the judgment and decree dated 06.02.2018 passed by the Family Court by which a decree of divorce has been granted in favour of the respondent/husband.

2. The primary grievance of the appellant is that her right to cross- examine the respondent/husband was closed and thereafter, the matter was heard in her absence. Although, the learned counsel for the respondent/husband has drawn attention of this Court to the order sheets of the learned Family Court to show that the present matter pertains to the year 2009 and issues were framed on 03.07.2015. The respondent/husband had filed his affidavit by way of evidence on

03.01.2018. The appellant/wife had cross-examined the respondent/husband on 03.01.2018. Thereafter, a Local MAT.APP (F.C.) No.53/2018 Page 1 of 6 Commissioner was appointed on 08.01.2018 and dates for recording of evidence were fixed for 31.01.2018, 03.02.2018, 04.02.2018, 05.02.2018 and 06.02.2018, when the appellant/wife chose not to appear before the Local Commissioner. However, learned counsel for the respondent/husband submits that he would have no objection if the impugned judgment is set aside and the appellant/wife is granted an opportunity to cross-examine the respondent/husband and thereafter lead evidence in the matter, provided she does not delay the matter any further.

3. At this stage, the appellant/wife submits that in view of the order passed by the Division Bench of this Court on 16.03.2018, the petition seeking divorce filed by the respondent/husband should be dismissed. The order dated 16.03.2018 reads as under: CAV2102018 Mr.Prashant Mendiratta, learned counsel enters appearance on behalf of the caveator/respondent. CM100492018 & CM100522018 (Exemption) Exemption granted subject to all just exceptions. The applications are disposed of. CM100512018 The present application under Section 151 of the Code of Civil Procedure, 1908, instituted on behalf of the applicant/appellant, seeks permission of this Court to appear in person and argue the matter. For the reasons stated in the application, which are duly supported by an affidavit, the same is allowed. The applicant/appellant is allowed to appear in the accompanying case and to argue the same. MAT.APP (F.C.) No.53/2018 Page 2 of 6 4. The application is disposed of accordingly. MAT. APP. (F.C.) 53/2018, CM100502018 (Stay) Having heard the appellant, who appears in person, as well as, learned counsel appearing on behalf of the respondent, and having perused the impugned judgment dated 06.02.2018, we are of the view, that the alacrity with which the learned Family Court in one fell swoop has proceeded to not just close the right of the appellant to cross-examine the respondent, but has further proceeded to close her evidence; as well as thereafter pronounce ex parte judgment on the same day, on the petition for divorce instituted on behalf of the respondent; is contrary to law to say the least and in the teeth of the intent of the enactment. Further, from a reading of the impugned judgment, which has as aforesaid been rendered ex parte, we are of the prima facie view that the respondent had not been able to make out grounds of cruelty so as to entitle him

to a decree of divorce on the stated ground. Renotify for hearing on 04.09.2018. Trial Court Record be requisitioned so as to be available before this Court on the next date of hearing. The operation of the impugned judgment and order dated 06.02.2018, passed by the learned Family Court in HMA No.5 titled as 'Sh.Prashant Ojha vs. Smt. Shalu Ojha', shall remain stayed during the pendency of the appeal. The application for stay, being CM100502018, stands disposed of. A copy of this order be given dasti under the signature of Court Master to both the parties. The appellant/wife also relies upon a decision rendered by the Honble Supreme Court in the case of Delhi Development Authority vs. Ashok Kumar Behal, reported at (2002)7SCC135 in support of her contention that this Court cannot take a different view than the view MAT.APP (F.C.) No.53/2018 Page 3 of 6 expressed by the predecessor Bench of this Court. The paragraph 18 relied upon by the appellant/wife reads as under: 18. Inconsistency and contradiction in the orders passed by the same Court on the same point regarding the same scheme cannot be allowed to be continued or perpetuated. If contention of the learned counsel is accepted then an anomalous situation would arise by which the price fixed for few of the MIG flats in the scheme would be much less than the price fixed for the remaining flats allotted in the same year which cannot be permitted. The law laid down by the Supreme Court is binding on all courts within the territory of India and the law laid down by a High Court is binding on all courts within its jurisdiction. It is a cardinal principle of rule of law of that inconsistency and contradiction in the orders has to be avoided at all costs to bring about a certainty in the mind of the Subordinate courts and the litigant public. This principal would stand violated in case two binding principles on the same point of the same Court are allowed to operate simultaneously. 5. Reliance has also been placed on the Full bench decision passed in the case of National Insurance Co. Ltd. v. Pranay Sethi, reported at (2017) 16 SCC680 more particularly para 59, whereby the Honble Supreme Court after perceiving cleavage of opinion between Reshma Kumari v. Madan Mohan reported at (2013) 9 SCC65 and Rajesh v. Rajbir Singh reported at (2013) 9 SCC54 both being three-Judge Bench decisions, a two-Judge Bench of the Honble Supreme Court in National Insurance Co. Ltd. v. Pushpa reported at (2015) 9 SCC166 referred the matter to a larger Bench for the reference whereby it was held as under: MAT.APP (F.C.) No.53/2018 Page 4 of 6

59. In view of the aforesaid analysis, we proceed to record our conclusions:

59. 1 The two-Judge Bench in Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC421 should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC121, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench. 6. We have heard learned counsel for the parties and gave thoughtful consideration to the matter. We are unable to accede the request made by the appellant/wife for the reason that the order passed by the division bench of this Court on 16.03.2018 was an order passed on the first date, when the counsel for the respondent/husband had appeared on a caveat and it cannot be termed as a final order in the matter. The order dated 16.03.2018 passed by the predecessor Bench of this Court was passed at the stage of admission and the Bench had only expressed a prima facie view. Moreover, the Bench was unhappy in the manner the Family Court had dealt with the matter by closing the evidence of the wife and then proceeded and decided the matter on the same day. We also find that the reliance placed on the decisions enumerated in foregoing paragraphs have no bearing to the facts of the present case and does not help the appellant/wife.

7. Accordingly, we set aside the impugned judgment dated 06.02.2018 and remand the matter back to the Family Court. Parties will appear before the Family Court on 19.03.2019. Evidence shall be concluded within a period of three months. MAT.APP (F.C.) No.53/2018 Page 5 of 6 8. Resultantly, the appeal along with the pending application is disposed of in the above terms. G.S.SISTANI, J.

JYOTI SINGH, J.

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