

A S vs.s J

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SooperKanoon Citation : sooperkanoon.com/1222291

Court : Delhi

Decided On : Mar-28-2019

Appellant : A S

Respondent : S J

Judgement :

\$~15 * % IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:

28. 03.2019 + MAT.APP.(F.C.) 334/2018 A S S J CORAM: Appellant Through: Ms. Nidhi Mohan Parashar, Mr. Umang Kumar Singh & Mr. Pratyaksh Sharma, Advocates versus Through: None Respondent HON'BLE MR. JUSTICE G.S. SISTANI HON'BLE MS. JUSTICE JYOTI SINGH G.S. SISTANI, J.

(ORAL) CM APPL. 54267/2018 1. This is an application seeking condonation of delay. None is present to oppose the prayer made in the application. For the reasons mentioned in the application, the same is allowed and the delay is condoned.

2. The application stands disposed of. CM APPL. 54268/2018 3. This is an application filed by the appellant seeking to bring on record additional facts by way of an affidavit describing various incidents of cruelty inflicted upon her by the respondent. None has appeared for the respondent and there is no opposition to the prayer made in this application.

4. For the reasons mentioned in the application, the same is allowed. The affidavit is taken on record. MAT. APP (F.C.) No.334/2018 Page 1 of 4 5. The application stands disposed of. MAT.APP.(F.C.) 334/2018 6. Respondent has been served through publication. Despite service, none is present on behalf of the respondent. We thus proceed to hear the appeal in the absence of the respondent.

7. This appeal is directed against the judgment dated 23.08.2018 by which a petition seeking divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, has been dismissed.

8. In this case, marriage between the parties was solemnised on 18.11.2015. No child is born out of the said wedlock.

9. Despite service, the respondent has chosen to stay away from the proceedings. The respondent did not appear even before the Family Court and was proceeded ex-parte by an order dated 18.01.2018. Thereafter, the appellant herein filed her affidavit by way of evidence.

10. Learned counsel for the appellant submits that the only ground on which the petition for divorce has been dismissed by the Family Court is that the same lacks material particulars. It is submitted in para 5 of her affidavit by way of evidence, the appellant had stated that soon after the marriage, the respondent started taunting her, that he had shown mercy on her by marrying her, otherwise a minimum sum of Rs. 5 to 6 lacs would have been spent on the marriage of the appellant if the marriage would have been arranged with a person like the respondent, who was earning approximately Rs. 25000/- to Rs. 30,000/- per month. She submits that since the date of marriage has already been mentioned in the petition, the expression, after few days of marriage, has to be given a reasonable interpretation. According to her, she has given a specific instance of money being demanded by the respondent in MAT. APP (F.C.) No.334/2018 Page 2 of 4 the month of February 2016, which the appellant was forced to arrange from her grandfather, and thus, this would fall within the broader definition of cruelty and since the year and month have been given, it cannot be said that the petition lacks material particulars.

11. Additionally, it is contended that all other instances which have been mentioned remain uncontested and have not been rebutted in any form and thus are deemed to have been admitted. It may be noted that during the present proceedings as well, the respondent could not be served by way of ordinary means, and was served through publication. A copy of the newspaper has been placed on record. Even now he has chosen to remain absent and not contest the appeal.

12. Counsel also submits that the husband had filed a petition for habeas corpus knowing fully well that she had left the matrimonial home on account of ill-treatment meted out to her by him, which, according to her, is also a ground for cruelty.

13. We have heard the learned counsel for the appellant and carefully examined the order passed by the Family Court and the affidavit by way of evidence, which remains unrebutted. Two specific instances have been brought out in the affidavit of evidence. The first instance pertains to a few days post marriage and next one is of February 2016, when demand of money was made and, in fact, money was received from the grandfather and paid to the respondent. There is no rebuttal to the averments in the affidavit filed by the appellant, and therefore, her testimony on the allegations of cruelty remains unimpeached.

14. Accordingly, we are of the view that the appellant has made out a case of cruelty within the definition of Section 13(1)(ia) of the Hindu Marriage MAT. APP (F.C.) No.334/2018 Page 3 of 4 Act.

15. The appeal is thus allowed. The marriage between the parties is hereby dissolved under Section 13(1)(ia) of the Hindu Marriage Act.

16. Let a decree of divorce be prepared in favour of the appellant. MARCH28 2019 rd G.S.SISTANI, J JYOTI SINGH, J MAT. APP (F.C.) No.334/2018 Page 4 of 4