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M vs.A

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SooperKanoon Citation : sooperkanoon.com/1223065

Court : Delhi

Decided On : May-06-2019

Appellant : M

Respondent : A

Advocate for Def. : Mr. V. Shukla

Advocate for Pet/Ap. : Mr. Ashish Sehrawat

Judgement :

$~ * % + 1. IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

06. h May, 2019 C.R.P. 101/2016 M A Through: Mr. Ashish Sehrawat, Advocate .....

... Petitioner
petitioner in person versus Through: Mr. V. Shukla, Advocate ..... Respondent CORAM: HON'BLE MR. JUSTICE J.R. MIDHA JUDGMENT The petitioner has challenged the order dated 29th February, 2016 whereby the learned Family Court allowed the respondent to withdraw the divorce petition with liberty to file a fresh petition on the same cause of action subject to payment of cost of Rs.10,000/-.

2. The parties were married according to Hindu rites and ceremonies on 04th November, 2009 and they stayed together till 11th May, 2013. The petitioner filed a complaint against the respondent in CAW Cell on 27th May, 2013. The police

registered FIR No.617/2013 against the petitioner on 13th November, 2013 under Sections 498-A and 406 of Indian Penal Code.

3. On 24th July, 2013, the respondent filed a petition for restitution of conjugal rites under Section 9 of the Hindu Marriage Act which was withdrawn on 06th November, 2013. C.R.P. 101/2016 Page 1 of 4 4. On 05th September, 2013, the petitioner filed a petition for maintenance and domestic violence against the respondent.

5. On 18th March, 2014, the respondent filed a petition for divorce on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 in which the issues were framed on 09th February, 2015. The respondent filed his evidence by way of affidavit on 29th July, 2015 and his examination-in-chief was recorded on 04th August, 2015.

6. On 10th November, 2015, the respondent filed an application under Order XXIII Rule 1 of the Code of Civil Procedure for permission to withdraw the petition with liberty to file a fresh petition on the ground that the petition suffered from two formal defects of not giving dates of the instances of cruelty and the date of withdrawal of the petitioner from the society of the respondent. The respondent blamed his previous counsels for these defects. The petitioner also mentioned that he wants to add the instances of cruelty.

7. Vide order dated 29th February, 2016, the Family Court allowed the application on the ground that the particulars of the cruelty with specific dates have not been mentioned in the divorce petition which amounts to a formal defect.

8. Learned counsel for the petitioner urged at the time of the hearing that the respondent has raised false claims before the Family Court as well as this Court. It is submitted that the respondent wants to build up an entirely new case under the guise of removing formal defects.

9. Learned counsel for the respondent urged at the time of the hearing that the respondent wants to cure the formal defects in the divorce petition by giving the specific particulars of the cruelty. C.R.P. 101/2016 Page 2 of 4 10. Vide order

dated 11th May, 2018, this Court directed the respondent to produce the draft petition in respect of which the respondent had sought liberty to consider whether the alleged defects sought to be cured were formal in nature.

11. On 12th October, 2018, learned counsel for the respondent produced the draft divorce petition proposed to be filed.

12. This Court has compared the draft divorce petition with the divorce petition filed by the respondent. The draft petition filed by the respondent reveals that the real intention of the respondent is to built up an entirely new case. The respondent did not give any reason or justification as to why these averments were not incorporated in the divorce petition. Unfortunately, the learned Family Court did not consider this aspect. This Court is of the view that the respondent has misled the Family Court as well as this Court.

13. This Court is of the view that the respondent cannot be allowed to institute a fresh divorce petition to set up an entirely new case. The respondent should have approached the learned Family Court for amendment of the petition to incorporate the detailed particulars of the instances of cruelty. The respondent is at liberty to seek amendment of the divorce petition to incorporate the dates and particulars of the instances of cruelty mentioned in the divorce petition.

14. The petition is allowed, impugned order dated 29th February, 2016 is set aside and the petitioners application under Order XXIII Rule 1 of Code of Civil Procedure is dismissed.

15. The divorce petition of the respondent is restored. The parties shall appear before the learned Family Court on 28th May, 2019 when the Family Court shall fix the case for cross-examination of the respondent. C.R.P. 101/2016 Page 3 of 4
16. The Family Court is directed to expedite the divorce petition and endeavour to decide the same within six months.

17. Learned Family Court shall not grant any unnecessary adjournments to the parties. MAY06 2019 ds J.R. MIDHA, J.

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