

Pooja vs.hemant Kumar

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Court : Delhi

Decided On : Jul-24-2019

Appellant : Pooja

Respondent : Hemant Kumar

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + MAT.APP.(F.C.) 197/2019, CM No.33092/2019 (delay of 45 days in the appeal), CM No.33093/2019 (exemption) & CM filing No.33094/2019 (delay of 21 days in re-filing the appeal) % Appellant Respondent Through Mr. C.M. Grover, Advocate. versus POOJA HEMANT KUMAR CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HON'BLE MS. JUSTICE ASHA MENON Through None.

ORDER

2407.2019 CM No.33093/2019 1.

2. Allowed, subject to all just exceptions. The application is disposed of. CM No.33092/2019 1. For the reasons stated in the application, the delay of 45 days in filing the accompanying appeal is condoned.

2. The application is disposed of. CM No.33094/2019 1. For the reasons stated in the application, the delay of 21 days in re- filing the accompanying appeal is condoned.

2. The application is disposed of. MAT.APP.(F.C.) 197/2019 1. The present appeal is directed against the judgment dated 02.03.2019, passed by the learned Family Court, Karkardooma Courts, Delhi whereby MAT.APP.(F.C.)197/2019 Page 1 of 7 the marriage between the appellant/wife and the respondent/husband has been dissolved.

2. The facts of the case are that the respondent/husband had filed the petition for divorce on the grounds of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 pleading inter alia that the appellant/wife was given to strange behaviour, which created a fear in his mind and his family, so much so that his elder brother had threatened to leave the joint family due to the adverse effect on his children, who were shaken, by her conduct.

3. The respondent/husband alleged in his petition that the appellant/wife proclaimed that she was a follower of Meera Baba and Jainka Baba and that she had been forced into the marriage against her wishes. On occasions, the respondent/husband and his family had to perform the sacrifice of cocks and goats in the name of Meera Baba and Jainka Baba to bring out the appellant/wife from under the influence of such Babas and which he agreed to perform under fear and in the hope that he could bring some normalcy in his marital life. It was alleged that due to the said acts of the appellant/wife, she had a miscarriage, which caused mental agony to the respondent/husband. The appellant/wife was also allegedly violent with the respondent/husband, having assaulted him on 14.10.2011.

4. Thereafter, the appellant/wife went to her parental home and remained there till 11.06.2012, when she returned due to the intervention of the Panchayat and her fathers assurance, who undertook to ensure that she will not indulge in such unacceptable behaviour in future. According to the respondent/husband even thereafter, the appellant/wife declined to establish any physical relationship with him and went on to proclaim that as she was a follower of Meera Baba and Jainka Baba, she was like the mother of the MAT.APP.(F.C.)197/2019 Page 2 of 7 respondent/husband, which shocked and surprised him. The conduct of the appellant/wife led the parents of the respondent/husband to sever all ties with him.

5. In the written statement filed by the appellant/wife before the learned Family Court, she denied all the averments made in the petition and alleged that the respondent/husband had concocted and fabricated the story of the worship of Meera Baba and Jainka Baba. She denied that she was their follower and claimed that till her marriage, she had never heard of these deities and that it was the respondent/husband and his family, who had taken the appellant/wife to Village Kheda, Atrauli District Aligarh, UP for the first time after the marriage, on 05.06.2012 as they were the followers of Meera Baba and Jainka Baba.

6. She denied that she had indulged in any conduct that had caused alarm and fear in the mind of the respondent/husband and his family members. She denied that her parents had asked the respondent/husband to sacrifice cocks and goats in the name of Meera Baba and Jainka Baba and that the respondent/husband had performed these rites due to fear. She denied that the elder brother of the respondent/husband had threatened to quit the joint family because his children were shaken by the incidents.

7. She denied that she had quarrelled and thrown utensils and created ugly scenes or that she had left the matrimonial home on 02.12.2010, without informing the respondent/husband or his family members. She denied that she had returned to the matrimonial home on the assurance given by her parents that such conduct would not be repeated as no such acts had been committed by her. She denied that it was due to her actions that the miscarriage had occurred and claimed that the miscarriage was a result of MAT.APP.(F.C.)197/2019 Page 3 of 7 the merciless beatings given to her by the respondent/husband. She also denied that she had ever assaulted the respondent/husband.

8. The appellant/wife denied that any Panchayat had been held on 11.06.2012, that she had refused to have sexual relations with the respondent/husband or that she had claimed to be like a mother to the respondent/husband. She claimed that she had been treated with utmost cruelty by the respondent/husband and his family members due to which she was compelled to file complaints against them with the CAW Cell and under Section 12 of the Protection of Women from Domestic Violence Act, 2005. She denied that she had left the matrimonial home

in the absence of the respondent/husband and instead claimed, that she had been left at her parental home by the respondent/husband on the pretext that her mother was sick.

9. It may be mentioned herein that in support of his case, the respondent/husband had examined himself as PW1 and had examined Sh. Lakhmi Singh as PW2 and Sh. Sushil Kumar as PW3. They were all cross- examined. Despite opportunities being accorded to the appellant/wife, no evidence was led by her and the opportunity was closed.

10. The Family Court noticed all these allegations and counter allegations in the impugned judgment and concluded that there was sufficient evidence on the record and the respondent/husband had been able to prove that he was subjected to mental cruelty. It was noted that the parties had got married on 29.11.2010 and had separated in July, 2012. It observed that the respondent/husband remained firm in his testimony as regards the conduct of the appellant/wife of creating a scene at the matrimonial home, being a follower of Meera Baba and Jainka Baba. It was noted that in the cross- MAT.APP.(F.C.)197/2019 Page 4 of 7 examination by the respondent/husband examined as PW1, he had referred to the specific conduct of the appellant/wife at the matrimonial home on 30.11.2010, by explaining that she had spread her hair and started rotating her head and had started abusing which lasted for about half an hour. This conduct was revealed by the respondent/husband while he was being cross- examined by the appellant/wife. He also stated that though this conduct was brought to the notice of the father of the appellant/wife, no one came forward to resolve the issue.

11. As noticed above, it was the stand taken by the appellant/wife that the respondent/husband and his family were followers of Meera Baba and Jainka Baba but the Family Court had noted that during his cross- examination by the appellant/wife, the respondent/husband had remained firm that he had gone to the samadhis of both Babas at the insistence of the appellant/wife and her brother. Noticeably, no suggestion was given to the respondent/husband that it was he and his family who were the followers of Meera Baba and Jainka Baba. The Family Court quite rightly concluded that the appellant/wife could not shake the version of

the respondent/husband during his cross-examination and she had also failed to prove her defence through effective cross-examination of the respondent/husband and his two witnesses and by failing to lead her own defence. The Family Court also observed that the respondent/husband had not been cross examined on his statement that he had been deprived of sexual consortium by the appellant/wife and had been manhandled by her and she had made no efforts for restitution.

12. Thus, after going through the pleadings and scrutinizing the evidence, the learned Family Court concluded that the respondent/husband had proved MAT.APP.(F.C.)197/2019 Page 5 of 7 that the appellant/wife had subjected him to cruelty and accordingly, dissolved the marriage.

13. Learned counsel for the appellant contends that the learned Family Court did not permit the appellant/wife to cross examine the respondent/husband and the other witnesses produced by him, which had caused her grave prejudice. He submits that the learned Family Court had also closed the opportunity of the appellant/wife to lead the evidence. The appellant/wife was thus unable to prove her defence as per the averments made in her written statement that it was the family of the respondent/husband who were followers of Meera Baba and Jainka Baba and that she had been compelled by the respondent/husband to follow their tenets. Relying on the judgment of the Supreme Court in Rafiq & Another vs Munshilal & Another, (1981) SCR (3) 509 he urged that an innocent litigant like the appellant/wife, should not be penalized for the ineptness of her counsel as being a woman, she was fully dependent on her counsel and could not be subjected to injustice only because he did not conduct the case effectively.

14. The facts of the present case are distinguishable from those in Rafiq & Another. That case was one of appeal, where the presence of the parties was not necessary and the counsel engaged had to be present to follow up the appeal. Here is a matrimonial case in which the parties are required to come to Court even when they engage a lawyer. Further, it is not as if the previous counsel had left the appellant/wife in the lurch. The previous counsel had in fact cross examined the respondent/husband and his witnesses. The fact that the Family Court found that such cross-examination was not effective, is not reason enough to derail the case

of the MAT.APP.(F.C.)197/2019 Page 6 of 7 respondent/husband. The appellant/wife cannot be permitted to pass on the entire blame on to her previous counsel.

15. We are of the opinion that it is not sufficient to merely complain against the counsel in an appeal to be able to overcome an adverse order. Quite clearly, no complaint has been filed by the appellant/wife and her counsel with the Bar Council of Delhi alleging professional misdemeanour. Moreover, as is evident from a perusal of the impugned judgment, it is not as if the appellant/wife did not have an opportunity to cross examine the respondent/husband and his witnesses. The cross examination conducted by her counsel on 07.03.2018, has been discussed in some detail in the impugned judgment and it has been observed that the father of the respondent, who appeared as PW-2 had been adequately cross examined and his testimony supported the testimony of the respondent/husband, who had appeared as PW1. It may also be noticed that the order passed by the learned Family Court directing closure of the right of the appellant/wife to lead evidence, was not challenged by her in any proceedings.

16. After considering the submissions made by learned counsel for appellant/wife and on perusing the impugned judgment and the documents on the record, we do not find any merit in the present appeal. The appeal is accordingly dismissed in limine along with the pending applications. JULY24 2019/MK/neelam ASHA MENON, J HIMA KOHLI, J MAT.APP.(F.C.)197/2019 Page 7 of 7

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