

Vikas Agarwal Vs. Ms. Anubha

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Court : Delhi

Decided On : Oct-18-2000

Reported in : 2000VIIAD(Delhi)1064; 90(2001)DLT801; I(2001)DMC676; 2000(56)DRJ485

Judge : Arun Kumar and; A.K. Sikri, JJ.

Acts : Code of Civil Procedure (CPC) - Order 10, Rule 4

Appeal No. : FAO (OS). No. 281 of 2000

Appellant : Vikas Agarwal

Respondent : Ms. Anubha

Advocate for Def. : Mr. A.S. Chandhiok, Sr. Adv., ; Mr. Hari and ; Ms. Jyoti

Advocate for Pet/Ap. : Mr. Vikas Singh,; Mr. Vishwajit Singh and; Mr. S.D. Mishra

Judgement :

ORDER

Arun Kumar, J.

1. We have heard learned counsel for the parties. In this appeal, the appellant is challenging the order dated 24th August, 2000 passed by learned Single Judge whereby on account of consistent failure on the part of the appellant to appear

before the Court inspire of specific direction in that behalf, the defense of the appellant was struck off. Learned counsel for the appellant argued that such an order could not have been passed under Order X Rule 4 of the Code of Civil Procedure. He has drawn our attention to the various Rules forming part of Order X of the Code of Civil Procedure. On the other hand, learned counsel for the respondent has vehemently argued that the conduct of the appellant has been such that he does not deserve any indulgence from the Court. He has sought to justify the impugned order by highlighting the conduct of the appellant. He has placed before us a compilation containing various orders passed by the learned Single Judge from time to time in the case.

2. It appears from the orders of the learned Single Judge that the need to examine the appellant in person arose on account of failure of the appellant and his representatives in India including his counsel, to specifically and clearly place before the Court the fact whether the restraint order passed in the Suit on 5th November, 1999 was brought to the notice of the Court in America which was dealing with a divorce petition filed by the appellant. By order dated 5th November, 1999 the learned Single Judge restrained the appellant who is defendant in the Suit before the learned Single Judge, from proceeding further with the proceedings for divorce in the Superior Court, State of Connecticut, U.S.A. for a period of 30 days from the date of the order. It appears that on 23rd November, 1999 the Court in America passed a decree of divorce. The learned Single Judge wanted to know whether the factum of the restraint order having been passed in these proceedings on 5th November, 1999 was brought to the notice of the Court in America. It is noted in the order dated 9th March, 2000 passed by the learned Single Judge that the impression that he gathered from the material on record was that the pendency of these proceedings was not brought to the notice of the Court in America. It appears that it was stated by the counsel for the appellant appearing before the learned Single Judge on 9th March, 2000 that the restraint order dated 5th November, 1999 had been brought to the notice of the American Court but the learned Single Judge observed in this behalf that :

'But conspicuously there is nothing in writing, emanating from the defendant, to support this contention.'

3. An attempt was made to place the fact of restraint order having been brought to the notice of American Court through an affidavit of the father of the appellant. This did not appeal to the learned Single Judge keeping in view the fact that the father was neither present before the American Court nor he was involved in any manner in communicating the restraint order to the Attorneys of the appellant in America. Rather in view of this conduct of the appellant, the learned Single Judge issued a show cause notice for contempt of Court on 9th March, 2000.

4. An appeal was filed against this order being FAO(OS). No.112 of 2000 which was dismissed as withdrawn vide order dated 9th May, 2000. Thereafter the appellant made an application before the learned Single Judge for recall of the order dated 9th March, 2000. Another application was moved seeking exemption from appearing in Court. These applications were disposed of on 3rd July, 2000. The order dated 3rd July, 2000 shows that the counsel appearing for the appellant indicated the willingness of the appellant to appear before the Court. However, he expressed an apprehension on the part of the appellant that if he came to India he would be arrested in pursuance of proceedings lodged against him under Section 498-A of the Indian Penal Code by the respondent. This apprehension of the appellant was taken care of in the said order dated 3rd July, 2000 inasmuch as the learned Single Judge directed that the defendant shall appear before the Court on 24th August, 2000 and it was also ordered that he shall not be arrested pursuant to any complaint or pending FIR filed by the plaintiff in the Suit in respect of the matrimonial dispute with the present appellant without leave of the Court. Thus the order dated 3rd July, 2000 appears to have been passed as per the appellant's own volition and desire. Learned counsel for the appellant submits that the appellant had another apprehension about losing his job at that time because of problem of getting leave. However, in view of the statement of Shri Rakesh Dwivedi, Senior counsel appearing on behalf of the appellant before the learned Single Judge this apprehension does not appear to have been emphasised because the counsel offered that the appellant would appear before the Court subject to protection from arrest.

5. In the context of the controversy whether the restraint order dated 5th November, 1999 was brought to the notice of the American Court, reliance was

placed on an affidavit dated 24th July, 2000 of one Mr. Harold Lambole said to be the attorney of the appellant in the proceedings in the American Court. The relevant portion in the said affidavit is reproduced below:-

'The Case Management date for divorce (Divorce Hearing) was scheduled for November 9, 1999. On the morning of November 9, 1999, Vikas Agrawal informed me about the restraining order issued from the court of India from proceeding for divorce in the Superior Court of Connecticut for 30 days. I brought to the attention of Superior Court of Connecticut about this order. The Court in Connecticut refused to enforce any restraining order because Indian Court has no jurisdiction over US Court proceeding and the order purported to interfere with a pending proceeding in United States of America. On Vikas Agrawal's personal request, I was still able to defer the date of final Divorce Hearing to November 23, 1999.

6. The statement in the affidavit that the Court in Connecticut refused to enforce any restraining order because Indian Court has no jurisdiction over American Court proceedings shows that the order dated 5th November, 1999 was not brought to the notice of the American Court. Had the order been placed before the Court in correct perspective such observations may not have been made because the order dated 5th November, 1999 does not restrain the American Court. It only restrains the appellant. Firstly, there is nothing in the affidavit to show that the order as such was placed before the American Court. Secondly, the affidavit is silent as to what was actually placed before the American Court i.e. whether the exact order was filed or only an oral statement about order was made. The exact thing is not available. It may be recalled that by the order dated 5th November, 1999 the appellant was restrained from proceeding with the case filed by him in the American Court. There was no restraint order or injunction against the Court. The affidavit is also silent on the point as to whether any application was moved before the American Court seeking adjournment in terms of the order dated 5th November, 1999 of this Court. On the other hand, learned counsel appearing on behalf of the respondent has brought to our notice the proceedings that took place in the Court in America on 23rd November, 1999 which shows that no reference was even made to the pendency of the present proceedings in this Court. Thus no satisfactory material or proof has been placed before the Court about the restraint

order having been brought to the notice of the American Court. In view of the above conduct of the appellant, we are not impressed by the argument of the learned counsel for the appellant that the proceedings were under Order X of the Code of Civil Procedure and such an order could not have been passed under Order X of the Code of Civil Procedure. According to the learned counsel for the appellant Order X of the Code of Civil Procedure can be invoked only on first hearing of the case. First hearing means, hearing at the stage of framing of issues or thereafter. Such a stage had not been reached so far in the case and therefore, Order X of the Code of Civil Procedure could not be invoked. We are unable to agree with this submission. Order X contains rules of procedure. Normally stage for its invocation would arise as suggested by the counsel. But in the peculiar situation which had arisen in the case and in order to elicit the correct facts resort to Order X of the Code of Civil Procedure by the learned Single Judge cannot be said to be wrong or unjustified. The detailed facts about the manner in which the appellant has conducted himself in the proceedings before the learned Single Judge fully justify the impugned order. We find no merit in this appeal. Dismissed.