

Pushpa Singh Vs. Gajeender Pal Singh

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Court : Delhi

Decided On : Feb-11-1991

Reported in : 44(1991)DLT22; I(1991)DMC540; 1991(1)DRJ(Suppl)442

Judge : R.L. Gupta, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 23A; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revision Appeal No. 933 of 1990

Appellant : Pushpa Singh

Respondent : Gajeender Pal Singh

Advocate for Pet/Ap. : Maldeep, Adv

Judgement :

R.L. Gupta, J.

(1) This revision petition is directed against an order dated 27th November, 1990 of the Learned Additional District Judge, Delhi, by which she dismissed Hma petition No. 131/90 of the respondent/husband in default of his appearance. Normally she petitioner wife should have been satisfied by the dismissal of a divorce petition by her husband. But still this petition seems to have been filed in view of peculiar circumstances. The first circumstances is that the wife had moved

an application under Order 6, Rule 17 of the Code of Civil Procedure for amending her written statement with the idea of converting it into a counter-claim under Section 23-A of the Hindu Marriage Act seeking divorce from the husband on the grounds of cruelty and desertion. She had also moved an application under Section 340 of the Code of Criminal Procedure for filing a complaint against the husband for various offences alleged to have been committed by him during the course of the proceedings. The main grievance in this respect was that on an ex parte divorce having been obtained by the husband, the wife moved an application under Order 9, Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside the ex parte decree alleging that her signatures on the summons were fraudulently obtained and manipulated and further that the summons actually did not bear her signatures. thereforee, the prayer in this revision petition is that the lower Court actually did not exercise the jurisdiction vested in it by deciding her application under Order 6, Rule 17 of the Code permitting the petitioner to take up the grounds of cruelty and desertion. She is also alleged to have refused to exercise jurisdiction on the application of the wife under Section 340 of the Code of Criminal Procedure.

(2) Notice to show cause of this petition was issued to the respondent. It was also ordered that if service by ordinary process is not effected it may be got done by affixation. Affixation was done but nobody appeared on behalf of the respondent/husband.

(3) I have beard learned counsel for the petitioner and have also perused the record of the trial Court. The order passed by learned Additional District Judge on the application under Order 9, Rule 13 shows that the ex parte decree in favor of the husband was set aside. Although there is no clear finding that the summons did not bear the signatures of the wife, yet there is the allegation in the application to that effect by the wife. It is to be noted that when a petition for divorce is moved and a counter claim is sought to be made by the opposite party then the Court must decide both the matters at the same time. The dismissed of the petition filed by the husband, thereforee, did not complete the proceedings. The wife was equally entirled to be heard on her counter-claim and in the circumstances mentioned by the wife on her application under Order 6, Rule 17, it was a fit case

where the learned trial Court should have allowed the amendment of the written statement. By this amendment she wanted to point out that although the summons did not bear her signatures, she was proceeding ex parte in collusion with some other persons.

(4) therefore, I am of the view that the learned Additional District Judge should not have dismissed the petition by the husband in default thereby completely shutting out the case of the wife. In the e circumstances I set aside the order of dismissal passed by the learned trial Court because she has refused to exercise jurisdiction vested in her by law, The learned Additional District Judge is directed to decide the matter afresh in accordance with the observations made above.

(5) The petitioner shall appear before the learned trial court on 22nd March, 1991. The petition stands disposed of.

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