

Seema Devi Vs. Sushil Kumar

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Court : Delhi

Decided On : Jan-21-1991

Reported in : I(1991)DMC447

Judge : R.L. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 151 - Order 9, Rule 7; [Hindu Marriage Act, 1955](#) - Sections 13 and 24

Appeal No. : C.R. No. 4 of 1990

Appellant : Seema Devi

Respondent : Sushil Kumar

Advocate for Def. : L.D. Adlakha, Adv.

Advocate for Pet/Ap. : K.B. Andley, Adv

Disposition : Petition allowed

Judgement :

R.L. Gupta, J.

1. This Revision is directed against an order dated 13-12-1989 of the learned Additional District Judge, Delhi by which she dismissed the application under Order 9 Rule 7 of the Code of Civil Procedure for setting aside the ex-parte

proceedings against the petitioner.

2. The facts are that the respondent-husband moved a petition for divorce against the petitioner under Section 13 of the Hindu Marriage Act (Act for short). The wife also moved an application under Section 24 of the Act for maintenance pendente lite. However neither the petitioner nor her counsel appeared on 1-5-1987. therefore the application under Section 24 was dismissed in default and the petitioner was proceeded ex-parte. The ex-parte evidence was recorded on 14-7-1988 and it was ordered to be listed for judgment on 4-8-1988.

3. Before that date, however, the petitioner moved the application on 1-8-1988 for setting aside the ex-parte order. The learned Trial Court was of the view that since the hearing in the main proceedings was complete, Order 9 Rule 7 did not apply and, therefore, dismissed the application.

4. Notice to show cause was issued to the respondent husband and further proceedings were stayed before the Trial Court vide order dated 8-1-1990.

5. No reply has been filed on behalf of the respondent-husband and I have heard the arguments advanced by the counsel for the parties.

6. It is not denied before me that the parties were referred for reconciliation by the learned Trial Court to Shri R.C. Chopra, Member Secretary, Delhi Legal Aid Advice Board, New Delhi. The record of the reconciliation proceedings was summoned. I have perused it. The proceedings dated 2-4-1987 recorded by the Legal Aid Advice Board indicate that both the parties were present there and they stated before the Reconciliation Officer that they were living quite happily with each other. The wife expressed that she was, however, still apprehensive and scared of the husband as he was in the habit of beating. Otherwise everything was going on smoothly. They were directed to come again on 30-4-1987. In the proceedings of that date it is recorded that there were still many differences between them and so they were directed to appear on 7-5-1987. On 7-5-1987 they appeared and were again directed to come on 14-5-1987 with the mother of the husband. Then they were asked to come on 2-7-1987. On that date only the wife was present. She informed the Reconciliation Officer that the husband had turned

her out of the house. therefore a notice was issued to the husband to appear on 9-7-1987. Finally the opinion was given by the Reconciliation Officer on 23-7-1987 that in view of the differences between the parties reconciliation was not possible. The order of the learned Trial Court shows that she proceeded ex-parte against the wife on 1-5-1987 when admittedly reconciliation proceedings were still pending before the Reconciliation Officer. They appeared together before the Reconciliation Officer on 7-5-1987 and also on 14-5-1987. This clearly shows that while the parties were living together on 1-5-1987, the husband managed to obtain an ex-parte order against the wife. The progress of the reconciliation and, therefore, the ultimate failure was concealed by the husband from the learned Trial Court and that is why probably she proceeded ex-parte against the petitioner. therefore I am of the view that no ex-parte order could have actually been passed against the petitioner during the pendency of the reconciliation proceedings and consequently ex-parte evidence could not have been recorded.

7. There is no doubt that after recording of the ex-parte evidence, the provisions of Order 9 Rule 7 of the Code are exhausted because by that time no hearing is pending before the trial court. However, if the circumstances of a particular case justify the redressal of a wrong done to a party, then in the absence of any express provisions to the contrary certainly the powers under Section 151 of the Code of Civil Procedure can be invoked. The learned trial court could have exercised its powers under Section 151 of the Code because the circumstances in this case amply justified the exercise of the inherent powers. therefore, the trial court having not exercised the inherent power has committed a material irregularity or rather an illegality.

8. I, therefore, set aside the ex-parte order against the petitioner. The Trial Court is directed to proceed with the trial of the case from the stage it proceeded ex-parte against the petitioner. The petitioner shall also be entitled to the costs which are assessed at Rs. 1,000/-. The costs are conditional and shall be payable by the husband before the Trial Court on 8-2-1991. The parties shall appear on that date before the Trial Court.