

Jyoti Sharma @ Ruby Vs. Pramod Kumar

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Court : Delhi

Decided On : Dec-10-2014

Judge : Sunil Gaur

Appellant : Jyoti Sharma @ Ruby

Respondent : Pramod Kumar

Advocate for Pet/Ap. : Mr. Samrat Nigam, Mr. Rohit Singh

Judgement :

\$~R-87 (Part-B) * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: December 10, 2014 + MAT APP. 26/2013 & C.M.APPL.19738/2013 JYOTI SHARMA @ RUBY Through:Appellant Mr. Samrat Nigam and Mr. Rohit Singh, Advocates versus PRAMOD KUMAR Through: Respondent Pranay Trivedi, Advocate CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL) % Vide impugned judgment of 2nd September, 2013, respondenthusbands petition for divorce is allowed by trial court while invoking the provisions of Order 12, Rule 6 of CPC. Suffice it would be to note that the parties were married on 27 th November, 2009 and out of the said wedlock, there was no issue. Frequent visits of appellant-wife to her parental house gave rise to the suspicion in the mind of respondent-husband. According to respondenthusband, appellant-wife had never allowed respondent-husband to touch her mobile phone.

As per respondent-husband, in the evening of 1st March, 2010, appellant-wife had left the matrimonial house without permission and a complaint was lodged with the local police. On enquiry, respondent-husband was shocked to learn that criminal cases of cheating, MAT APP. 26/2013 Page 1 etc. were pending against appellant-wife in Alwar courts and appellantwife was also involved in unauthorized withdrawal of cash from ATM of State Bank of Bikaner and Jaipur and an FIR was registered in which appellant-wife had obtained anticipatory bail few days before the marriage and the aforesaid background of appellant-wife was purportedly concealed from respondent-husband. On the ground of intentional concealment of aforesaid material facts and her criminal character, application under Order 12, Rule 6 of CPC was filed by respondent-husband, which stands allowed vide impugned judgment on the ground that appellant-wife has not denied the allegations of concealment of her criminal background. On an application under Order 12 Rule 6 of CPC by respondenthusband, trial court vide impugned judgment has granted divorce while holding as under:

It was urged before the court by the Id. Counsel for petitioner, that no reasonable minded person would be normally entering into a marriage alliance knowing that the would be spouse was facing such kind of criminal cases as immoral turpitude and cheating relating to ATM; and secondly, petitioner/husband would certainly not have entered the marriage, had he been disclosed this information prior to the marriage or even at the time of marriage. Since even respondent has not bothered to deny this fact that she has not disclosed about the pendency of all these criminal cases, it is a clear cut case of fraud made out and the consent of the petitioner to enter into marriage was obtained by fraud.

At the hearing, impugned order was assailed by learned counsel for MAT APP. 26/2013 Page 2 appellant by contending that there is clear-cut denial of the allegations of concealment and there is no clear admission on the part of appellant-wife regarding concealment of her criminal background. It was submitted by appellants counsel that the two criminal cases pending against appellant-wife have been compromised and the impugned order erroneously grants divorce on the ground of concealment whereas there is no such concealment. To substantiate the aforesaid stand, learned counsel for appellant drew the attention of this Court

to paragraphs No.17 to 21 of the divorce petition as well as to corresponding paragraphs of appellants written statement and also to paragraphs No.5 to 6 of the preliminary objections. On the contrary, learned counsel for respondent supports the impugned order and submits that there is no denial of material averments and thus, trial court has rightly invoked the provisions of Order 12, Rule 6 of CPC to grant divorce on the ground of concealment. As to when the judgment on admission can be passed, is no longer res integra. The Apex Court in Himani Alloys Ltd. v. Tata Steel Ltd, (2011) 15 SCC273 has reiterated the parameters governing exercise of power under Order 12, Rule 6 of CPC in these words:

It is true that a judgment can be given on an admission contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment MAT APP. 26/2013 Page 3 without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear admission which can be acted upon.

Applying the dictum of the Apex Court in Himani Alloys Ltd. (supra) to the facts of the instant case and on a bare perusal of paragraphs No.5 to 6 of the preliminary objections as well as paragraphs No.17 to 21 of the written statement filed by appellant-wife, I find that there is specific denial of appellant-wife concealing her criminal background. No doubt, in the preliminary objections, appellant-wife has questioned the source of information regarding the criminal cases pending against her, but this by itself will not dilute the specific denial of concealment of criminal background by appellant-wife. Infact, it has escaped the notice of the trial court that in paragraphs No.22 to 23 of the written statement, appellant-wife has categorically denied the averments of concealment made by respondent-husband. What is stated by appellant in paragraphs No.22 to 23 of the written statement is

as under:

That paras 22 & 23 of the petition are wrong and denied. Nothing has been concealed either by respondent or her parents rather it is the petitioner and his family members who made a wrong and false representations with regard to the education qualification of the petitioner and their status of movable property. It is the petitioner and his parents who got married the petitioner by adopting deceitful MAT APP. 26/2013 Page 4 means. Rest of the contents are wrong and denied. The allegations of concealment is absolutely false and nothing was concealed as alleged and it was told that there is a dispute with the landlord of the parents of the respondent and for this reason in order to force and pressurize the parents of respondent these false cases got registered in collusion with police while father of the respondent is a Govt. Employee and aged about 57 years has no bad antecedent and still serving as Govt. Servant.

Since the impugned order does not take notice of the aforesaid quoted paragraphs of the written statement wherein there is clear-cut denial of appellant concealing her criminal background, therefore, the impugned order is rendered unsustainable and is accordingly set aside and respondents petition for divorce is restored for trial in accordance with the law. The parties to appear before the trial court on 22nd December, 2014 for further proceedings. With aforesaid direction, the appeal and the application are accordingly disposed of. (SUNIL GAUR) JUDGE
DECEMBER10 2014 s MAT APP. 26/2013 Page 5

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