

Vipul Amar Vs. Neeta Amar and anr

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Court : Delhi

Decided On : Jan-04-2012

Appellant : Vipul Amar

Respondent : Neeta Amar and anr

Advocate for Def. : Ms. Anu Narula

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on: January 4, 2012 + CM(M) 1191/2011 VIPUL AMAR Petitioner Through: Ms. Geeta Luthra, Sr. Adv. with Mr. Jai Bansal, Adv. Versus NEETA AMAR and ANR Respondents Through: Ms. Anu Narula and Mr. Arun Sukhija, Adv. CORAM:- HON'BLE MS JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. Present is a petition under Article 227 of the Constitution of India wherein petitioner/husband has challenged impugned order dated 2.9.2011 passed by learned ADJ, Delhi wherein application of the petitioner seeking permission to take on record the additional documents has been rejected..

2. Briefly, the facts relevant for the disposal of present petition are as under:- The petitioner/husband has filed a divorce petition under Section 13(1)(ia) of Hindu Marriage Act (hereinafter referred to as the Act) against respondent/wife seeking dissolution of their marriage on the ground of cruelty and harassment. In that very petition, respondent/wife CM(M) 1191/2011 *Page 1 of 10* had moved an

application under Section 24 of the Act seeking maintenance pendente lite for herself and the minor child. The said application was disposed of by the learned ADJ vide order dated 17.5.2010 by which respondent/wife was not granted any maintenance and only ` 4,000/- per month was granted to the minor child..

3. Respondent/wife had filed a CM(M) No. 930/2010 under Article 227 of the Constitution of India challenging the said order. During the hearing of the said petition, respondent/wife had filed some fresh documents before this court on the ground that those documents had come to her notice after passing of the impugned order dated 17.5.2010. The said petition was disposed of by this court vide order dated 20.1.2010 wherein the matter was remanded back to the learned trial court for re- hearing the application in view of the new documents filed by the respondent/wife..

4. By the said order, this court with the consent of the parties ordered that all the additional documents which have been taken on record during the hearing before this Court shall be allowed to be filed before the trial court. Further, with the consent of the parties, they were given liberty to place on record before the trial court all the true copies of the documents filed in the High Court before the next date of hearing. In addition, parties were also given liberty to file additional documents which they wish to file. It was ordered that at the first instance, respondent/wife will file those documents within 10 days from the said order and thereafter respondent will be entitled to file documents in rebuttal within 10 days thereafter. CM(M) 1191/2011 Page 2 of 10.

5. On 11.2.2011, when the parties appeared before the trial court, the counsel for petitioner/husband submitted before the trial court that complete set of documents filed by the respondent/wife has not been supplied to him as such the petitioner was not in a position to file documents in rebuttal. Accordingly, request was made for adjournment. The trial court adjourned the matter to 18.3.2011 for filing the documents as well as hearing of application under Section 24 of the Act. After inspection of the documents, the counsel for petitioner/husband found that respondent had filed sales tax receipt of the petitioners company and in order to reply the said documents, the petitioner had to file the complete balance sheet of

the company as well as Income Tax Return for the financial year 2010-11 ending 31.3.2011 which can be filed only after 31.3.2011. Accordingly, petitioner had moved CM No. 4957/2011 in CM(M) No. 230/2010 under Section 148 of CPC before this court seeking extension of time for filing complete balance sheet as well as Income-tax Return for the financial year 2010-11. This court vide order dated 09.03.2011 rejected the extension of time of 4 weeks i.e. by 18.4.2011 for filing balance sheet of the company as well as Income-tax Return with the observation that financial year ending has yet to come as such the request and the application cannot be allowed. As the extension of time was declined, the petitioner/husband on 18.03.2011 i.e. the date fixed before the trial court, filed complete set of documents and supplied the same to the respondent/wife. However, the objection was raised by the respondent/wife, as a result of which the trial court directed the petitioner/husband to move an appropriate application. On 26.04.2011, the petitioner/husband moved an application under Section 151 CPC for CM(M) 1191/2011 *Page 3 of 10* taking on record the additional documents. The same is declined by the learned trial court vide impugned order dated 2.9.2011. Aggrieved with the same, the present petition is filed..

6. Ms. Geeta Luthra, learned senior counsel appearing for the petitioner/husband has submitted that by order dated 20.1.2011 passed in CM(M) No. 930/2010, this court had given time to both the parties to file additional documents. It is submitted that on 11.2.2011, when the counsel for parties appeared before the trial court the counsel for respondent/wife submitted that they had already filed documents. On that day, counsel for petitioner submitted that he had not received the complete set of documents and he will inspect the file and sought some time and thereafter the matter was adjourned to 18.3.2011 for filing documents as well as arguments on application under Section 24 of H.M. Act. It is contended that the additional documents had already been filed on 18.3.2011. It is also submitted that the CM No. 4957/2011 was filed before this court seeking extension of time beyond 18.3.2011 i.e., by another four weeks which was not allowed by this court. It is contended that petitioner never approached this court for filing additional documents and respondent/wife has tried to mislead the trial court, the petitioner/husband has approached in this regard to this court and his application was rejected on 09.3.2011. It is contended that the documents have already been

filed by 18.3.2011. Later on, only formal application was filed for taking those documents on record which has been rejected vide impugned order dated 02.9.2011. It is stated that there is no defiance of the order of this court. A great prejudice shall be caused to the CM(M) 1191/2011 *Page 4 of 10* petitioner/husband if those additional documents are not taken on record as they are essential for disposal of application of respondent/wife under Section 24 of Hindu Marriage Act..

7. On the other hand, Ms. Anu Narula, learned counsel for the respondent has contended that in view of the earlier order passed by this court dated 20.1.2011 passed in CM(M) No. 930/2010 and another dated 9.3.2011 passed in CM No. 4957/2011 in CM(M) No. 930/2011, these documents cannot be taken on record. It is contended that the order of learned ADJ in rejecting the additional documents is legal and valid in all respects and does not call for interference of this court..

8. I have considered the submissions made and perused the material on record..

9. It may be mentioned that the application of respondent/wife dated 13.3.2007 under Section 24 of the Act was disposed of by the trial court vide order dated 17.5.2011 which was challenged by respondent/wife before this court by filing CM(M) No. 930/2010. The said petition was disposed of by this court wherein the respondent/wife has filed certain documents relating to the income of the petitioner/husband by contending that she had come to know of those documents only after the disposal of maintenance application. Thereafter, this court disposed of the said petition on 20.1.2010 by the consent order and remanded back the matter to the trial court for re-hearing on maintenance application. The relevant order of this court is reproduced as under:- CM(M) 1191/2011 *Page 5 of 10* "CM(M) 930/2010 and CM No. 12847/2010 (STAY) 20.01.2011.

1. Present petition is directed against the order dated 17.05.2010 passed by the learned trial court on an application filed by the petitioner (wife) under section 24 of the Hindu Marriage Act. The learned trial court vide its order dated 17.05.2010, while disallowing the claim for interim maintenance to the wife has directed the respondent to pay a sum of ` 4,000/- per month to the minor son towards his maintenance and upbringing..

2. After some hearing, counsel for the parties agreed that the matter may be remanded back to the trial court for a fresh hearing. It is also agreed that the petitioner shall be at liberty to urge all/new grounds available, including the grounds taken in the present petition. It is further agreed that the respondents shall also be at liberty to take such defences which may be available to them in accordance with law. It is also agreed that all the additional documents which have been taken on record during the hearing and form a part of the present proceedings, shall be allowed to be filed before the trial court as well..

3. As further agreed, the trial court is directed to hear the matter on the basis of the pleadings and documents which are placed on record in this court. The parties are given liberty to place on record of the trial court all the true copies of the documents filed in the High Court, before the next date of hearing. On 19.1.2011, the petitioner has also filed in this court, certain documents pertaining to the Sales-tax Department. The same CM(M) 1191/2011 *Page 6 of 10* are also taken on record and the respondent is given liberty to file a response to these documents. In addition to the documents which they wish to file may be permitted to be filed by the petitioner at the first instance within ten days from today and the respondent will be entitled to file documents in rebuttal within ten days thereafter..

4. It is made clear that the trial court shall not grant any extension of time to file documents/additional documents. The trial court will fix a date for hearing of the application under section 24 of the Hindu Marriage Act and the application shall be decided within a period of three months from the date, so fixed..

5. It is made clear that no unnecessary adjournments will be granted for hearing the application under Section 24 of Hindu Marriage Act as well as the main petition. In view of the stand taken by counsel for the parties, the impugned order is set aside in above terms..".

10. On remand, the matter was listed before the learned ADJ on 11.2.2011 and on the said date the following order has been passed:- "HMA No.319/10/06 11.02.2011 Present: Sh. Jai Bansal counsel for petitioner. Respondent with counsel Ms. Anu Narula and Arun Sukhija. Counsel for parties have stated that matter has been remanded back from the Honble High Court with direction to re

hear on the application CM(M) 1191/2011 *Page 7 of 10* U/s 24 of HMA with liberty to file documents on behalf of parties. Counsel for respondent has stated that they have already documents on behalf of respondent and copy of same has been supplied to the counsel for petitioner. Counsel for petitioner has stated that he has not received complete set of documents and he will inspect the file and sought some time. Heard, considered. Counsel for parties are directed to take appropriate steps as there is direction from the Honble High Court to dispose of the application U/s 24 of HMA within three months. In the meantime, counsel for respondent has stated that petitioner has not filed the documents within stipulated period given by the Honble High Court. Now to come up for filing documents as well as arguments on the application U/s 24 of HMA on 18.03.2011. (Sunil Rana) ADJ-03 (West)/Delhi 11.02.2011".

11. Learned senior counsel for the petitioner/husband has pointed out that on 11.2.2011, counsel for petitioner had pointed out the learned trial court that the respondent/wife has not been given complete set of documents and also pointed out that the respondent had not filed the documents within the stipulated time. Thereupon, learned ADJ has given the date for filing of documents and gave time to file additional documents and adjourned the matter to 18.3.2011. It is stated that the additional documents which have been rejected by the learned ADJ vide impugned order were already filed on 18.3.2011. Before that, petitioner had filed CM No. 4957/2011 in CM(M) No. 930/2010 for extension of CM(M) 1191/2011 *Page 8 of 10* time for filing additional documents of four weeks beyond 18.3.2011 i.e., extension of four weeks beyond 18.3.2011. The said application was rejected by this court on 9.3.2011..

12. The order dated 9.3.2011 of this court is as under:- "9.3.2011 Present: Ms. Anu Narula and Mr. Arun Sukhija, Advs. for the petitioners. Mr. Jai Bansal, Adv. for respondents/applicants. CM NO.4957/2011 in CM(M) NO.930/2010 This is an application filed by the respondent seeking further 30 days time for filing documents before the trial court. This court had disposed of the matter by order dated 20.01.2011. Parties were granted time to file documents. Counsel for the respondent submits that petitioner has filed various documents including sales-tax receipts and in order to clarify the issue, he wishes to file copies of the income-tax

returns for the financial year ending 31.03.2011. Counsel further submits that the next date fixed before trial court is 17.03.2011 which date should be cancelled and a date beyond 17.04.2011 may be fixed. Notice. Counsel for non-applicant accepts notice. While disposing of this matter, this court had granted opportunity to both the parties to file additional documents. Since the financial year comes to an end on 31.03.2011, present application cannot be considered, at this stage. Accordingly, the application is dismissed. G.S. SISTANI, J. March 09, 2011" CM(M) 1191/2011 Page 9 of 10.

13. It is clear by the aforesaid order that request of petitioner/husband for extension of time for filing additional documents by four weeks i.e. four weeks from 18.3.2011 is rejected. It is admitted position that liberty to file additional documents was given to both the parties vide order dated 20.1.2011. It is admitted position that the documents have already come on record on 18.3.2011. It is also admitted position that trial court had adjourned the matter to 18.3.2011 for filing documents. There is no challenge to the order dated 11.2.2011 of the trial court by which it had adjourned the matter for filing of documents. Further, the stand of the petitioner/husband is that the petitioner was not given complete set of documents due to which it had filed the documents by 18.3.2011. Further, the documents are also relevant as the same pertain to income of petitioner/husband and are relevant for deciding the maintenance application..

14. There is no defiance of the orders of this court as is contended by the counsel for respondent/wife. Accordingly, impugned order dated 02.9.2011 is set aside. The additional documents which have already been filed by the petitioner before the trial court on 18.3.2011 shall form part of the record before the learned trial court and shall be considered while disposing of the application of maintenance of respondent/wife under Section 24 of the Act. The trial court shall expeditiously dispose of the said application as it is pending since long. The petition stands disposed of accordingly. VEENA BIRBAL, J JANUARY 4, 2012/kks CM(M) 1191/2011 Page 10 of 10