

Nirmal Joshi Vs. Mathura Dutt Joshi

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Court : Delhi

Decided On : Apr-17-2012

Judge : The Honourable Ms. Justice Veena Birbal

Appeal No. : CM(M) 244 OF 2012

Appellant : Nirmal Joshi

Respondent : Mathura Dutt Joshi

Judgement :

VEENA BIRBAL, J:

(ORAL)

1. The counsel for appellant has challenged the impugned order dated 02.02.2012 by contending that the learned trial court at Tis Hazari dealing with the aforesaid case has no territorial jurisdiction to deal with the matter. It is contended that the respondent/husband ought to have filed the divorce petition at Dwarka Courts. After some arguments learned counsel submits that she is not pressing the aforesaid contention before this court and prays that liberty be given to take appropriate remedy in accordance with law. In view of above submissions made, the aforesaid contention is dismissed as having not been pressed. However, petitioner/wife will be at liberty to file appropriate proceedings at appropriate forum in accordance with law.

2. The next ground on which the impugned order is challenged is that the right of the petitioner/wife to cross-examine the respondent/husband has been closed by the learned trial court. The learned counsel for the appellant/wife has submitted that the divorce petition was filed in the year 2011. The issues were framed on 02.01.2012 and the first date of evidence of respondent/husband before the Id. trial court was 02.02.2012. It is submitted that on that day, the petitioner/wife had to cross-examine the respondent/husband. However, her counsel who was from the Legal Aid was not well, as such request was made to the court for adjourning the matter. But the learned trial court declined the request and discharged PW-1 and listed the matter for remaining PE on 02.03.2012. It is submitted that great prejudice has been caused to the petitioner/wife, inasmuch as the petitioner/wife is precluded from her valuable right of cross-examining the respondent/husband, as such, she will not be able to substantiate her defence.

3. On the other hand, the learned counsel for the respondent has contended that keeping in view the facts and circumstances of the case, petitioner/wife is not entitled for any opportunity to corss-examine the respondent/husband.

4. It may be noticed that vide impugned order opportunity to cross-examine the respondent/husband is closed. The same has serious consequences on the petitioner/wife as the evidence of respondent/husband will go un rebutted as right to cross-examine has been declined which is the valuable right of petitioner/wife. It is stated that petitioner/wife had been provided counsel from Legal Aid. Petitioner/wife should not be allowed to suffer due to lapse on the part of counsel. Ld.Counsel for the petitioner has apologized in respect of observations made by the Id.trial court about the conduct of petitioner/wife as well as her counsel.

5. In the interest of justice, the impugned order dated 02.02.2012 by which right of the petitioner/wife to cross examine the respondent/husband has been closed, is set aside.

6. It is informed that the matter is coming up for hearing on 27.04.2012 and is fixed for the evidence of the petitioner/wife. On that date, the respondent/husband will present himself before the court and the petitioner/wife will be given opportunity to cross examine him. If the petitioner does not cross-examine the respondent, she

will not be given any further opportunity. After recording the said evidence, the Id. trial court shall give another date to petitioner/wife for her evidence.

The appeal stands disposed of accordingly.

CM 3706/2012 (stay)

In view of above order, no further orders are required on this application. The same stands disposed of accordingly.

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