

Neutral Citation No. - 2024:AHC:50957-DB

AFR

Court No. - 29

Case :- FIRST APPEAL No. - 245 of 2024

Appellant :- Richa Mumgaie

Respondent :- Harendra Prasad

Counsel for Appellant :- Ritesh Srivastava, Shweta Singh

Hon'ble Vivek Kumar Birla, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Ritesh Srivastava, learned counsel for the appellant.
2. Present appeal has been filed challenging the order judgment and order dated 16.02.2024 passed by Principal Judge, Family Court, Ghaziabad in Case No. 596 of 2020, under Section 13 (1) (i) of the Hindu Marriage Act.
3. By the impugned order, the application moved by the appellant-wife (hereinafter referred to as 'wife') under Order VII Rule 11(d) CPC read with Section 23 (1) (b) of the Hindu Marriage Act (hereinafter referred to as the Act) on the ground that after discussing the case law on the interpretation of the word 'condonation of the act' as given under Section 23 of the Act. The court below rejected the application and held that the divorce petition has been moved on the ground of cruelty and adultery with the averments made in the petition and the matter is at the stage of cross-examination of DW-1 coupled with the fact that the matter has been expedited by this Court, no such application can be entertained at this stage.

4. By drawing attention to paragraph 9 of the divorce petition, submission of learned counsel for the appellant is that the act of wife was condoned by the husband and therefore, in view of the provisions of Order VII Rule 11(d) CPC read with Section 23 (1) (b) of the Act, as the act has been condoned in the plaint itself, therefore, the plaint ought to have been rejected. He further submits that the sole reason for rejecting such application is that the matter has been expedited by this Court, therefore, he refused to entertain the application.

5. We have considered the submission and perused the record.

6. For ready reference, the provisions of Order VII Rule 11 and Section 23 of the Hindu Marriage Act are quoted as under:

Order VII Rule 11 CPC

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

Section 23 of the Hindu Marriage Act

23. Decree in proceedings.—(1) *In any proceeding under this Act, whether defended or not, if the court is satisfied that-*

(a) any of the grounds for granting relief exists and the petitioner [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.”

(Emphasis supplied)

7. For the purpose of consideration of the application on merits, paragraph 9 of the divorce petition is also quoted as under:

(ix) That after the Petitioner came across all vile and filthy chats exchanged between Respondent no. 1 and Respondent no. 2 and call logs of Respondent no.1 for the calls made on mobile number _____ which belongs to Respondent no. 2, Respondent no. 1 confessed the same in front of Petitioner and his family members, that the conversation between the family members of the parties to the petition was recorded by the Petitioner on his mobile phone wherein Respondent no. 1 herself accepted her intimate relationship with Respondent no. 2, family of Respondent no. 1 further requested Petitioner to give a chance to Respondent no. 1 and forced the Petitioner to live with Respondent no.1 in the same house, for the sake of saving the married life and future of his son, Petitioner accepted the terms of family members of Respondent no. 1. (Copy of mobile recording is annexed herewith as Annexure-D (colly).

(Emphasis supplied)

8. However, this Court is of the opinion that this paragraph cannot be read in isolation for the purpose of rejection of the plaint and entire contents of the plaint have to be looked into and therefore, paragraphs 10 to 17 are also quoted as under:

(x) That after the above mentioned family meeting, the Respondent no. 1 remained quiet for a couple of days, but to the surprise of Petitioner and his family the Respondent no.1 again started the same old activities, she again continued her arrogant and egoistic behavior along with continuous telephonic engagement and complete negligence towards her child and responsibilities.

xi) That, infact afterwards, it became further worse in addition to remain uncaring towards home and the child, she used to lock herself in a room for most of the time and she used to be continuously on phone.

While being in the same room, the Respondent no. 1 used to cover her body and face with blanket, and remain busy on the phone beneath it. Further, Respondent no. 1 many a times threatened the Petitioner and his family members that she is going to file divorce petition along with multiple false complaints at various police stations.

xii) That on multiple occasions Respondent no. 1 clearly expressed her love to Co-Respondent i.e. Respondent no. 2 in open words through Facebook messages and WhatsApp messages (Photocopy of screenshot of intimate chats between Respondent no. 1 and Respondent no.2 is already annexed for the kind perusal of this Hon'ble Court).

xiii) That simultaneously the Respondent was in touch and in conversation with many other male friends also. Moreover the Respondent no.1 makes it obvious that the Respondent no.1 was in a habit of approaching her targets in suggestive manner to get into adulterous relation.

xiv) That the brazeness in action of the Respondent no. 1 comes to fore on repeated occasions. The Respondent dared to take Co-Respondent to hotel room leaving her son at home and splurged hard earned money of the Petitioner on her male friends. That at the time of this obnoxious act of Respondent no. 1 and Respondent no. 2, family of Petitioner use to take care of child who was born out of the wedlock.

xv) That further Petitioner got to know that the Respondent no.1 was in physical relationship with other multiple males and Respondent no.2. i.e. Amit Kumar having mobile number . _____

xvi) That after confession of Respondent no.1 neither family members of Respondent no.1 tried to resolve this dispute between Petitioner and Respondent no.1, they never contacted Petitioner or his family member and only Petitioner or his elder brother used to contact the family member of Respondent no. 1. That further on December 14, 2019 as it was hard for the Petitioner to live in a harmonious cohabitation with the Respondent no.1 because of the vile and adulterous act performed by

the Respondent no.1 with Respondent no. 2, it is pertinent to mention here that the Petitioner on the request of Respondent no. 1 dropped her at her parental home i.e. House No. A-56, A-Block, East Vinod Nagar, Delhi.

xvii) That from December 2019 to February 2020, after every proof Petitioner many times requested Respondent no. 1 and her family to meet at a common place to find a solution peacefully for this situation, and after a delay of more than a month, finally a meeting was set up for the same on 2nd February 2020 at Akshardham Mandir where Petitioner requested family of Respondent no. 1 to bring Viraj (son of Petitioner) along with them at the time of meeting, despite this clear message conveyed via father i.e. the Petitioner, Respondent no. 1 clearly refused the said request to bring the child along with her, which clearly reflects the irked behavior of the Respondent no. 1 towards the Petitioner and his family members, Moreover the Petitioner along with his family members went to the meeting point. Where, to utmost surprise for the Petitioner, family of Respondent no.1 started quarreling and blaming Petitioner for every shameful act of Respondent no.1, and started threatening the Petitioner to lodge a false case and complaints against the Petitioner and his family members. Respondent no. 1 also threatened the Petitioner that if he ever tries to get in between her relationship with Respondent no. 2, she will make sure that Petitioner will face dire consequences and if the Petitioner ever tries to get in touch with Viraj (son of petitioner) she along with Respondent no. 2 will cause serious harm to the Petitioner and his family members.”

(Emphasis supplied)

9. A bare reading of the aforesaid paragraphs clearly discloses the fact that a cause of action in the plaint is made out. As per paragraph 9, the family of the wife forced the husband-respondent to live with her in the same house for the sake of saving the married life and future of his son the respondent-husband accepted the terms of family members of the appellant-wife. In paragraph 10, it has been clearly alleged that after

remaining quiet for a couple of days, the appellant-wife again started same activities. Paragraph 11 starts with the words "infact afterwards it became further worse" and other facts are narrated thereafter. Subsequent paragraphs also reflects the conduct of the wife subsequent to the initial condonation of his acts of alleged adultery. We also find that in paragraph 7, the details of check-in and check-out of hotel rooms on the same day, which were booked by the person with whom she was having relationship, have also been mentioned. Therefore, it cannot be said that no cause of action is disclosed in the divorce petition. Even otherwise, single condonation of any act or acts by itself, would not be sufficient to reject the plaint once there is allegation that subsequent to condonation of the such acts, the same were being repeated.

10. Learned counsel for the appellant has placed reliance on the judgments of the Apex Court passed in *Civil Appeal No. 8518 of 2002 (Saleem Bhai & Ors. Vs. State of Maharashtra & Ors.)* and *Civil Appeal No. 2224 of 1970 (Dr. N.G. Dastane Vs. Mrs. S. Dastane)*.

11. We find that such judgments are of no help to the appellant.

12. In para 8 of **Saleem Bhai (supra)**, it has been observed that for Order VII Rule 11 CPC only averment in the paint are relevant and the plea taken by the defendant in the written statement are wholly irrelevant at this stage. **Dr. N.G. Dastane (supra)** is essentially on the issue of burden of proof in a case of cruelty. The appeal before Hon'ble Apex Court was challenging the final judgment of High Court passed in a second appeal on the ground that High Court has re-appreciated the evidence and came to erroneous approach and Order VII Rule 11 CPC was not in issue.

13. In our considered opinion even if there is condonation of an act, or even acts but subsequently the same are revived or repeated and there is specific statement regarding such repetition in other paragraphs of the plaint, by reading one paragraph in isolation, ignoring the other

paragraphs, would not be covered by Section 23 (1) (b) of the Hindu Marriage Act, 1955 to become a ground for rejection of plaint in Order VII Rule 11 (d) CPC as there can be no such condonation of act/acts, if the acts are being repeated. Even in common understanding, condonation of any act is conditional forgiveness that the act would not be repeated. This is not so in the present case. As the statement has been made in the plaint to the effect that such acts are being repeated.

14. It is also pertinent to note that the divorce petition has been filed not only on the ground of having voluntary sexual relationship with others by the wife but also on the ground of cruelty (Section 13 (1) (i) of the Act) as well. The other paragraphs of the plaint, therefore, cannot be ignored. The prayer clause of the divorce petition is quoted as under:

“1. Pass a decree of divorce by dissolving the marriage between the Petitioner and Respondent no.1, in favour of the Petitioner under Section 13(1)(i) of the Hindu Marriage Act, 1955 as amended up to date;

2. Pass an order thereby directing the district forensic authority for the analysis of phones, Facebook accounts, messenger app, WhatsApp chats, of the Respondent no.1 and Respondent no.2;

3. Pass an order thereby directing OYO to provide check-in and check-out records of bookings made by Respondent no.2 on different occasions as mentioned above’

4. Pass an order thereby directing the Respondent no.1 to handover the custody of the child to father i.e. Petitioner;

5. Pass such an order and further orders as this Hon’ble Court may deem fit and proper in the interest and furtherance of Justice.”

15. From perusal of the order-sheet, it appears that the divorce petition is pending at the stage of cross-examination of DW-1 and the court below

has also noted that there is also a direction for expeditious disposal issued by this Court is also operating in the aforesaid case.

16. The court below has used the words 'coupled with', it is, therefore, clear that the contention of learned counsel for the appellant that the application under Order VII Rule 11 CPC read with Section 23 (1) (b) of the Act has been rejected for this sole reason, is patently misconceived.

17. The court below is directed to proceed expeditiously as already directed by this Court accordingly. The Registrar (Compliance) is directed to send a copy of this order to the court concerned, as expeditiously as possible.

18. The appeal is devoid of merits and is, accordingly, dismissed, however, with the observations made above.

Order Date :- 20.03.2024

Noman