

Court No. - 29

Case :- FIRST APPEAL No. - 473 of 2019

Appellant :- Alka Singh Chauhan

Respondent :- Shakti Singh

Counsel for Appellant :- Mehul Khare,Pragya Pandey

Counsel for Respondent :- Iftekhhar Ahmad,Lakshman Singh,Rahul Mishra,Rohan Gupta,Sanjay Mishra

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Donadi Ramesh,J.

1. This appeal is by the appellant-wife under Section 19 of the Family Courts Act, 1984 challenging the decree of divorce passed against her by the husband vide judgment and order dated 2.5.2019. The decree of divorce is primarily challenged on the ground that reasonable opportunity of contest in the matter has been denied to the appellant-wife by the family court while dissolving her marriage.

2. Undisputed facts that emerge on record are that the marriage between the parties was solemnized on 7.5.2015. The respondent-husband instituted proceedings for dissolution of marriage before the Family Courts, Karkardooma, Delhi on 16.11.2016 on the ground that the wife has left her on 27.9.2015 on account of adulterous relationship that she was having with another person. The proceedings were entertained by the family court at Karkardooma, Delhi and notices were issued to the appellant. It transpires that the wife approached the Hon'ble Supreme Court by filing Transfer Petition (C) No.344 of 2017 which came to be allowed by the Supreme Court on 10.1.2018. The proceedings were, accordingly, transferred to the Court of Family Judge, Kanpur Nagar, U.P. An observation was also made by the Supreme Court to make all endeavour to dispose of the matter within six months without unnecessary adjournments granted to the parties. It is pursuant to this order of the Supreme Court that proceedings were transferred to the Family Court at Kanpur Nagar and were re-registered as Case No.380 of 2018. The order-sheets of proceedings have been annexed alongwith the appeal according

to which notices were issued in the matter to the appellant-wife. The appellant-wife appeared and filed application under Section 24 of the Hindu Marriage Act, 1955 for payment of maintenance to her. Litigation cost was also claimed in such application. The Family court passed an order on 4.12.2018 rejecting plea of maintenance but allowed litigation cost of Rs.10,000/- to her. The order-sheet indicates that matter was adjourned on subsequent dates. On 8.2.2019 Presiding Officer was not available and the matter was adjourned to 21.2.2019. Subsequent application of the wife for recalling the order dated 4.12.2018 and payment of maintenance was rejected on 21.2.2019 by the Family court. The proceedings of the case was transferred from the court of Principal Judge, Family Court, Kanpur Nagar to the Court of Additional Principal Judge, Family Court, Court No.2, Kanpur Nagar vide order dated 28.2.2019. The order-sheet reveals that on 2.3.2019 following orders were passed:-

"दिनांक 02.03.2019

पुकारा। वादी हाजिर। विपक्षी गैर हाजिर है।

न्यायालय के आदेश के अनुपालन में 11,000/- रुपये का डिमान्ड ड्राफ्ट वादी द्वारा जमा किया जा चुका है। डिमान्ड ड्राफ्ट की तिथि 15.12.2016 है। इस प्रकार यह स्पष्ट है कि यह डिमान्ड ड्राफ्ट व्यर्थ हो चुका है। अतः इस डिमान्ड ड्राफ्ट को वादी को वापस किया जाता है। इसकी छायाप्रति कराकर पत्रावली में रखी जाये। जब विपक्षी न्यायालय में हाजिर हो तो उसे नकद दिया जाये।

विपक्षी को अंतिम अवसर प्रदान किया जाता है। इसके उपरान्त उसे कोई अवसर नहीं दिया जायेगा।

पत्रावली वास्ते बयान तहसीरी दिनांक 18.03.2019 को पेश हों।

दिनांक 02.03.2019

अपर प्रधान न्यायाधीश,
परिवार न्यायालय, कक्ष सं०-2,
कानपुर नगर।"

3. The order-sheet also reflects that Rs.11,000/- was paid as cash in compliance of the previous orders to the wife on 18.3.2019. On 18.3.2019, Additional Principal Judge, Family Court, Court No.2, Kanpur Nagar passed following orders:-

"18.03.2019

पुकार पर उभयपक्ष हाजिर है।

आज प्रार्थिनी द्वारा ग्यारह हजार रुपये प्राप्त किये। जबकि दस हजार रुपये का आदेश है। अतः एक हजार रुपया वापस करें।

दि० 02.03.19 को प्रतिवादिनी को बयान तहरीरी दाखिल करने का अंतिम अवसर दिया गया लेकिन आज उसके द्वारा बयान तहरीरी दाखिल नहीं की गयी है। अतः प्रतिवादिनी को बयान तहरीरी दाखिल करने का अंतिम समाप्त किया जाता है। पत्रावली वास्ते साक्ष्य वादी दि० 27.03.19 को पेश हो।

अपर प्रधान न्यायाधीश,
परिवार न्यायालय, कक्ष सं०-2
कानपुर नगर।”

4. On the very date i.e. 18.3.2019, a subsequent order was passed acknowledging filing of an application by the appellant-wife vide application no.195Ka, for further time to be granted for filing written statement. On this application time was granted to file written statement till 23.3.2019 and the question as to whether written statement would be taken on record or not was to be considered on 27.3.2019. The subsequent order passed by the Presiding Officer on 18.3.2019 is also re-produced:-

"प्रतिवादिनी ने ws दाखिल करने हेतु प्रा०प० 195 क प्रस्तुत किया। दि० 23.3.2019 तक ws दाखिल करे जिसे पत्रावली पर लिया जाये या नहीं, दि० 27.3.2019 को फैसला लिया जायेगा।"

5. On 27.3.2019 issues were framed by the trial court. The matter was directed to come up on 28.3.2019. An affidavit was filed by the husband copy of which was directed to be taken by the wife and the matter was adjourned to 28.3.2019 for cross-examination. The right of the wife to cross-examine the husband on it was forfeited on 28.3.2019 itself. The family court thereafter proceeded to decree the suit of the husband vide order dated 2.5.2019. It is this order of the family court which is under challenge. In this order the family court has noticed that on 27.3.2019 right of cross-examination to the wife was forfeited. On next day i.e 28.3.2019, right of wife to adduce evidence was forfeited and since there was a direction by the Supreme Court to conclude the matter within six months, as such the matter has been decided on merits accepting the claim of the husband.

6. Learned counsel for the appellant argues that the litigation cost was to be paid to the wife pursuant to previous order passed in the matter on 4.12.2018. This amount was actually paid to the wife on 18.3.2019. It is on 18.3.2019 itself that the right of the wife to file written statement was forfeited. On the very next date issues were framed and the right of the

wife to cross-examine the husband on his affidavit filed on 27.3.2019 was forfeited on 28.3.2019 and on the next date her right to adduce her evidence was also forfeited. The order passed by the family court on 27.3.2019 is reproduced hereinafter:-

"27.03.2019

पुकार पर वादी हाजिर है। प्रतिवादी गैर हाजिर है।

प्रतिवादी की ओर से प्रतिवादपत्र पत्रावली पर उपलब्ध है लेकिन पुकार के वक्त गैरहाजिर है।

न्यायहित में जवाबदावा कागज सं० 196 ग शामिल पत्रावली होवे।

जवाबदावा के साथ प्रतिवादी ने कुछ दस्तावेज दाखिल किये हैं। जिनको सूची के साथ दाखिल नहीं किया है। सूची के साथ नियमानुसार कागज दाखिल करें।

198 ग सूची द्वारा वादी शामिल पत्रावली हो।

उभयपक्षों के अभिवचनों के आधार पर निम्नलिखित वाद बिन्दु सृजित किये जाते हैं-

1- क्या वादी वादपत्र में अभिकथित आधारों पर प्रतिवादिनी के विरुद्ध विवाह विच्छेद की डिक्री प्राप्त करने का अधिकारी है?

2- क्या वादी किसी अन्य अनुतोष को प्राप्त करने का अधिकारी है?

वाद बिन्दु पढ़ कर सुनाये गये। अन्य कोई वाद बिन्दु नहीं बनता है।

वादी द्वारा साक्ष्य में शपथपत्र कागज सं० 199 क दाखिल किया गया है जो शामिल पत्रावली हो। प्रति संलग्न है, प्राप्त करें। पत्रावली वास्ते जिरह पी० डब्लू 1 दि० 28.03.2019 को पेश हो।

अपर प्रधान न्यायाधीश,
परिवार न्यायालय कक्ष सं०-2,
कानपुर नगर।"

7. Learned counsel for the appellant with reference to aforesaid proceedings argued that once right to file written statement was forfeited on 18.3.2019 and subsequently the Court directed the issue of accepting the written statement to be considered on the next day i.e. 27.3.2019 the Family court erred in fixing the matter for 28.3.2019 and forfeiting appellant's right to cross-examine the husband on 28.3.2019 itself on the affidavit of the husband filed a day earlier i.e. on 27.3.2019.

8. Learned counsel for the respondent, on the other hand, states that the wife was in an adulterous relationship and was deliberately avoiding contesting the case on merits and, therefore, the family court rightly passed the order resulting in dissolution of marriage.

9. We have heard Sri Aditya Shankar Pandey holding brief of Ms. Pragya Pandey, learned counsel for the appellant-wife and Ms. Kriti

Gupta holding brief of Ms. Rohan Gupta, learned counsel for the opposite party and have perused the materials on record.

10. In the facts of the case we find that after the matter was transferred by the Supreme Court in Transfer Petition (C) No.344 of 2017 notices were issued to the wife by the family court. An order was passed for payment of litigation cost to the wife by the Principal Family Judge, Family Court, Kanpur Nagar on 4.12.2018. This order has been complied with by tendering the litigation cost to the counsel for the wife for the first time on 18.3.2019. On the same day i.e. 18.3.2019 Family court forfeited the right of the wife to file written statement. This approach of the Additional Principal Judge, Family Court, Kanpur Nagar cannot be countenanced, inasmuch as the payment of litigation cost to the wife was to facilitate contest by her before the family court. The forfeiting of right of wife to file written statement even before payment of litigation cost appears to be an act taken in undue haste. The subsequent order of 18.3.2019 directed the question of accepting written statement to be considered on 27.3.2019. On 27.3.2019 the court framed issues and fixed the case on 28.3.2019 and forfeited the right of wife to cross-examine the husband. Absence of wife on a particular day would not justify such harsh approach on part of the Family court.

11. On 27.3.2019 Family court noticed that the written statement is on record but the wife is not present at the time of hearing. On the same day an order was passed to file list of documents submitted by the wife. On the same day issues were framed by the Additional Principal Judge, Family Court. On 27.3.2019 the matter was adjourned to 28.3.2019. On 27.3.2019 itself Family court directed the affidavit of husband to be served to the wife. On 28.3.2019 Family court forfeited the right of wife to cross-examine the husband even without ascertaining the fact whether the husband's affidavit was actually received by the wife. On the next date Family court forfeited right of wife to adduce evidence.

12. The manner in which the proceedings have been undertaken by the Family court culminating in passing of the decree of divorce clearly cannot meet the approval of a fair adjudication in the matter. The undue haste in which the Court has proceeded cannot be approved of. Although there was a direction by the Supreme Court to expedite the proceedings and conclude it within six months but such direction was to resist any uncalled for adjournment claimed by the parties. The order of the Supreme Court cannot be construed as depriving the wife to contest the proceedings.

13. We are of the considered view that notices were issued by the concerned court for appearance of the wife whereafter she filed an application for maintenance and for payment of litigation cost. This application was apparently allowed on 4.12.2018 and a direction was issued to the husband to pay litigation cost of Rs.10,000/-. The proceedings on subsequent dates were adjourned for reasons not attributed to the appellant. The subsequent application filed by the wife for recall of the order dated 4.12.2018 insofar as her claim for maintenance was not considered was then rejected by the Family court, Kanpur Nagar on 21.2.2019. Vide order dated 28.2.2019 the proceedings were transferred to Additional Principal Judge, Family Court. The Additional Principal Judge, Family court did not issue notices to the appellant and the first order on record is of 2.3.2019 granting last opportunity to the wife to file written statement. It is after this order that the litigation cost has been paid to the wife on 18.3.2019 and on the very date her right to file written statement was forfeited. The subsequent order of 18.3.2019 shows that there was no order passed to take on record the written statement and this issue was to be considered on 27.3.2019. The manner in which the court has proceeded in undue haste in rejecting the right of the wife on the very next day to cross-examine the husband and thereafter to forfeit the right of the wife to adduce her evidence cannot find approval of this court.

14. Expeditious disposal of matters is always to be appreciated but while doing so, regard will have to be had that fair opportunity of contest to a party is not denied. The manner in which the court has proceeded to deny opportunity of contest to the appellant-wife thus cannot be approved of. Consequently, the judgment of the trial court dated 2.5.2019 is set aside. The matter is restored to the Family Court, Kanpur Nagar. Both the parties would appear before the Court on 27.1.2025. No separate notices would be issued to either of the parties. Further proceedings before the Family court would be undertaken by fixing weekly dates and none of the parties would claim any adjournment except upon payment of cost which shall not be less than Rs.1,000/- for a day. The court concerned will also record specific reasons for acceptance of prayer for adjournment in light of the order passed by the Supreme Court. Right of the wife to cross-examine the husband and to adduce evidence is also restored. We request the family court to conclude the proceedings at the earliest possible in light of the above observations. No order is passed as to costs.

Order Date :- 7.1.2025

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