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**(1993) 09 DEL CK 0069**  
**In the Delhi High Court**  
**Case No : C.R. No. 744 of 1992**

Parvesh Rani

APPELLANT

Vs

Raj Kishan

RESPONDENT

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**Date of Decision :** 20-09-1993

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 13(1)

**Citation :** (1995) 1 DMC 503

**Hon'ble Judges :** V.B. Bansal, J

**Bench :** Single Bench

**Advocate :** R.K. Jain, for the Appellant; S. Bazaz, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.B. Bansal, J.—Smt. Parvesh Rani has filed the revision petition against the order dated 14.7.1992 of Shri K.P. Verma, Additional District Judge, Delhi vide which her application under Order IV Rule 7 read with Section 151, Civil Procedure Code, for amendment of the written statement in a petition for divorce by her husband, Raj Kishan, respondent herein has been dismissed.

2. Smt. Parvesh Rani (hereinafter referred to as "the wife") filed a petition for divorce against Raj Kishan, respondent (hereinafter referred to as "the husband") for dissolution of marriage by a decree of divorce on the grounds of cruelty u/s 13(1)(i-a) of the Hindu Marriage Act (for short "the Act"). This petition was filed on 6.5.1983. In pursuance of a notice issued by the Court the husband appeared to contest the proceedings. The petitioner came up before the Court on 8.7.83 when the wife withdrew her petition for divorce. However, the husband filed a reply-cum-counter claim in the said petition seeking dissolution of his marriage with his wife on the grounds of cruelty u/s 13(1)(i-a) of the Act. The counterclaim of the husband, thus, became the petition, which was strongly contested by the wife and is pending trial.

3. An application dated 29.3.1990 was moved by the wife for amendment of the

written statement. Averments made in the application inter alias have been that during the pendency of the divorce proceedings the husband re-married and out of the said wedlock was having a son, aged about three years. It was also pleaded that the aforesaid marriage was illegal, having been entered into during the subsistence of his valid marriage with the wife and, thus, wanted this fact to be brought on record. The application was opposed by the husband inter alias pleading that the petition was for divorce on the ground of cruelty and the aforesaid averment with regard to the remarriage of the husband was irrelevant and not material for the decision of the petitioner. It was also pleaded that this tact could have no bearing nor could it be said that the husband was taking advantage of his own wrong. The learned Trial Court after hearing arguments dismissed this application vide the impugned order.

4. I have heard Shri R.K. Jain, learned Counsel for the petitioner and Dr. S. Bazaz, learned Counsel for the respondent.

5. Learned Counsel for the petitioner has submitted that a fraud was committed by the respondent on the petitioner and she was made to sign a petition for divorce without her knowledge of the contents and, in fact, she was made to sign the same under duress, force and coercion. He has also submitted that the moment she came to know of this fact the petition was withdrawn by the petitioner and that during the pendency of the counter claim/petition of the respondent for divorce the petitioner came to know about the remarriage of the respondent and his getting a son out of the said marriage. He has submitted that it is a very relevant material which would indicate that the respondent is taking advantage of his own misdeeds and, thus, submitted that it was an amendment necessary for the just decision of the case. He has also submitted that there has not been any inordinate delay on the part of the petitioner in moving this application and that the learned Trial Court has committed serious error in dismissing this application. Reliance has also been placed on the case *Medasetti Satyanarayana Vs. Medasetti Veeramani*, .

6. Learned Counsel for the respondent has, on the other hand, submitted that the petition for divorce filed by the respondent is based on the grounds of cruelty on the part of the petitioner and that the averment made by the present petitioner with regard to the respondent having entered into a marriage is emphatically denied. But even otherwise the allegation can have no bearing on the averments with regard to the cruelty on the part of the petitioner wife. He has, thus submitted that the learned Trial Court has correctly dismissed the application and has not committed any error, not to speak of a material irregularity. Reliance has also been placed by the learned Counsel for the respondent on the case *Umashankar Prasad Singh Vs. Smt. Radha Devi and Others*, and *Sumitra Manna v. Gobinda Chandra Manna* 2 1987 D.M.C. 388.

7. I have given my thoughtful consideration to these submissions and have also perused the aforesaid judgments. I have no hesitation in coming to the conclusion that the learned Trial Court has correctly dismissed the application

and no case has been out for interference in the conclusion arrived at by learned Trial Court.

8. As already referred to, the written statement-cum-counter claim of the respondent-husband was treated as a petition for divorce on the ground of cruelty on the part of the petitioner-wife. The husband has to succeed only in case he is in a position to prove on record the grounds of cruelty. The plea of the petitioner wife has been that the respondent-husband has during the pendency of the divorce proceedings entered into another marriage and has been blessed with a son out of the said wedlock. Can this be said to be a ground on the basis of which the petitioner-wife can avoid the claim of the husband for divorce on the basis of the plea of cruelty ? The answer would certainly be in the negative. There can possibly be no dispute that no legal marriage can be contracted by a person during the subsistence of an earlier marriage. All that can be said is that he was keeping a lady and could be guilty of the offence of adultery. Can this fact be considered to be evidence to indicate that the husband is taking benefit of his own misdeeds or default ? The answer certainly would be in the negative.

9. The case of *Medasetti Satyanarayana v. Medasetti Veeramani* (supra) relied upon by the learned Counsel for the petitioner cannot be of any assistance to him. It was a case where the husband filed an application for restitution of conjugal rights against his wife. The wife had filed a separate petition for maintenance in which an order for maintenance was passed. The plea taken up by the wife was that the application for restitution of conjugal rights filed by the husband was counter blast to defeat the order of maintenance passed in her favor prior to the filing of the petition u/s 9 of the Act. It has also been observed that u/s 23A of the Act, this wife could lodge a counter-claim and press for judicial separation on ground of desertion, but she did not do so. An objection was raised that she could not be permitted to contend "desertion" as a ground and resist the petition. It was concluded that the fact that she did not lodge a counter claim per se did not disable her to press the legal ground of desertion envisaged under the Act and that the wife could resist the claim for restitution of conjugal rights on the grounds of desertion. The judgment, thus, cannot be of any assistance to the petitioner.

10. In the case *Sumitra Manna v. Gobinda Chandra Manna* (supra) a decree for judicial separation was passed in favor of the wife in 1980. The husband-respondent filed a petition for divorce in the year 1983. The plea of the wife was that u/s 10(2) of the Act the husband was under an obligation to resume cohabitation and as he did not take any steps in this regard, the grant of decree of divorce in his favor would mean permitting him to take advantage of his own wrong. The plea was, however, not accepted and it was held that the husband was not bound to resume cohabitation and it could be said that he was taking undue advantage of his own wrong. It was also pleaded that the maintenance was not being paid by the husband to the wife and was taking steps for obtaining divorce, thereby taking advantage of his own wrong. This plea was also not

accepted and it was held that the husband was not taking any advantage on account of non-payment of alimony or maintenance in obtaining a decree of divorce. This judgment supports the plea of the learned Counsel for the respondent.

11. The judgment in case Umashanker Prasad Singh v. Smt. Radha Devi (supra) to my mind is not relevant and of no assistance of the Counsel for the respondent as all that has been held in this case is that a relief for injunction restraining the husband from taking a second wife is not maintainable under the Hindu Marriage Act.

In view of my aforesaid discussion, I do not find any ground of interfere in the conclusion arrived at by the learned Trial Court. The Civil Revision Petition is dismissed with costs.