
(2002) 01 DEL CK 0089
In the Delhi High Court
Case No : C.R. No. 614 of 2000

Rekha Singal

APPELLANT

Vs

Lavleen Singal

RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Citation : (2002) 3 AD 260 : (2002) 96 DLT 289 : (2002) 1 DMC 476 : (2002) 62 DRJ 7

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : J.K. Seth and Shalini Kapoor, for the Appellant; H.L. Tikku, for the Respondent

Final Decision : Partly Allowed

Judgement

R.C. Jain, J.—This Civil Revision is directed against the order dated 15.5.2000 passed by the learned Additional District Judge, Delhi thereby dismissing an application under Order 6 Rule 16 filed by the wife Smt. Rekha Singal praying for a direction on the husband to strike out and delete certain allegations contained in the divorce petition, as the allegations are stated to be scandalous, frivolous, vexatious and likely to prejudice and embarrass the wife and delay the fair trial of the divorce petition.

2. The petitioner herein Ms. Rekha Singal is facing a divorce petition filed by the respondent-husband Mr. Lavleen Singal seeking dissolution of the marriage between the parties on the ground of cruelty. Before filing her written statement to the divorce petition, the petitioner-wife filed an application under the provisions of Order 6 Rule 16 CPC with the averments that although the dissolution of marriage was not sought on the ground of "adultery" or on the ground that the wife having had sexual intercourse with persons other than the spouse, after solemnisation of the marriage, yet the husband has made several false, scandalous allegations against the character of the wife without impleading the persons which according to him had illicit relations with his wife. The said

allegations are contained in paras 4.6, 4.16, 4.18, 4.23 and 4.23 of the petition for divorce and the offending portions of the paragraphs containing the said allegations were detailed with in the said applications. The application was opposed by the husband and it was stated that the allegations are relevant for deciding the real controversy between the parties and that he intends to prove the same. On a consideration of the matter, the learned trial Court dismissed the application primarily for the reason that allegations made by the petitioner in the petition were necessary for the purpose of explaining his case and cannot be said to be of scandalous nature or liable to be deleted. It was, however, observed that the petitioner-wife would be at liberty to take whatever objections she may have in her written statement.

3. I have heard Shri J.K. Seth, senior advocate on behalf of the petitioner-wife and Shri H.L. Tikku, advocate representing the respondent-husband and have given my thoughtful consideration to their respective submissions. In support of his contention that some of the allegations made in paragraph 4.5, 4.6, 4.11, 4.16, 4.18 and 4.23 of the divorce petition are insinuating, false, scandalous, vexatious and irrelevant and are liable to be deleted from the divorce petition as the husband is not seeking the dissolution of marriage on the ground of adultery, the learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court in the case of Manjit K. Singh Vs. S. Kanwarjit Singh, . In the said cited case, the husband had filed a petition for dissolution of marriage by a decree of divorce on the grounds of adultery, cruelty and desertion. However, as the case progressed, the husband gave up the ground of adultery for seeking dissolution of marriage still the husband, wanted to rely upon and adduce evidence qua the allegations of adultery in support of the ground of cruelty on the premises that the adulterous acts alleged in the petition amounted to cruelty. By means of an application the wife sought deletion of certain portions from the petition on the ground that the allegations were scandalous, frivolous, vexatious and unnecessary. The application was, however, dismissed by the learned trial court. The Division Bench of this Court, on a consideration of the matter reiterated the legal position that the Court has sample power to order striking out of pleadings which may be unnecessary, which may tend to prejudice, embarrass or delay the fair trial of the suit and further held that after the husband had given up the ground or in that behalf the allegations of adultery, allowing the same to remain a part of the pleadings more especially in the absence of the alleged adulterer being a party will definitely tend to prejudice the fair trial of the suit which will have to be tried on the basis of allegations which may amount to cruelty whether physical or mental. The Court ruled that the allegations as noticed were not only unnecessary but might tend to prejudice and also delay the fair trial of the proceedings. The Court ordered the deletion of the allegations from the petition which amounted alleging adultery on the part of the wife.

4. As against the above, learned counsel for the respondent-husband has placed reliance upon the Supreme Court decision in the case of V. Bhagat Vs. Mrs. D.

Bhagat, and in the case of Romesh Chander Vs. Smt. Savitri, in order to show that the allegations of which offence has been taken by the wife are nothing, but various instances of cruel conduct attributable to the wife. In the case V. Bhagat v. D. Bhagat (supra), the Supreme Court more fully expounded the meaning of cruelty as referred to in Section 13(1)(i-a) of the Hindu Marriage Act, 1955 in the following words:-

"Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. Mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstance which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

5. Reliance has also been placed on two English decisions. In the case of *Chalcroft v. Chalcroft* (1969) 2 All. E.R. 1172 and the case of *Walker v. Walker* (1961) 3 All. E.R.14 laying down that an allegation of condoned adultery or of a reasonable belief in adultery in a petition founded on cruelty is not an allegation of adultery for the purpose of Rule 13(1) of the Matrimonial Causes Rules 1968, but is an allegation of improper association within Rule 13(2) of the Rules. In the later case, it was held that a husband who carries on deliberately such a course of conduct as induces in his wife a reasonable belief that he is carrying on an adulterous association and thereby causes injury to her health, is guilty of persistent cruelty towards her.

6. Bearing in mind the above legal proposition, I may now proceed to examine if the allegations which are sought to be deleted from the divorce petition are relevant and necessary for the just and proper adjudication of the petitioner or are scandalous, insinuating, vexatious and irrelevant. The allegations which are stated to be offending and liable to be deleted have been reproduced in paragraph 2 of the revision petition and are purposely being not reproduced in this order.

7. The said allegations are undoubtedly serious in nature and may also be termed as scandalous or insinuating but the question to be answered is as to whether the same are relevant for the purpose of adjudication of the petitioner and should be allowed to remain on record. There is no denial of the legal

position that in a petition for dissolution of marriage, based on the ground of cruelty, the petitioner has to succinctly state the events and instances which according to the petitioner constitute cruel conduct within the meaning of Section 13(1)(1a) of the Hindu Marriage Act but such instances of cruel conduct must, however, relate to a period after the solemnisation of the marriage and not prior thereto. There is also no doubt that any conduct of the spouse which points to his/her extra martial relations would be the conduct amounting to utmost cruelty to the other spouse. Judging above referred allegations in this light, this Court is of the opinion that so far as the allegations which form part of paras 4.4 and 4.6 of the petition which pertains to the alleged conduct of the wife prior to the solemnisation of the marriage cannot be said to be relevant for the just and effective adjudication of the divorce petition. These allegations are, Therefore, irrelevant besides being scandalous and, Therefore, are liable to be deleted from the petitioner. Yet another reason why the Court should not permit the retention of these allegations is the alleged person with whom the wife is stated to have been sexually involved has not been made a party in the divorce petition. So far as other allegations contained in paragraphs 4.16, 4.18 and 4.23 are concerned, this Court is of the opinion that the allegations no doubt being of serious nature and tend to be scandalous but as they are attributable to the conduct of the wife after solemnisation of the marriage may be considered to be the instances of cruel conduct for establishing the ground of cruelty on which the petition for divorce has been filed. The said allegations no doubt vaguely suggest that the wife might be indulging in extra-marital relations, but it is not categorically alleged that the wife having had after solemnisation of the marriage voluntarily sexual intercourse with any person other than the husband. Accordingly these allegations are not liable to be deleted and can be allowed to be retained in the petition.

8. In the result, this revision petition is partly allowed. The impugned order of the learned trial court dated 15th May, 2000 is hereby set aside and the application of the petition under Order 6 Rule 16 is allowed to the extent that the allegations as contained in the portion of paragraphs 4.4 and 4.6 and as reproduced in para 2 of the Revision Petition are ordered to be deleted from the petitioner. The respondent-husband shall make requisite amendment in the petition within four weeks from the date of this order.

9. The trial court record shall be sent back forthwith.