
(2013) 12 AHC CK 0155
In the Allahabad High Court
Case No : C.R. No. 512 of 2013

Smt. Ratna Sharma

APPELLANT

Vs

Dr. Pradeep Kumar Sharma

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 3 ADJ 717 : (2014) 3 ALJ 80 : (2014) 103 ALR 134 : (2014) 2 DMC 422 : (2014) 122 RD 808

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Judgement

Manoj Misra, J.—Heard learned Counsel for the parties. The instant revision application has been filed against an order dated 7th October, 2013, passed by Additional District Judge, Court No. 6, Aligarh in Matrimonial Petition No. 227 of 2007, by which the application of the revisionist (defendant in the suit) to dismiss the suit of the plaintiff, in view of the compromise dated 23rd May, 2009, filed before the Chief Judicial Magistrate, Aligarh, has been rejected and a date has been fixed for filing of written statement and framing of issues.

2. The facts relevant for deciding the instant case as they appear on record are that in the year 2005, the plaintiff-respondent (the husband of the revisionist) instituted a suit for divorce against the revisionist before District Judge, Tees Hazaari Courts, New Delhi, which was transferred to district Aligarh, by order of the Apex Court dated 7.12.2007, and was registered there as Matrimonial Petition No. 227 of 2007 in the Court of Additional District Judge, Court No. 6, Aligarh. It appears that the revisionist had filed a criminal case against the plaintiff-respondent, which proceeded as Case No. 4688 of 2005 in the Court of Chief Judicial Magistrate, Aligarh, u/s 498-A, 323, I.P.C. and section 3/4 of the Dowry Prohibition Act. In the criminal case that is Case No. 4688 of 2005, an application dated 23rd May, 2009 was jointly filed by the revisionist and the plaintiff-respondent, before the Court of Chief Judicial Magistrate, Aligarh, praying therein that on the basis of compromise between the parties, the case

may be disposed of. This application is on record as Annexure-6 to the affidavit. In this application it was stated that the parties have no subsisting dispute between them and, therefore, the revisionist, who was the prosecutrix there, does not want to press her case. In paragraph 6 of the application, it was stated that the plaintiff-respondent, who was an accused there, would withdraw the Matrimonial Petition No. 227 of 2007. Before the concerned Court could act on the compromise, a Criminal Misc. Application No. 18856 of 2009 was filed before this Court, invoking its power u/s 482 of the Code of Criminal Procedure, for quashing of the proceedings of Case No. 4688 of 2005. The said application was allowed vide order dated 31st July, 2009 and the proceedings of Case No. 4688 of 2005 were quashed. In the meantime, on 2nd July, 2009, the Matrimonial Petition No. 227 of 2007 was dismissed for non-prosecution. The plaintiff-respondent, therefore, applied for its restoration under Order IX, Rule 9 of the Code of Civil Procedure. The Court below restored the suit by its order dated 3rd July, 2012 against which the revisionist filed Civil Revision No. 376 of 2012 before this Court on ground that since under, the terms of the compromise the plaintiff-respondent was required to get his divorce case withdrawn, therefore, he could not have sought for recall of the order dismissing the divorce case in default. This Court vide order dated 30th July, 2012 disposed of Civil Revision No. 376 of 2012 by observing that so far as the order of restoration of the suit is concerned the same does not call for interference but the question whether suit should proceed or should be dismissed in terms of the compromise dated 23.5.2009 is a question which can always be considered by the Court below, accordingly, a direction was given to the Court below to first consider the above aspect before proceeding with the suit.

3. In pursuance of the order dated 30th July, 2012, the revisionist filed an application before the Court below stating therein that in view of the compromise application dated 23.5.2009 filed before the CJM, Aligarh, which was used by the plaintiff-respondent for getting the proceedings of criminal case quashed, the divorce proceeding cannot continue and the divorce petition deserves to be dismissed. The above application was opposed by the plaintiff-respondent stating therein that such an application was not maintainable in absence of any such plea. The plaintiff-respondent submitted that first there should be such a plea in written statement, only thereafter it could be decided as an issue. It appears that the Court below examined the matter and by its order dated 26th October, 2012 rejected the preliminary objection of the defendant-revisionist on ground that the defendant had, as yet, not filed written statement, therefore, the question of maintainability of the suit can be considered only after filing of written statement and framing of issue in that regard. Against the order dated 26th October, 2012, the revisionist filed Civil Revision No. 201 of 2013 before this Court, which was disposed of by order dated 7th May, 2013, thereby directing the Court below to first consider whether the suit can continue in terms of the compromise and only thereafter proceed further with the suit.

4. Pursuant to the order dated 7th May, 2013, passed in Civil Revision No. 201 of

2013, the revisionist approached the Court below by filing application No. 59Ga, dated 26th July, 2013, for dismissing the suit as infractions, in view of the compromise dated 23rd May, 2009. Thereafter, the revisionist filed another application 63Ga with a prayer that a preliminary issue may be framed to the effect whether the divorce petition is liable to be dismissed in terms of the compromise. In that application it was further prayed that the parties may be allowed to lead evidence on that, and that said issue be decided first.

5. A perusal of the impugned order reveals that the learned Counsel for the plaintiff-respondent opposed the aforesaid applications of the revisionist on ground that the compromise was not in accordance with law; the said compromise was produced before the concerned Court in absence of the plaintiff; that before the Court concerned the parties did not express their consent; that there was no satisfaction of the Court concerned; and it was also not verified by the Court concerned.

6. By the impugned order, the Court below rejected the aforesaid applications of the revisionist on ground that before it the parties have not filed any compromise application for dismissal of the suit and till such time a compromise application is filed by or on behalf of the parties with their free consent, in accordance with the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure, or a withdrawal application is filed by the plaintiff under Order XXIII, Rule 1, the suit cannot be dismissed in terms thereof, and if, there has been any violation of any such compromise, the defendant is free to take recourse to such remedy as may be available to him in law.

7. Assailing the impugned order, the learned Counsel for the revisionist submitted that the Court below took a very technical view and has failed to exercise jurisdiction vested in it. It has been submitted that even if the compromise may not have been entered before the Court below or there may not have been a duly signed compromise application before the Court below, but by the application the revisionist had brought to the notice of the Court that there had been a compromise, on which the parties did act, inasmuch as the same was relied by the plaintiff-respondent for seeking quashing of the criminal proceedings. Moreover, the plaintiff-respondent having taken advantage of the compromise was estopped from pursuing further, the divorce suit. It was submitted that the order of the Court below is in the teeth of the order passed by this Court.

8. The learned Counsel for the respondent defended the order of the Court below.

9. Having given thoughtful consideration to the arguments advanced by the learned Counsel for the revisionist, this Court is of the view that though the arguments of the learned Counsel for the revisionist appear to be attractive, but they cannot be accepted, inasmuch as, a compromise in writing, duly signed by the parties, as per the finding of the Court below, was not produced by any of the parties before it. Admittedly, no application was filed by plaintiff to withdraw

the suit. The Court below, therefore, could not have dismissed the suit of the plaintiff-respondent on the basis of the alleged compromise. To enable a Court to decree or decide a suit or a case in terms of a compromise there has to be strict compliance of the provisions of Order XXIII, Rule 3, C.P.C. One of the mandatory condition as per Rule 3 of Order XXIII, C.P.C. is that the Court should be satisfied that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties. Where no such agreement or compromise, in writing and signed by the parties, is produced before a Court, the Court cannot record a compromise and pass a decree in terms thereof. A compromise application filed by parties to a suit not before the Court where the suit is pending, but before a Criminal Court in respect of some other proceedings, where some promise is made, may be utilized as a piece of evidence of an agreement to set up a defense. But, for a Court to record a compromise and decide a suit in terms thereof, the compromise in writing and signed by the parties should be there before the Court where the suit is pending. So far as the plea of estoppel is concerned, the same has to be pleaded and proved. The proper course for the revisionist, therefore, is to raise the said plea and pursue the same as an issue before the Court below.

10. In view of the discussion made above, I do not find any legal infirmity in the order passed by the Court below.

11. At this stage, it was pointed out by the learned Counsel for the revisionist that the Court below had wrongly observed that the revisionist has not filed written statement. It has been submitted that not only the written statement has been filed but even issues have been framed. In this regard attention of the Court was drawn to Annexure-16 to the affidavit, which is copy of the written statement filed by the revisionist as also to Annexure-17 of the affidavit, which discloses that issues were framed in the suit by the Delhi Court on 24.2.2006, before its transfer to Aligarh.

12. Be that as it may, if it is so, the revisionist may file application before the Court below for correcting its record. Subject to above, the revision application is dismissed. However, it will be open to the revisionist, if so advised, to take such other plea as may be permissible in law.