

(2013) 02 DEL CK 0361
In the Delhi High Court
Case No : CM (M) No. 76 of 2009

Smt. Sulekha Rana

APPELLANT

Vs

Shri Satyender Rana

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 80
Hindu Marriage Act, 1955 — Section 13B(1)

Citation : (2013) 02 DEL CK 0361

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : R.N. Jindal, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a Civil Miscellaneous Main petition filed by the petitioner against the order dated 6.12.2008 passed by the Additional District Judge, Delhi in M No. 15-04 titled Satyender Rana Vs. Smt. Sulekha Rana wherein the learned Additional District Judge dismissed the application under Order 47 Rule 1 read with Section 151 CPC for recalling of the decree dated 5.7.2003 in case No. 550/2003. Briefly stated the facts of the case are that the petitioner was married to the respondent on 18.4.2000 according to Hindu rites and customs. From the said wedlock, two children were born on 19.2.2001 (female) and 20.8.2002 (male).

2. Due to divergent nature, personal problem and temperamental differences between the husband and the wife, they obtained a decree of divorce on the basis of mutual consent.

3. The first motion petition u/s 13-B(1) of the Hindu Marriage Act was allowed by the District Court, Tis Hazari, Delhi on 3.5.2003 and the second motion petition u/s 13-B(1) was allowed by Sh. S.C. Mittal, the then learned ADJ, Delhi on

4.6.2003. While allowing the second motion petition, the learned ADJ had specifically noted that the statements of the parties on the second motion had been recorded and the Court was satisfied that there was no collusion between the parties nor was any fraud, misrepresentation produced by either of the parties and accordingly, their marriage was dissolved by a decree of divorce. The learned Additional District Judge observed that no useful purpose would be served by waiting for another period of six months. The petition was then adjourned to 2.7.2003 and finally disposed of on 5.7.2003. The petitioner/ Sulekha after obtaining the decree of divorce in the year 2003 filed an application after considerable length of time that is after almost a year in the Civil Court challenging the decree of divorce passed by Sh. S.C. Mittal, ADJ on 4.6.2003 stating that the said decree was obtained by fraud. The Civil Court vide order dated 18.12.2003 dismissed the suit for declaration (Suit No. 263/2003 before the Senior Civil Judge) of the decree of divorce as null and void on the ground of lack of jurisdiction and on fraud. The appellant thereafter filed an appeal against the said order of the learned Civil Judge dated 18.12.2003 which was also withdrawn by him on 23.4.2005. Thereafter, the petitioner filed an application u/O 47 Rule 1 read with Section 151 CPC for recalling of the decree of divorce dated 5.7.2003 making allegations that misrepresentation of facts and fraud was played on her. This application was rejected by the impugned order dated 6.12.2008. The learned Additional District Judge dealt with the plea of fraud in extenso in its order stating that there was nothing on record to suggest that at the time of recording of the statement in the first motion or even in the second motion her signatures were obtained under coercion or fraud. On the contrary, the Court noted that the statements of the parties were recorded and the petition for second motion was duly supported by the affidavit of the present petitioner which was duly attested by the Commissioner which clearly shows that she had voluntarily came forward along with her husband/respondent for dissolution of her marriage on the basis of mutual consent.

4. It is because of this reason, the Court was satisfied that the marriage was annulled by a decree of divorce as the statements were made by the parties voluntarily and the consent was not vitiated by fraud or misrepresentation and accordingly, the application for review of the decree of divorce was rejected.

5. Feeling aggrieved, the present petition under Article 227 of the Constitution of India has been filed.

6. I have heard the learned counsel for the petitioner and perused the judgments relied upon by him.

7. No doubt, the Apex Court in the case titled S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, has held that the fraud, if detected at whatever stage, will vitiate the entire proceedings which may include even decree of divorce but then this must be proved by the parties who have alleged that the fraud has been played to the satisfaction of the Court.

8. In the instant case, not only the contemporaneous conduct of the petitioner but even the subsequent conduct of the petitioner after passing of a decree of divorce is not at all compatible with the stand taken by her that there was any fraud played on her for the purpose of obtaining her signatures. This is on account of the fact that admittedly a decree of divorce on the basis of mutual consent requires filing of two motions (first motion and the second motion) and in between there has to be a gap of six months. The petition has to be duly supported by an affidavit, averments have to be made in the petition that there is no collusion between the parties and that there is voluntariness on the part of the parties in getting their marriage annulled. In addition to this, on both occasions, the statements of the parties were recorded and the petitioner had never complained that her signatures were obtained by misrepresentation or fraud.

It is only once the decree was passed that she chose to file a suit declaring the decree to be null and void. u/s 80 of the Evidence Act, there is a presumption of correctness attached to the judicial proceedings; the petitioner has not been able to bring out even an iota of evidence on record to show that her signatures or consent was obtained by the respondent by fraud, coercion or inducement. Simply by making an allegation of fraud would not be good enough, there must be some prima facie evidence also produced by the parties either by way of circumstance or some document which will impel the Court to look into the matter. This has not been done and the application of the petitioner has been rightly rejected by the trial court.

9. There is no jurisdictional error, impropriety, illegality or incorrectness in the order of the learned Additional District Judge in rejecting the review application. Accordingly, I feel that this Court in exercise of its powers under Article 227 of the Constitution of India cannot interfere with the findings of the trial court. Hence the appeal is dismissed.