

(2006) 02 AHC CK 0187

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 59671 of 2005

Subha Maheshwari

APPELLANT

Vs

Rajul Maheshwari and Another

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16
Constitution of India, 1950 — Article 226

Citation : (2006) 3 AWC 2544 : (2006) 1 DMC 764

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : Ashutosh Srivastava, for the Appellant; V.D. Singh, U.P. Singh, H.N. Mehrotra and Kirtika Singh, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard the learned Counsel for the parties.

2. This petition challenges the order of the Family Court dated 16.7.2005 whereby the prayer of the petitioner for deletion of paragraphs 2, 4 and 5 of the divorce petition has been partly rejected.

3. The petition of divorce made by the respondent No. 1 before the Family Court is on the ground of cruelty. For that purpose certain facts have been pleaded in the aforesaid three paragraphs of the plaint stating that the petitioner wife had been in illicit relations with one Ranveer and subsequently a second man Ajay Batra. This act of the wife has given a lot of mental set back to the husband. The learned Counsel for the petitioner submits that since these facts pleaded in the aforesaid paragraphs are, in appearance as well as in nature, scandalous, they should have been deleted in accordance with the provisions of Order 6 Rule 16, C.P.C. and further also on the ground that Issue No. 2 has been deleted by the Court below. This issue was on the point that the petitioner/wife whether has or has not illicit relations with Ajay Batra.

4. From the aforesaid facts and circumstances that the petition has been filed on the ground of cruelty alleged to have been committed by wife against the husband, the fact that the wife had some illicit relations prior or after the marriage is a very important and relevant fact to substantiate the allegations of cruelty as a ground for decree of divorce. If these factual pleadings are permitted to be deleted under the provisions of Order 6 Rule 16, C.P.C. the petitioner who has based his claim for the grant of decree of divorce will not be in a position to lead evidence on those facts.

5. In this view of the matter if the Court below has dismissed the prayer of the petitioner for deleting those facts from the pleadings of the divorce petition, I do not find that any sort of illegality or procedural irregularity has been committed. The aforesaid issue No. 2 which is framed as "Whether O.P. has illicit relations with Ajay Batra as alleged" appears that the same on the face of it, was redundant because the continuance of illicit relations with Ajay Batra has not been pleaded in the divorce writ petition. She had illicit relations earlier with Ajay Batra and. therefore, on that basis only, it so appears that the Court has directed deletion of Issue No. 2. That does not give an occasion for deleting the aforesaid three paragraphs of the divorce petition. The order passed by the Court below, thus, rejecting the application under Order 6 Rule 16, C.P.C. moved by the petitioner is wholly justified and does not warrant any interference in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. The writ petition, having no force, is hereby dismissed.