
(2008) 11 DEL CK 0178
In the Delhi High Court
Case No : CMM No. 780 of 2007

Suman Kaushik

APPELLANT

Vs

N.P. Kaushik

RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 420, 512

Citation : (2008) 2 DMC 771 : (2008) 13 ILR Delhi 1

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : D.K. Sharma, for the Appellant; Valmiki Mehta and D.P. Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner is aggrieved by an order dated 26th April, 2007 whereby an application under Order 6 Rule 17, CPC for amendment of the written statements made by the petitioner was dismissed.

2. In nutshell facts relevant for the purpose of deciding this petition are that the petitioner was facing a divorce petition filed by the respondent husband on account of cruelty and desertion. The evidence in the case had already been recorded and when the case was fixed for final arguments, the petitioner moved this application to amend W.S. and to bring on record subsequent conduct of the respondent husband. Petitioner submitted that the respondent had inserted advertisements seeking matrimonial alliance claiming himself to be a divorcee whereas he was not a divorcee. The petitioner wanted to place on record the said advertisement allegedly inserted by the respondent, a CD of the telephonic conversation allegedly of the respondent, his brother with other persons (relatives of the respondent), record of telephone bills, E-mails correspondence done with the prospective parties, etc. to prove the fact that it was the respondent who inserted the advertisement. The petitioner had also filed a complaint to the concerned SHO making same kinds of allegations. On the basis

of this complaint an FIR No. 15 of 2007 was registered for the offences under Sections 419, 420, 512 of the Indian Penal Code.

3. The learned Trial Court observed that the petition was filed by the respondent for dissolution of marriage on account of cruelty by desertion of petitioner. The contention of the respondent was that the parties lived together for a short span of six months and have been living separately thereafter. The marriage had taken place in 1987. The period during which cruelty and desertion was alleged is from 1987 to 1990. The question of cruelty and desertion has to be decided on the basis of evidence of the events within that time frame. The grievance of the petitioner regarding efforts of the respondent of seeking matrimonial alliance and inserting matrimonial advertisements does not pertain to the main and core issues involved in the controversy. The subsequent conduct of the parties can be brought on record only if it relates to the subject matter of the petition i.e. cruelty and desertion. The Trial Court observed that the amendments sought were not germane to the issues before the Trial Court nor the subsequent facts were relevant and thereby dismissed the application.

4. Learned Counsel for the petitioner argued that the subsequent conduct of the respondent showed that the respondent was playing fraud and was claiming himself to be a divorcee and issueless whereas he was not a divorcee and this conduct of the respondent affects the petitioner since she continued to be the legally wedded wife of the respondent and her this status of legally wedded wife got affected by insertment of the advertisements by the respondent.

5. I consider that the contentions of the Counsel for the petitioner have no concern with the grounds on which amendments are allowed in a WS and are farfetched. Presuming that these advertisements were issued by the respondent, this fact cannot be taken into account to decide the issue whether the petitioner committed cruelty on the respondent or the petitioner deserted the respondent or not, which are the basic issues in this case. The issue whether the respondent was taking benefit of his own wrongs has also to be decided on the basis of the facts before filing of the petition. An application under Order 6 Rule 17, CPC to bring on record the subsequent facts can be allowed only to cut short the controversy and litigation so as to do complete justice between the parties qua the subject matter pending adjudication before the Court. It is not the case of the petitioner that she filed a counter-claim of divorce and she wants to bring on record these facts showing that the respondent had committed cruelty on her even subsequently by claiming to be a divorcee. She has in fact been resisting the divorce petition tooth and nail. The respondent can get divorce only by proving cruelty and desertion as alleged by him. The counter cruelty or the counter desertion or alleged cheating, fraud, etc. during pendency of litigation cannot be considered while deciding the issues of cruelty and desertion on the part of the petitioner.

6. I consider that the application of the petitioner under Order 6 Rule 17, CPC was made only to delay the proceedings and not with a view to assist the Court

in adjudicating the issues. The petition filed by the petitioner is also a frivolous one and is liable to be dismissed with exemplary costs.

7. The same is hereby dismissed with cost of Rs. 25,000.