

SUPREME COURT OF INDIA

B.V.Smitha Rani

Vs.

M.K.Girish

C.A.No.4558 of 2009

(B.N. Agrawal and G.S. Singhvi J.)

20.07.2009

ORDER

1. Leave granted.

2. Heard learned counsel for the appellant.

3. In spite of service of notice, nobody has entered appearance on behalf of the respondent to contest the prayer made in this appeal. The parties were married on 28.5.2003. After sometime, the appellant- wife filed Matrimonial Case No.82/2005 for grant of divorce on the ground of cruelty. In support of her case, the appellant examined herself as PW-1 on 7.9.2006. On that day, the respondent-husband remained absent and his lawyer did not cross-examine the appellant. Thereafter, the case was posted for evidence of the respondent on 28.9.2006. At that stage, the respondent applied for recording his evidence by video conferencing. The Family Court rejected his prayer and the special leave petition filed by him was dismissed by this Court. On 28.9.2006, the respondent's counsel filed vakalatnama and written statement. The Family Court rejected the written statement on the ground of undue delay. Thereupon, the respondent filed writ petition no.1031 of 2006, which was allowed by the High Court and a direction was issued to the Family Court to allow the respondent to contest the case on merits.

3. In furtherance of the High Court's directive, the Family Court fixed the next date as 7.11.2006 for cross-examination of the appellant, but the respondent did not avail that opportunity. On the next two dates also, the respondent's counsel did not cross-examine the appellant. Instead, an application was filed on behalf of the respondent for amendment of the written statement, which was dismissed on 11.1.2007. Simultaneously, the Family Court closed the evidence of the respondent and fixed the case for arguments. Application filed on behalf of the respondent for recall of that order was dismissed on 23.1.2007 and the petition filed by the appellant was decreed on 22.2.2007.

4. On an appeal preferred by the respondent, the High Court remanded the case to the Family Court with the direction to give final opportunity to cross-examine the appellant (PW-1) and to adduce his evidence. That order has been challenged in this appeal.

5. Having heard learned counsel for the appellant and perused the records, we are convinced that the High Court was not justified in remitting the matter to the Family Court with a direction to give final opportunity to the respondent to cross-examine the appellant and to adduce his evidence. The premise on which the High Court passed the impugned order, namely, non-grant of adequate opportunity to the respondent to cross-examine the appellant and adduce his evidence is clearly erroneous, because, as mentioned above, after disposal of writ petition no. 1031/2006 filed by the respondent, the Family Court fixed the case on three different dates for cross-examination of the appellant, but the respondent did not avail that opportunity. In this view of the matter, the Family Court had rightly closed the evidence of the respondent, heard the arguments and pronounced the judgment and the High Court committed serious error by remitting the matter for giving further opportunity to the respondent to cross-examine the appellant and adduce his evidence.

6. Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the matter is remanded to it to dispose of the appeal on merits in accordance with law after giving opportunity of hearing to the parties.