RAJASTHAN HIGH COURT

Raj Kumari

Vs.

Nandlal

S.B. Civil Misc. Appeal No. 99 of 1996
(Prakash Tatia, J.)

13.12.2001

JUDGMENT

Prakash Tatia, J.

1. Heard learned Counsel for the appellant as well as learned counsel for the respondent. Perused the impugned order.

2. This is an appeal against the judgment and decree dated 5.10.95 passed by the court of District Judge, Churu in Civil Misc. Case No. 22/94 whereby the trial Court allowed the application for divorce of the petitioner-respondent against the appellant and granted the decree for divorce.

3. Brief facts of the case are that in present divorce petition, which was filed before the court below the learned counsel for the appellant filed the power on 17th April, 1995. On that day the trial Court fixed the date of reconciliation between the parties on 20th May, 1995. On that day both the parties were absent, therefore, matter was adjourned and fixed on 15th July, 1995 for reconciliation. The non-petitioner-appellant did not turn up. The matter was again adjourned and date was fixed on 26th August, 1995. On 26th August, 1995 learned counsel for the appellant-non petitioner pleaded no instruction. The respondent was present in court and non-petitioner-appellant did not come in court on 26th August, 1995. Therefore, the trial court passed the order to proceed *ex parte.* Therefore, the evidence was recorded by the trial court and after hearing the arguments of the learned counsel for the respondent passed the impugned decree for divorce on 5.10.95.

4. Against the above *ex-parte* decree dated 5.10.95, the appellant presented the appeal

before this Court on 10th Nov., 1995. In this appeal the appellant straightaway challenged the judgment and decree passed by the court below on merits and also submitted that the appellant's advocate did not inform appellant about pleading no instruction, before pleading no instruction or after pleading no instruction. It is also submitted in the memo of appeal that appellant duly sent the written statement or reply, but in the memo of appeal itself admitted that "it never reached the concerned hand." In addition to above, it is also mentioned in the memo of appeal that Nandlal, SHO was at Bikaner managed that advocate's letter should not reach and she was not given any compensation or maintenance and as such, in her absence, due to ignorance the decree has been passed *ex-parte.*

5. In this appeal learned counsel for the appellant submitted that the appellant's advocate did not inform appellant about the passing of the decree and also did not inform appellant before pleading no instruction. Therefore, the decree of the divorce deserves to be set aside as have been passed without there being any opportunity of hearing to the appellant-non-petitioner.

6. I perused the record and the facts mentioned in the memo of appeal alongwith grounds taken by the appellant and also perused the evidence produced by the respondent and the events, which took place before the court below.

7. Learned counsel for the appellant is not in position to state whether any application for setting aside *ex-parte* decree was moved before the court below or not. Be that as it may be, the fact remains is that, in present appeal the appellant has challenged the validity of the decree itself instead of challenging the order of proceeding ex-parte. Though she has raised an objection that appellant's advocate did not inform appellant about pleading no instruction before or after for which I perused the contention raised by the appellant in the memo of appeal, which is as under :

> "(xv) that the Advocate of the appellant never informed the appellant that he has pleaded no instruction neither before or after the incident though the appellant duly sent the written statement of reply put it never reached the concerned hand and the Nandlal SHO, was at Bikaner managed that Advocate's letter should not reach and she was not given any compensation or maintenance and as such in her absence due to ignorance the decree has been passed *ex- parte* and the same deserves to be set aside and appellant is poor and cannot maintain her and her

female child but the learned lower court has not looked into this matter."

A bare perusal of the above contention itself shows that it is absolute vague contention. Appellant stated as mentioned above that though the appellant duly sent the written statement or reply, but it never reached the concerned hand. The appellant has not even said when and how and by what mode she sent the alleged written statement or reply to the "concerned hand". In this submission she even did not choose to say that she sent the written statement or reply to her advocate. Assuming for the sake of the arguments, that the concerned hand may mean the advocate of the appellant then the appellant did not disclose when and from whom she got the knowledge of the fact that it has not reached the Advocate. In the same sequence she said that the respondent Nandlal managed that advocate's letter should not reach but she has not disclosed from where and how she got this information that it was the respondent who managed that advocate's letter should not reach to her. This fact is again in such a vague way that it leads nowhere again no date of letter. This fact only shows that some letter was, admittedly, written by the advocate of the appellant to the appellant. The date and reason for writing letter is not given by the appellant. Assuming for the sake of the arguments that since letter was not reached to her, she is not in position to give date but since the appellant said that a letter was written by the advocate and sent to her and it was managed by the respondent that the same may not to reach to the appellant then she must have got this information from some. source, which is also not disclosed by the appellant. In this appeal also she has not said, what was the contents of the letter, according to her information and if she got this information from her advocate then she should have what were the certainty of the letter ?

8. The appellant instead of submitting material facts in this appeal or by moving application for setting aside *ex-parte* decree preferred appeal. If she would have moved any application for setting aside decree before the trial court in which situation the respondent could have opportunity to file reply to the allegations and if, the court below would have found some substance and material facts in the application, it could have been enquired. But that opportunity was not availed by the appellant. Even if a liberal approach is taken even then there must be some material facts put forward by the party, which can be enquired into but when the party himself/herself did not choose to place before the court any material then it does not give any cause for enquiry by the court and the allegation deserves to be rejected only on the ground of

lack of material particulars of the facts.

9. In addition to above, the contention is self-contradictory of the appellant; at one stage appellant said that appellant's advocate never informed and in the same para she said that advocate sent a letter, though it has not reached to the appellant. The appellant nowhere said that she tried to contact her advocate at any time. Not only this but it is clear from the order-sheet of the trial court that the appellant did not appear even for reconciliation proceedings. Therefore, the trial court has no option but to proceed in accordance with law, which provides that in absence of the defendant-non-applicant the trial court may proceed *ex-parte* against the defaulting party and, therefore, the trial court has not committed any illegality in proceeding *ex-parte.*

10. It is further relevant to mention here that appellate has not given any reason for her absence when she was required to attend the court as per the orders passed by the trial court dated 17th April, 1995, 20th May, 1995 and 15th July, 1995. The trial court very specifically ordered that appellant shall remain present in any case on next date, i.e., on 26th August, 1995. When the court has already passed the order for the appellant to remain present in court and appellant did not appear in court despite granting opportunities then the defaulting party had no right to even say that advocate had not informed her about pleading no instruction and, particularly, when in this case appellant do not disclose why she did not appear on the date fixed for her appearance in court, therefore, there is no illegality in proceeding *ex-parte* against the appellant by the court below.

11. Though this is an *ex-parte* decree and the order of the trial court proceeding *ex-parte* was found to be legal and just even then I perused the entire record of the trial court and the evidence led by the respondent. The trial court granted the decree of divorce on the ground of cruelty but refused the decree of declaring marriage as null and void.

12. The AW-1 Nand Lal applicant-respondent in his statement on oath before the court below stated that marriage took place on 20.11.89 of the applicant- respondent with the appellant-non-applicant. A daughter was born to them on 5.9.90. The applicant-respondent stated that at the time of marriage the age of appellant was made known to him as 21 years whereas in fact, she was of the age of 25 years. The applicant was told that non-applicant is unmarried whereas she was married, but her husband died

before the marriage with the respondent. The applicant places on record the marriage card of the appellant Ex.2. This marriage was solemnized with Dr. Anil Kumar. In this card name of the appellant was shown as Chandra Kala. Ex.2 card was got printed by the family of the non-applicant-appellant. This marriage took place on 21st April, 1986. He further stated that Dr. Anil Kumar committed suicide on 2nd Oct., 1986, which is just after five months of the marriage with the non-applicant. The FIR was also placed on record as Ex.1. The applicant submitted that Dr. Anil Kumar committed suicide because of fact that non-applicant-appellant harassed Dr. Anil Kumar. In this sequence the non-applicant said that marriage was taken place with non-applicant-respondent by committing fraud upon the applicant. The applicant further, in his statement, stated that non-applicant-appellant was quarreling with some lady and she used to quarrel with family members. She left the house of the applicant on 7th Dec., 1991 and as the relation of the applicant becomes so bearable, he had to lodge an FIR on 25th Oct., 1993 because of the apprehension of his service and also of his life. The case was also registered under Sections 490, 420, 120 against the appellant.

13. The applicant also produced witness AW-2 Bharat Bhooshan. AW-2 Bharat Bhooshan stated on oath the facts with respect to the event of suicide and AW-3 Banwarilal, who is the brother of the applicant also supported the contention of the appellant. He also stated on oath that non-applicant was quarrelling with all the family members including the appellant and also committed fraud upon them by not disclosing true facts and deliberately suppressed the material facts. Another witness AW-4 Rajendra was produced, who was neighbour of the applicant-respondent. He stated that the non-applicant- appellant left the house of the applicant-respondent with intention to not to come back and she was having nature of quarrelling and she used to quarrel with the family members of the applicant.

14. In rebuttal to above uncontroverted evidence there is no evidence available on record. There is no cross-examination on any of the points by the non-applicant-appellant. It is true that the proceedings were taken *ex-parte* even then the statement on oath cannot be ignored when the statement discloses the facts, which constitutes the cruelty against the applicant. The entirety of the facts, if taken together, certainly constitution clear case of cruelty against the respondent-applicant and, therefore, the trial court has not committed any illegality in passing the decree for divorce against the appellant on merits.

15. Therefore, I do not find any illegality in the decree passed by the court below. Hence, the appeal of the appellant is hereby dismissed.

Appeal dismissed.