

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM (M) 622/2010

Date of Decision: May 07, 2010

MANPREET SINGH TALWAR Petitioner Through: Mr. Rajiv Kataria, Adv.

versus

SUKHWINDER KAUR TALWAR Respondent Through: NEMO.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? yes (3) Whether the judgment should be reported yes in the Digest ?

JUDGMENT

ARUNA SURESH, J. (Oral)

CM (M) 622/2010 and CM APPL Nos.8583-85/2010

1. Petitioner has filed this petition invoking the powers of this Court under Article 227 of the Constitution being aggrieved of the order of the Trial Court dated 11.08.2009.

2. Petitioner filed a petition for divorce on the grounds of cruelty and desertion against his Respondent wife. Respondent in her written statement admitted the claim and prayed for decree for CM(M) No.622/2010 Page 1 of 4 divorce. Accordingly, Petitioner filed an application under Order 12 Rule 6 CPC for passing of a decree of divorce on the basis of the admission made by the Respondent. Respondent contested the said application and claimed that she was subjected to cruelty by the Petitioner and sought divorce on her own plea of cruelty. She also desired adjudication of her claim for interim maintenance. The Trial Court dismissed the said application observing:-

" . This is a petition for Divorce under the provision of HMA. A decree for Divorce can only be passed on the basis of admission if the other party admits the grounds and not merely for the reason that the other party prays for the same relief. If the party seeks a common relief than, the provision would be different and the parties can approach this court by filing the petition by mutual consent. As far as the petition is concerned, the petitioner has substantiated his case by proving the allegations of cruelty and desertion which has been specifically denied by the Respondent. Accordingly, the application is not maintainable and same is dismissed ."

3. Mr. Rajiv Kataria, counsel for the Petitioner has submitted that Trial Court failed to consider that the Respondent has admitted the claim of the Petitioner and had agreed to obtain a decree for divorce. It is also argued that the marriage between the parties has irretrievably broken down and parties agreed CM(M) No.622/2010 Page 2 of 4 for mutual divorce and that the Respondent has demanded a sum of Rs.1 crore for settlement of her claim towards stridhan, dowry articles, permanent alimony, etc. The order of the Trial Court, dismissing the application therefore, is un- affirmed and illegal.

4. Under Order 12 Rule 6 CPC, the Court has the power to pass a judgment where the claim is admitted. Court has jurisdiction to enter a judgment and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. Wherein other party has made a plain admission entitling the plaintiff to succeed, the Court should apply principles of order 12 Rule 6 CPC and enter a judgment. Where there is a clear admission of facts on the face of it, it is impossible for the party making such admission to succeed, the Court can deliver a proper judgment.

5. In the facts and circumstances of this case, when both the parties have alleged commission of acts of cruelty against CM(M) No.622/2010 Page 3 of 4 each other and none of the parties have admitted any of such allegations, it cannot be said that Respondent admitted in unequivocal terms that she is ready to grant divorce to the Petitioner on the grounds on which he has claimed.

6. Irretrievable break down of marriage is not a ground available to the Petitioner under Section 13 of the Act. However, parties to the petition can claim divorce on the grounds of irretrievable break down of marriage under Section 13 (B) of the Act by mutual consent. Both the parties are eagerly contesting the case of each other.

7. Under these circumstances, the Trial Court rightly dismissed the application observing that there was no admission made by the Respondent. She has denied and controverted the allegations of cruelty and desertion in her written statement.

8. Hence, I find no merit in the petition, the same is accordingly dismissed.

ARUNA SURESH

(JUDGE)

MAY 07, 2010

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CM(M) No.622/2010 Page 4 of 4