

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 12TH OF AUGUST, 2024
M.P. No.1667 OF 2021

Vs.

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Appearance:

Shri R.K. Sanghi – Advocate for the petitioner.

Shri Manoj Sharma – Senior Advocate with Ms. Aqsa Mokarram – Advocate for the respondent.

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Reserved on : 01.08.2024

Delivered on : 12.08.2024

ORDER

This petition is arising out of the order passed by the Family Court in a pending petition of divorce and as such, with the consent of learned counsel for the parties, the matter is finally heard.

2. This petition is under Article 227 of the Constitution of India filed against the order dated 17.03.2021 passed in a case No.847 of 2019 wherein the application of the wife/ present petitioner filed under Order 1 Rule 10 of the Code of Civil Procedure has been rejected by the Court i.e. First Additional Principal Judge, Family Court, Bhopal.

3. The facts in compendium leading to filing of the instant petition

are as under:-

- (3.1) A petition has been filed by the respondent/husband under Section 13(a)(c) of the Hindu Marriage Act, 1955 seeking decree of divorce against the wife/present petitioner on the ground of cruelty.
- (3.2) The ground of cruelty is based upon the allegations made by the wife/present petitioner against the husband/respondent that he is in illicit relationship with one ***** Singh and as per the husband this allegation is absolutely false and incorrect.
- (3.3) In the divorce petition, the cause of action arose only when the wife alleged illicit relationship of the husband/respondent with ***** Singh in the year 2009 and started quarrelling with the husband/respondent and thereafter the situation was continued and as such, in the year 2019, a petition seeking decree of divorce was filed by the husband/respondent.
- (3.4) As per the allegations made in the plaint and ground of cruelty created by the husband that the wife/present petitioner has made false allegations of illicit relationship with ***** Singh and that illicit relationship was also flourished by her intimating the friends and other relations of the husband/respondent and as such, defamed the husband and his family members and on those grounds, she left the house of the husband/respondent and thereafter she filed a petition of divorce in the Court of Jabalpur, but later on, she withdrew petition of divorce.
- (3.5) The parties have adduced their evidence and the case is at the state of passing the final judgment. In that situation, an application has been filed by the wife/present petitioner under

Order 1 Rule 10(2) r/w Section 151 of the CPC so as to make ***** as a party saying that the allegation of adultery made by the wife/present petitioner against the husband/respondent and the husband is asking for decree of divorce on the ground of cruelty saying that by making false allegation of illicit relationship with *****, the husband and his family members have been defamed and as such, it amounts to cruelty and decree of divorce on the basis of cruelty has been sought by filing petition under Section 13 of the Hindu Marriage Act by the husband.

- (3.6) In the application submitted by the wife, it is claimed that in the existing circumstances, the lady ***** is a necessary party and without making her as a party in the matter, proper adjudication of dispute between the parties cannot be made.
- (3.7) The application was replied saying that the suit can be decided without impleading ***** as a party. It was further replied that only on the basis of false allegations, it is not appropriate to call the said person in the Court and to implead her as a party in the litigation.
- (3.8) The Family Court after considering the application and reply filed thereto and also the submissions made by the counsel for the parties had rejected the application by the impugned order dated 17.03.2021 saying that the allegation with regard to illicit relationship of the husband with other ladies including ***** though made, but all those women are not required to be impleaded as party because neither they are necessary nor formal party. Hence, this petition.

4. Learned counsel for the petitioner has placed reliance upon the judgments reported in **2019 SCC OnLine P&H 6239** parties being **Rajesh Devi Vs. Jai Prakash** and **2012 SCC OnLine AP 1281** parties being **Padmavathi Vs. Sai Babu**.

5. In a case of **Rajesh Devi** (supra), the Division Bench of the Punjab and Haryana High Court has observed as under:-

“16. Section 13(1)(i-a) of the Act deals with the ground of cruelty but Section 13(1)(i) of the Act deals with the ground of adultery. In the present case, the decree has been granted to the respondent on the alleged act of adultery by the appellant without impleading the adulterer who has been specifically named in para No. 9 of the petition. Rule 6 of the Rules provides that if a petition for divorce is filed on the ground of adultery, then the particulars of the adulterer have to be given as early as possible. Rule 10 of the Rules provides that it is incumbent upon the petitioner husband or wife to implead the adulterer as a co-respondent but for three exceptions which are provided therein. Rule 11 further says that copy of the pleadings is to be served upon the said adulterer and Rule 14 further says that if the adultery is established, the Court may order the adulterer to pay the whole or pay part of the costs of the proceedings except for two exceptions provided in the Rules.

17. Thus, from the aforesaid Rules, it is apparent that the spouse alleging adultery, has to implead the alleged adulterer as a party and in the absence of the said adulterer as a corespondent, the plea of adultery cannot be accepted.

18. Although in the absence of the adulterer, whose name has been mentioned in para No. 9 of the petition filed by the respondent-husband, the petition itself was not maintainable before the Family Court but we would also refer to the evidence led by the respondent which has been misread by the Family Court while holding that the appellant was living an adulterous life.

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22. After hearing learned counsel for the parties and perusing the available record in this regard, we are of the considered opinion that the Court below has erred in appreciation of evidence available on record because Ex.PW3/A and Ex.PW3/B do not show that the appellant had taken the treatment at Kalawati Hospital for the purpose of abortion and in particular, the document Ex.PW3/B is

mentioned in such a manner as if the appellant is a male instead of a female because the first line of the said document reads that “main apni aurat ki safai apni marji se kara raha hu”. Similarly, the letters available on record, more particularly Ex.PX and Ex.PY, do not show at all the admission on the part of the appellant of having sexual intercourse with a person rather than her husband has to prove the allegation of adultery. There is no cogent evidence brought on record to prove that the appellant, after her abortion at home, had concealed the foetus because not even a single person much-less a lady amongst his family members were examined by the respondent in regard to termination of pregnancy by the appellant, who could have been the best witness. The appellant has relied upon the statement of his friend who was with him in Gujarat Police and has no connection with the family of the appellant and, thus, his evidence cannot be relied upon. Keeping in view the totality of the aforesaid facts and circumstances, we are of the considered opinion that the respondent has miserably failed to prove the act of adultery on the part of the appellant by leading cogent and convincing evidence and also the petition filed by him, knowing fully well about the person with whom the appellant was living the alleged life of adultery but without impleading him as a co-respondent, was not maintainable in view of Rule 10 of the Rules.”

6. Likewise, in a case of **Padmavathi** (supra), the Andhra Pradesh High Court has observed as under:-

“16. In the context of adding the alleged adulterer as a party in the divorce O.P., what is required to be considered is as to whether any alleged finding of adultery would adversely affect the interest of the adulterer by reason of which an opportunity should be provided to him to defend himself to disprove the claim of adultery applying the concept of the principles of natural justice. This analogy is to be applied irrespective of enacting a Rule of Law for adding him as a party to the divorce proceedings. As a matter of fact his presence in the proceedings helps better to effectively and completely adjudicate the controversy and also safeguard his interest.

18. The Karnataka High Court also considered the relevant provisions of Civil Procedure Code about adding necessary party in the proceedings, and observed:

(7) But what if the rules do not require the impleading of the alleged adulterer as co-respondent, though named in the petition? In the absence, of any Rule, we have to fall back upon Rules 3, 5 and 10(2) of Order 1, CPC. Rule 3 provides that all persons against whom any right to relief

in respect of or arising out of the same act/s or transaction/s is alleged to exist, whether jointly or severally or in the alternative, may be joined as defendants in a suit. Rule 5 makes it clear that it shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against them. Rule 10(2) *inter alia* provides that the Court may at any stage of the proceedings, order that the name of any party improperly joined as defendant be struck out; or order the addition of any person who ought to have been joined as defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit.

(8) A plaintiff or petitioner is bound to implead all those who are necessary parties. He is also entitled to or at liberty to implead in a suit all parties who are proper parties. Though these terms are not defined in the Code, it is well-settled that persons who ought to have been joined, that is persons in whose absence no effective decree at all can be passed are necessary parties. In other words those whose presence is absolutely necessary for the grant of the reliefs claimed in a suit are necessary parties. On the other hand all person whose presence before the Court is necessary to enable it to effectually and completely adjudicate upon and settle all questions involved in the suit are proper parties. In *Anil Kumar Singh v. Shivnath Mishra*, 1995 AIR SCW 1782, the ??? Supreme Court stated that the object of Order 1 Rule 10(2), CPC is to bring on record all persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence and at the same time without any protraction, inconvenience, and to avoid multiplicity of proceedings. The Supreme Court further held (Para 9 of AIR) “a person maybe added as a party defendant to the suit though no relief may be claimed against him/her provided him/her presence is necessary for a complete and final decision on the question involved in the suit”.

(10) There can be no doubt that in a proceeding where the Court has to decide whether the spouse of the petitioner had voluntary sexual intercourse with another person, by adding such person (alleged adulterer) as a respondent, the Court would be in a better position to effectually and completely adjudicate upon the controversy. Nor can it be said that in a proceeding tinder Section 13(1)(i) of H. M. Act, when the spouse and alleged adulterer arc impleaded as respondents, the alleged adulterer is

improperly joined as a respondent. Therefore the alleged adulterer will be a proper party to a proceeding under Section 13(1)(i) of H. M. Act. The Family Court and the learned Single Judge merely concentrated on the fact no relief was sought against the second respondent. They, therefore, considered only whether the adulterer is a necessary party to a petition seeking divorce on the ground of adultery, but completely ignored that the alleged adulterer is a proper party. We adopt these observations here being quite rational. Eventually we are unable to accept the findings of the Court below to the effect that there is no need to add the adulterer as party to the proceedings, he being a necessary and proper party to the proceedings. We are unable to agree with the findings given in *Gali Kondaiah's* case (supra). Ultimately, the verdict of the Court below is to be set aside which results in the dismissal of the plea of the petitioner to dissolve the marriage by a decree of divorce without going into the merits of the evidence adduced.”

7. On the other hand, Shri Manoj Sharma, learned senior counsel appearing for the respondent has placed reliance upon a judgment reported in (2010) 7 SCC 417 parties being **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others** and also one of the judgments passed by the High Court of Delhi in a matrimonial dispute reported in **2024 Live Law (Del) 860** parties being **Shivi Bansal Vs. Gaurav Bansal in MAT.APP.(F.C.) 219/2024** on 16.07.2024, in which, the Court has observed as under:-

“11. In our view, even though the conclusion reached by the Family Court Judge on this score is correct, i.e., that the divorce petition cannot be rejected in part, arraying a third party to a divorce petition is neither proper nor necessary. A necessary party is one in whose absence no effective decree can be passed, whereas, a proper party enables complete and final adjudication of issues involved in a given lis.

11.1 The alleged adulterer is, to our minds, not a necessary party as a decree can be passed in his/her absence. Likewise, the adulterer is not a proper party since the issue concerning adultery can be adjudicated without making the adulterer a party to the cause. Proof

of adultery need not be conflated with who should be arrayed as a party to a divorce action.

11.2 A divorce action is a lis centered around the couple who have entered into matrimony. A third party [who does not claim the status of a spouse] has no locus to intervene or seek impleadment in such a cause. [Also see *Manjul Joshi v. Bhavna Khurana, 2024: DHC:4170-DB*].

12. The alleged adulterer (third party) can either be summoned as a witness or other evidence can be placed before the Family Court to prove adultery. Therefore, on this count, we are not in agreement with the counsel for the appellant/wife.

13. Likewise, contradictory pleadings concerning the accusation of adultery vis-a-vis the appellant/wife, if taken on a standalone basis, cannot lead to the divorce petition being dismissed summarily.

14. Significantly, counsel for the appellant/wife does not dispute, as noticed above, the fact that there are assertions in the divorce petition instituted by the respondent/husband concerning cruelty.

15. Thus, given the fact that allegations concerning cruelty are embedded in the divorce action, the petition cannot be rejected in a piecemeal manner upon an application being moved under Order VII Rule 11 of CPC. This principle has been reiterated by the Supreme Court in *Geetha v. Nanjundaswamy, 2023 SCC OnLine SC 1407*. For convenience, the relevant part of the judgment is extracted hereafter:

*12. There is yet another reason why the judgment of the High Court is not sustainable. **In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part.** This principle is well established and has been continuously followed since the 1936 decision in *Maqsd Ahmad v. Mathra Datt & Co.* This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*, which was again followed in *Madhav Prasad Aggarwal v. Axis Bank Ltd.*⁶ The relevant portion of *Madhav Prasad (supra)* is extracted hereinunder:*

*10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). **In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC.** Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*, (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the*

*plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. **The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.***

*12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. **In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...***

(emphasis supplied)

13. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground."

8. Considering the submissions made by the counsel for the parties, perusal of record and the judgments relied upon by the counsel for the parties, I am of the opinion that it is a case of husband, who filed the petition seeking decree of divorce on the ground that alleging false and incorrect allegations of adultery against him amounts to cruelty as those allegations defamed the husband/respondent and his family members and, therefore, according to him, it is the duty of the wife to prove the alleged allegations and if she failed to prove the same then only the Court may consider whether making false allegation of that nature against the husband comes within the definition of cruelty or not and then the petitioner can be granted decree of divorce on the ground of

cruelty.

9. As per the existing facts of the case, the parties have adduced their evidence and case is closed for final order. The wife, therefore, made an application to implead ***** as a party saying that adulterer is a necessary party and if she is brought before the Court, the Court would be in a convenient position to adjudicate the dispute in question and, therefore, according to the petitioner, the adulterer in view of the judgment on which the counsel for the petitioner has relied upon is a necessary party and under such circumstances, the application moved by the wife/present petitioner under Order 1 Rule 10 (2) r/w Section 151 of the CPC ought to have been allowed, but the Court has wrongly rejected the same.

10. I have perused the judgments relied upon by the learned counsel for the petitioner but in all those judgments, the decree of divorce was sought for on the ground of adultery. In case of **Rajesh Devi** (supra), the marriage between the parties solemnized on 14.02.1982 as per Hindu Ritis. The husband, at the time of said marriage, was a widower as his earlier wife namely Ramawati died and due to said wedlock he had a son namely Ravindra Kumar whereas the wife/appellant was a spinster. After getting married, the dispute arose between them and as per the husband, who filed a petition seeking decree of divorce on the ground of cruelty, the wife was involved in adultery and having illicit relationship with several men and as such, she was living an adulterous life.

11. In a written statement, the wife denying the allegations levelled against her, has made allegation against her husband saying that he was alcoholic from the very beginning and instead of maintaining his

children, he has been pursuing his bad habits and also used to beat her whenever she complains about the same. The Court has framed two issues in which one of the issues was whether the petitioner is entitled to seek decree of divorce from the wife on the ground of cruelty as well as adultery. After examining the witnesses, the Court has granted decree of divorce in favour of the husband which was assailed by the wife by filing an appeal which came for hearing before the Division Bench and during the pendency of appeal, the decree holder/husband died and thereafter, it is claimed by the counsel for the respondents that after the death of the husband, the appeal is not maintainable because the divorce is a personal remedy which cannot be pursued after the death of the husband, but that submission was opposed by the wife saying that the appeal is still maintainable even after the death of husband because the decree obtained by the husband is effective in law and determines the status of the appellant as a wife and also that the decree has been obtained by the respondent on the false ground of adultery which attaches a stigma to the appellant. The Court finally found substance in the submission and allowed the application filed under Order 22 Rule 4 of the CPC for bringing the legal heirs of the husband on record and while considering the appeal, the Court has found that the decree of divorce was sought and granted on the ground of adultery without impleading adulterer as a co-respondent.

In the aforesaid backgrounds and considering the provision of respective rule i.e. Rule 10 of the CPC in which it is observed that decree of divorce on the ground of adultery cannot be obtained without impleading the adulterer as a party and as such, the analogy which has been followed by the Division Bench in the case of **Rajesh Devi** (supra)

is not applicable here in this case for the reason that it is not a case on which the decree of divorce is being sought on the ground of adultery, but it is a case in which decree of divorce has been sought on the ground of cruelty as wife made false allegation of adultery against the husband.

12. Likewise, the case of **Padmavathi** (supra), is an appeal against the order of the Family Court accepting the petition for dissolving the marriage between the husband and wife by granting decree of divorce. It is the husband, who filed the petition for dissolving the marriage on the ground of adultery against the wife, in which, after considering the provision of the Hindu Marriage Act “*where a husband’s petition alleges adultery on the part of the respondent, the alleged adulterer shall if he is living be made a co-respondent in the petition*”, the Court has found that the request for adding adulterer as a party in the divorce petition is proper so as to give an opportunity to the adulterer to defend himself and applying the principles of natural justice, the Court has allowed the said application. But that analogy is not applicable here in this case for the reason that it is a case in which the husband asking decree of divorce on the ground of cruelty saying that the wife has made false allegations of adultery against him.

13. Thus, in the present case, if wife fails to prove her allegations, the decree of divorce can be granted by the Court in favour of the husband considering the fact whether the allegation of adultery made without any foundation against the husband comes within the definition of cruelty or not. But adulterer is not required to be impleaded as a party on the request made by the wife. Had it been a case where decree of divorce is being sought by the wife on the ground of adultery casting aspersion upon the husband saying that he is an adulterer, then in that situation,

the other person would have been required to be impleaded so as to prove the allegations against the husband. But, here the situation is otherwise and as such, the Court has to see whether the wife has collected sufficient material and produced it before the Court to prove the allegation or not.

14. The High Court of Delhi in a case of **Shivi Bansal** (supra), while hearing the appeal against the judgment and order dated 03.06.2024 passed by the Family Court in which the application moved under Order Order 7 Rule 11 of the CPC by the wife got dismissed. In the said case, the decree of divorce was sought by the husband on the grounds of cruelty, adultery and desertion and as such, prerequisite condition of Section 13(1)(ib) of the Hindu Marriage Act, 1955, were not fulfilled. As far as the allegation of adultery is concerned, it is alleged that there is contraction in the stand taken by the respondent/husband and, therefore, decree of divorce cannot be granted on those grounds.

Apart from this, it was also claimed that the person with whom wife was involved and living adulterous life was not arrayed as a party, the plaint was, therefore, liable to be rejected. The Court has considered the aspect for non-joinder of the adulterer as a party saying that the divorce petition cannot be rejected only for the reason that the person with whom the wife was said to be involved and having adulterous relationship was not impleaded as a party. The Court has observed that the adulterer is not a necessary party as the decree can be passed in his/her absence. It is also observed by the Court that the adulterer is not a proper party as the issue of adultery can be adjudicated without making adulterer as a party to the case.

15. In the case of **Mumbai International Airport Private Limited**

(supra), the Supreme Court has observed that Order 1 Rule 10 (2) of the CPC is a complete discretion of the Court to add parties. In the facts and circumstances of the present case, I am of the opinion that when decree of divorce is not being sought against the wife on the ground of adultery, then the adulterer is not a necessary party. If the wife failed to prove allegation of adultery levelled against the husband and ultimately the Court comes to the conclusion that the wife without having any proof or foundation defamed the husband and his family members, can grant decree of divorce, if according to the Court the said conduct of the wife comes within the ambit of cruelty. But, in the present scenario, the impugned order dated 17.03.2021 passed by the Family Court rejecting the application of wife to implead adulterer as a party does not suffer from any material illegality or irregularity which warrants any interference from this Court.

16. In the backdrop of aforesaid discussion, the petition being *sans* merit, is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE

ac/-