IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.24 OF 2022
WITH
INTERIM APPLICATION NO.1854 OF 2022
IN
FAMILY COURT APPEAL NO.24 OF 2022

[redacted] .. Appellant / Applicant / Original Petitioner

Versus

[redacted] .. Respondent

Mr. Krishna Holambe Patil a/w Mr. Vishal G. Shirsat for the Applicant / Appellant.

Mr. Abhishek L. Tripathi for the Respondent.

CORAM : R.D. DHANUKA &
GAURI GODSE, JJ.

DATE : 24th MARCH, 2023.

JUDGMENT :-

1. Heard learned counsel for the Appellant and learned counsel for the Respondent.

2. Admit. Respondent waives service. By consent, taken up for final disposal.

3. By this Appeal filed under Section 19 of Family Court Act, 1984 the original Petitioner (Appellant) challenges the impugned Judgment and decree passed by the Principal Judge, Family Court Mumbai dated 17th February, 2022 thereby passing a decree partially to the extent of prayer clause (a) and whereby the marriage between the Petitioner and the Respondent is dissolved under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The learned Family Court has however kept the Petition pending for the reliefs prayed in prayer clauses (b) and (c) to the Petition. So far as prayer clauses (b) and (c) are concerned, the clause (b) refers that the Respondent be directed to pay maintenance of Rs.80,000/- per month to Petitioner and her son; and clause (c) refers to costs of the present Petition to be granted in favour of the Petitioner.

4. The Appellant and Respondent got married on 14th July, 2013 according to the provisions of Hindu Marriage Act, 1955. The dispute arose between the parties on 11th January

2017. There is a child out of the said wedlock between the parties. The child is born on 24th July, 2017. In the month of November, 2017, the Appellant filed M.J. Petition No.A-3037 of 2017 *inter alia* praying that the marriage between the parties solemnized on 14th July, 2013 be dissolved by a decree of divorce and also prayed that the Respondent be directed to pay maintenance of Rs.80,000/- per month to Petitioner and her son with cost of the petition in favour of the Petitioner. The said Petition was opposed by the Respondent by filing written statement in the month of January 2019 and the allegations of cruelty and other allegations were made by the Appellant against the Respondent were denied. In the month of April, 2021, the Respondent filed the Application *inter alia* praying for passing a decree of divorce on admission and the Respondent submitting to the decree and prayer clause (a) of the Petition. The said Application was opposed by the Appellant (Original Petitioner) by filing reply on 8th February, 2022. The learned Family Court passed a decree in terms of prayer clause (a) on 17th February, 2022 which is impugned by the Appellant (original Petitioner) in this Family Court Appeal.

5. The learned counsel for the Appellant invited our attention to the written statement filed by the Respondent. Despite the allegation of cruelty made by the Appellant were denied by the Respondent, the Application was filed by the Respondent submitting to the decree of divorce on admission in terms of prayer clause (a) of the Petition. The Application was opposed by the Appellant by filing the affidavit-in-reply. He submitted that the Family Court could not have passed a decree in terms of prayer clause (a) on admission. Even though there were serious allegations of cruelty under Section 13(1)(ia) of Hindu Marriage Act, 1955 against the Respondent, which were disputed by the Respondent in the written statement and also in the Application filed by the Respondent for decree of divorce on admission, the learned Family Court passed a decree for divorce. He submitted that in the affidavit-in-reply filed by the Appellant apart from the allegations of cruelty, the Appellant had disputed that there was any uncondtional and unequivocal admission on the part of the Respondent for passing decree in terms of prayer clause (a).

6. Learned counsel for the Respondent on the other hand

submitted that the marriage between both the parties was severed and not reconciled for quite sometime. He submitted that in the affidavit-in-reply to the Application filed by the Respondent, the Appellant had clearly admitted that at the point of passing the decree, the status of the Appellant and Respondent get severed as husband and wife. It is further stated in the affidavit-in-reply that the Appellant shall not be wife of the Respondent after passing of decree of divorce and the decree of divorce cannot be passed by keeping issue of maintenance and permanent alimony pending. He relied upon Order 12 Rule 6 of the Code of Civil Procedure, 1908 ("CPC") and also Section 151 of CPC and submitted that Family Court was justified in invoking Section 151 of CPC and passing a decree on admission under Order 12 Rule 6(2) of CPC. Learned counsel for the Respondent also placed reliance on Section 23 of Hindu Marriage Act, 1955 and submitted that Family Court has wide power to pass a decree of divorce if the Family Court is satisfied that any of the grounds for granting relief exist whether the proceedings are defended or not by any of the parties.

7. It is submitted that it is duty of the Court at the first instance in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. He submitted that the Appellant has already withdrawn the domestic violence Case No.318/DV/2017 filed before the Court of Addl. Chief Metropolitan Magistrate 6th Court at Andheri, Mumbai on 19th October, 2019. He submitted that only after withdrawal of the the proceedings under the Protection of Women from Domestic Violence Act, 2005, the Respondent has filed an Application in the Month of April 2021 for passing a decree of divorce on admission and for submitting to the decree of divorce in the terms of prayer clause (a) of the Petition.

8. Learned counsel for the Respondent also placed reliance on Section 25 of the Hindu Marriage Act, 1955 as far as keeping pending prayer clauses (b) and (c) by the Family Court and vehemently urged that the prayer for permanent alimony and maintenance can be passed by the Family Court even after passing of decree for divorce and thus the Family Court was justified in not deciding prayer clauses (b) and (c) as it were for

maintenance, permanent alimony and costs alongwith the prayer clause (a).

9. A perusal of Petition filed by the Appellant clearly indicates that there were serious allegations of cruelty made by the Appellant against the Respondent. There are various grounds raised in the Petition. The Appellant applied for a decree for divorce. The Appellant invoked Section 13(1)(ia) of the Hindu Marriage Act, 1955 against the Respondent.

10. A perusal of the written statement filed by Respondent No.1 would clearly indicate that the Respondent had denied the allegation of cruelty against the Appellant and had made counter allegations against the Appellant.

11. Perusal of the Application filed by the Respondent in the Month of April, 2021 indicates that the Respondent prayed for passing a decree of divorce on admission and submitted to the decree of divorce in terms of prayer clause (a) to the Petition.

12. In paragraph 3 of the Application filed by the Respondent, the Respondent had stated that without admitting the allegations made in the Petition more particularly set out in the written statement, the Respondent had no objection to grant of decree of divorce in terms of prayer clause (a) of the Petition without prejudice to the rights and contentions with regard to other prayers prayed in the Petition. It is further stated that by passing a decree of divorce on admission, the ambit and scope of the trial of the Petition in respect of other reliefs will be narrowed which will save the precious time of the Court. The Respondent reserved the right to contest other prayers of the Petition on merits.

13. In Paragraph 7 of the said Application, it is stated that the Respondent had denied the allegations made in the Petition by filing his written statement in detail and therefore the other prayers in the Petition can be heard on merits by adducing evidence by the Petitioner and Respondent.

14. We have perused the reply filed by the Appellant. A perusal of the said reply clearly indicates that the Appellant has

referred to the written statement filed by the Respondent in which the Respondent had specifically prayed for dismissal of Petition with costs. It is the case of the Appellant that the Respondent had set up case of denial and thereby pressed for dismissal of Petition. The Appellant opposed the Application filed by the Respondent for the decree divorce on admission. In paragraph 6 of the said reply, it is stated that at the point of passing the decree, the status of the Petitioner and the Respondent would get severed as husband and wife. The Appellant shall not be wife of the Respondent after passing decree of divorce, thus order of maintenance and permanent alimony cannot be passed in favour of Appellant after passing decree of divorce. It is thus clear that the Appellant has not submitted to the decree of divorce under Order 12 Rule 6 of the Civil Procedure Code, 1908. Neither the Appellant-wife had withdrawn allegations of cruelty against the Respondent nor the Respondent has accepted the allegations of cruelty.

15. A perusal of Order 12 Rule 6 of CPC clearly indicates that where any party admits the facts by his / her pleadings or otherwise, orally or in writing, at any stage of the proceedings,

against other party, on making an application against other party, under Order 12 Rule 6 of CPC, the Court is empowered to pass a judgment on admission where admission of fact have been made either in the pleading or otherwise, whether orally or in writing the Court may at any stage of the suit, either on application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admission.

16. In our view, a decree under Order 12 Rule 6 can be made only if there is unequivocal admission of facts by the party without reserving any rights. A perusal of the written statement filed by the Respondent and the Application filed for decree of divorce on admission clearly indicates that he had clearly disputed the allegations of cruelty. The affidavit-in-reply filed by the Appellant to the application filed by the Respondent also clearly indicates that she had not given up the allegations of cruelty. Obviously, the prayer for maintenance would have bearing on the claim for decree of divorce granted by the Family Court on the Application made by the Respondent.

17. In our view, the Family Court has misconstrued the submission made by the Appellant in paragraph 6 of the affidavit-in-reply. It is the case of the Appellant that after passing the decree of divorce the status of Appellant and Respondent would get servered as husband and wife and thus the order of maintenance and permanent alimony cannot be passed after passing of decree of divorce.

18. We are not inclined to accept the submission of the learned counsel for the Respondent that the order of maintenance and permanent alimony could be passed in these circumstances also where decree on admission is granted by the Family Court in favour of the Appellant when the Appellant having given up the allegations of cruelty.

19. A perusal of decree passed by the Family Court clearly indicates that though the Family Court has taken congnizance of Section 151 of CPC which provides for inherent jurisdiction of the Court, when there is no specific provision for passing such an order, the Family Court has passed the decree of divorce contrary to Section 151 of CPC by assuming that the Appellant

and the Respondent are intending to separate as marriage has been dissolved in their mind and heart. None of the parties have led any evidence. Allegations and counter allegations are made against each other. The learned Family Court could not have done guess work and could not have come to the conclusion that the marriage was dissolved in their mind and heart while passing the decree of divorce. It is a common ground when parties agree for divorce and do not make any allegations against each other or withdraw allegations made against each other, the parties could have filed a Petition for mutual divorce. No such Petition for mutual divorce was filed.

20. In view of the fact that, there is a specific provision for passing decree under Order 12 Rule 6 of CPC on satisfaction of conditions provided under the said provision, the Family Court could not have invoked Section 151 of CPC. The impugned order shows non application of mind on the part of the Family Court while passing decree of divorce by doing a guess work and without there being any evidence on record. As per Order 12 Rule 6 of CPC, the party who is alleged to have made an admission is entitled to be granted an opportunity to explain the

so called admission made in the affidavit at the stage of trial. Such allegations made by the parties against each other could not have been brushed aside in such a summary manner as it is done by the Family Court.

21. We have perused the Application filed by the Respondent for passing decree on admission without admitting the allegations of cruelty made on part of the Appellant in the affidavit-in-reply, and also based on its own admission in the Application, praying for passing of decree of divorce on admission and submitting to the decree in terms of prayer clause (a) of the Petition. There is no admission on the part of the Appellant for decree of divorce. The decree of divorce on admission could have been passed if both parties would have agreed before the Family Court. The situation would have been different in such case.

22. We accordingly pass following order;

ORDER

(i) The impugned Judgment and decree of divorce dated 17th February, 2022 passed by the

Principal Judge, Family Court, Mumbai is hereby set aside.

(ii) M.J. Petition No. A-3037 of 2017 to be restored to file and to be heard on its own merits expeditiously.

23. Family Court Appeal is allowed in the above terms. In view of disposal of Family Court Appeal, Interim Application does not survive and accordingly stands disposed of. Parties to bear their respective costs.

(GAURI GODSE, J.) *(R.D. DHANUKA, J.)*