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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 11th OF DECEMBER, 2023

FIRST APPEAL No. 2251 of 2023

BETWEEN:-

NIKLESH BARWE S/O SHRI NAMDEV BARWE, AGED ABOUT 37 YEARS, R/O HOUSE NO. 240, BEHIND PALASH RESIDENCY, NORTH T.T. NAGAR, BANGANGA BHOPAL (MADHYA PRADESH)

.....APPELLANT

(BY MR. NAVNEET SHUKLA - APPELLANT)

AND

SUDHA JAISWAL W/O SHRI NIKLESH BARWE D/O SHRI RAMACHAL JAISWAL, AGED ABOUT 35 YEARS, R/O FF-15, A BLOCK BOCHS RESIDENCY RMV 2ND STAGE, ASHWATH NAGAR, 80, FEET ROADM BENGALURU (KARNATAKA)

.....RESPONDENT

This appeal coming on for hearing this day, Justice Devnarayan Mishra passed the following:

ORDER

This first appeal has been filed being aggrieved by the judgment and decree passed by the First Additional Principal Judge Family Court Bhopal in RCS HM No.553/2022 dated 10.08.2023 by which, the divorce petition of the appellant/husband has been dismissed.

2. The case of the appellant before the Family Court in brief is that the appellant and respondent were married as per Hindu Rites and Rituals on 12th

of December, 2012. After 02-03 months of their marriage, the behaviour of the respondent changed and she conceived pregnancy but she did not want to deliver the child. The respondent is suffering from paranoia. At her maternal home on 17th of February, 2014, she delivered a male child but her misbehaviour and paranoia attitude did not change. She denied to reside with the appellant. The appellant went to her maternal home situated at Bangalore but she also denied to reside with him. After certain time, again the appellant tried to live with her wife at Bangalore but she has not cooperated so the appellant tried to bring the respondent to his residence at Bhopal but she was not ready to live with him at Bhopal and she consistently demanded to construct a dental clinic from the appellant for her and when the appellant expressed his inability then, she started quarreling with him. The appellant went to Jamnagar, Gujrat to pursue his carrier but the respondent was not ready and willing to live with the appellant as his wife and she did not want to continue to live at matrimonial home on the ground of cruelty and thereafter, the appellant filed a divorce petition before the Family Court Bhopal.

3. In the divorce proceedings, the respondent never appeared so the Family Court proceeded ex-party. Family Court after adducing the evidence, passed the impugned judgment/decreed and dismissed the petition mentioning that the appellant has failed to prove the ground of cruelty and the petition was not within the jurisdiction of the Family Court Bhopal.

4. Heard on admission.

5. Learned counsel for the appellant has argued that the marriage was solemnized in Bhopal. Some ceremonies of the marriage were performed in Bhopal (M.P) and some ceremonies were performed at Ajamgarh (U.P.) but the trial Court has not appreciated this fact in relation to Section 7 of the

Hindu Marriage Act, 1955.

6. Mr. Shukla has further argued that as per Section 7, no ceremony has been fixed by the Act and as per this Section, marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. Thus, the Family Court Bhopal was having jurisdiction and the Court erroneously dismissed the petition on the ground of jurisdiction.

7. Heard learned counsel and perused the record.

8. Hindu Marriage Act, 1955 provides that jurisdiction and procedure in which the petition under this act can be presented as below:

"19. Court to which petition shall be presented.- Every petition under this Act shall be presented to the district court within the local limits of whose ordinary civil jurisdiction.

(i) the marriage was solemnized;

(ii) the respondent, at the time of the presentation of the petition, resides; or

(iii) the parties to the marriage last resided together; or

(iv) the petitioner is residing at the time of presentation of the petition, in case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive."

9. Thus, the District Court/Family Court exercising the jurisdiction in anyone of the places mentioned below where the petition can be filed:-

(a) the place where the marriage was solemnized;

(b) in case where the respondent is residing in any other place then the residence of the opposite party to marriage;

(c) the place where parties of the marriage last resided together.

To determine by which way the marriage is solemnized and when the

marriage becomes complete and binding.

10. Section 7 of the Hindu Marriage Act mentioned as under:

"7 Ceremonies for a Hindu marriage.

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptpadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

11. Thus, from perusal of the above provisions, it is clear that whenever saptpadi is one of the ceremonies performed in marriage, then marriage becomes complete on taking the seventh step before the sacred fire.

12. It is clear from the appellant's arguments that saptpadi was performed at Ajamgarh (U.P.). Thus, the marriage was actually solemnized at Ajamgarh (U.P.) and the prior or subsequent to ceremonies performed at Bhopal (M.P.) are not material to decide the solemnization of the marriage. For the purpose of Section 19 of the Act, the marriage between the parties was actually solemnized at Ajamgarh (U.P.).

13. It is not the case of appellant that lastly both the parties resided at Bhopal. As per the plaint averment, the appellant lastly resided with the respondent in her parental home situated in Bangalore. Thus, Bhopal Court has no jurisdiction as per the law prescribed under Section 19 of the Hindu Marriage Act, 1955.

14. Hence, the appeal has no substance and is hereby dismissed at motion stage.

15. All pending interlocutory applications are disposed of.

16. Let a copy of this order alongwith record be sent to the concerned

trial Court for information and necessary compliance.

17. Certified copy as per rules.

(SHEEL NAGU)
JUDGE

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(DEVNARAYAN MISHRA)
JUDGE

