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Elizabeth Skariah Vs Aby Skariah and Others

Court: Delhi High Court

Date of Decision: Dec. 13, 2001

Acts Referred: Divorce Act, 1869 â€" Section 32
Hindu Marriage Act, 1955 â€" Section 32

Citation: AIR 2002 Delhi 307 : (2002) 3 CivCC 16 : (2002) 95 DLT 343 : (2002) 1 DMC 273

Hon'ble Judges: Jiwan Dass Kapoor, J

Bench: Single Bench

Advocate: P.S. Khera and S. Khera, for the Appellant; Nemo, for the Respondent

Judgement

J.D. Kapoor, J.
This is a suit for permanent injunction restraining the defendant No. 1 from contracting a second marriage during the

subsistence of his marriage with the plaintiff herein and also restraining the defendant Nos. 2 to 5 from taking any steps in any manner in connection

with or in furtherance of the design of the said second marriage of defendant No. 1 or in any way executing or advancing the same or permitting or

conniving at it.

2. The plaintiff is Christian by religion. Though she hails from Kerala but since childhood is domiciled in Delhi. She is the daughter of Pastor

(Preacher) T Samuel, who is attached to the United Pentecostal Church, Green Park, New Delhi for the last over thirty five years. Defendant No.

1 is then son of defendant Nos. 2 & 3, while defendant No. 4 is the sister of defendant No. 1 and defendant No. 5 is the husband of defendant

No. 4. The marriage of the plaintiff with defendant No. 1 was solemnised on 21.12.1994. It was an arranged marriage. It was told to the plaintiff''s

parents that defendant No. 1 was a Commerce graduate and gainfully employed. Soon after the marriage, she discovered that the defendant No. 1

was not gainfully employed to support a matrimonial home. He was entirely dependent on defendants No. 2 & 3. The said defendants looked up

to the plaintiff being employed in Saudi Arabia as mulch-cow to feed and to sustain them. The plaintiff used to send between Rs. 10-15000/- per

month to defendant No. 1 so that in the very first year of her marriage approximately Rs. 2 lakh was remitted to defendant No. 1 through normal

banking channels. During the short sojourns the plaintiff was subjected to harsh treatment and insulted in coarse and abusive language if she

resisted reckless demands on her earnings and savings.

3. It is further averred that while in Najaran, defendant No. 1 informed the plaintiff that he had got a job but as he had to travel long distances so

he need money to buy a motorcycle. The plaintiff sent Rs. 40,000/-. These demands kept being repeated one after other on one pretext or the

other. Defendant No. 1 in connivance with the prodded by defendant Nos. 2 to 5 during one of her visits to India on vacation started putting

pressure on the plaintiff to remit/raise Rs. 1 lac so that the said plot of land can be purchased back from defendant No. 4. The plaintiff was

threatened that if she did not raise/remit this money, she would be faced with divorce proceedings. Defendant Nos. 2 & 3 would unabashedly

announce to the plaintiff that they would re-marry their son.

4. On return to India, she started living with the defendants. Defendant Nos. 2 to 5 again began to make her life miserable. Defendant No. 1 could

shouldered by defendant Nos. 2 to 5 started persuading the plaintiff to move to Delhi so that not only the plaintiff but also the defendant No. 1 can

go with her and both can find a job. The plaintiff and defendant No. 1 then shifted to Delhi and for a few months lived with plaintiff"s parents. The

plaintiff was lucky to get a job as a Staff Nurse in a Government hospital where she is working now. Defendant No. 1 was flooded with letters

from defendant Nos. 2 to 5 and whenever he would get a letter he would start demanding money from the plaintiff showing indifference and even

becoming violent towards the plaintiff. On on about 18.12.1999, the plaintiff received summons from the Family Court in Ernakulam with petition

Section 32 of the Indian Divorce Act filed by defendant No. 1 for restitution of conjugal rights. She made inquiries with friends and local

acquaintances and has come to know that defendant No. 1 in connivance with defendant Nos. 2 to 5 is planning to give a practical shape to his

frequent threats of remarriage. The Local Advocate engaged to represent the plaintiff in the Family court has also confirmed that defendant is

seeking a remarriage and that the petition for conjugal rights was only a placebo device to lull the plaintiff with complacency and to detract her from

inquiring about the mischievous designs of the defendants to cause permanent hurt and injury to the conjugal tie of the plaintiff and defendant No. 1.

Hence this suit.

5. Despite service of summons, defendant did not choose to appear and contest the proceedings and were subsequently proceeded exparte.

6. In order to prove her case, the plaintiff has filed affidavit by way of evidence and has proved the following documents:-

(i) Exhibit PW 1/1 is the copy of petition for Restitution of Conjugal rights u/s 32 of the Indian Divorce Act filed by defendant No. 1 against the

plaintiff in the Family Court in Ernakulam; (ii) Exhibit PW 1/2 to 1/7 are the photographs of marriage between the plaintiff and defendant No. 1;

(iii) Exhibit PW 1/8 is the invitation card of the marriage; (iv) Exhibit PW 1/9 is the invitation card of reception and (v) Exhibit PW 1/10 is the letter

dated 18.1.2000 from Mr. K.P. Haridas, Advocate.

7. The series of events referred above demonstrate and project persistent demand of money and atrocities perpetrated upon the plaintiff coupled

with the proceedings before the Family Court at Ernakulam which were subsequently withdrawn I am satisfied that the apprehension of the plaintiff

is not misplaced.

8. The letter Exhibit PW/10 sent to the plaintiff by her local Advocate engaged in Kerala has verified the apprehension of the plaintiff that

defendant No. 1 would like to contract second marriage by way of making her complacent.

9. Marital rights of the spouse are valuable rights and have to be preserved at any cost. Sanctity of marriage has to be maintained particularly in

view of vows parties take at the time of marriage that ""till death do up part."" That is why remedy of divorce unless consented by both the parties on

account of irretrievable breakdown or no hope of re-union, is cumbersome and is subjected to strict proof of the grounds available in the statute. If

the divorce is made available on constructive creation of ground or is made easily available upon tempos sort of proof, law itself would be a cause

of disintegration. A spouse cannot unshackle or rid of the marital bond by subjecting the other to cruelties or demand of money with ill motive of

forcing him or her to seek divorce. Unless and until both consent to part ways, the aggrieved or the victim as the case may be, has to prove the

allegations sufficient to dissolve the marriage. Marriage cannot be allowed to be rocked on the drop of hat.

10. In the light of allegations, withdrawal of the petition u/s 32 of the Indian Marriage Act on 31.12.1999 before the Family Court in Ernakulam

coupled with the letter received by the plaintiff through her local Advocate in Kerala, entitle the plaintiff the relief claimed against defendant No. 1.

11. As a consequence, defendant No. 1 is permanently restrained from contracting the second marriage without obtaining divorce from plaintiff by

way of legal and valid proceedings.

12. Suit is decreed accordingly.