



2025:DHC:3368-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 01.04.2025
Pronounced on: 07.05.2025

+ MAT.APP.(F.C.) 128/2024

SMT. NIKITA @ RINKIAppellant

Through: Mr. Abhinav Bajaj, Mr. Ajay
Malik, Mr. Saksham Ojha &
Ms. Geetashi Chauhan, Advs.

versus

SHRI. AJAY KHANDELWALRespondent

Through: Mr. Deepak Khadaria, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

CM APPL. 22867/2024

1. For the reasons stated in the application, the same is allowed and the delay of 28 days in filing the appeal is condoned.
2. The application stands disposed of.

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3. The present appeal has been filed by the appellant under Section 19 of the Family Courts Act, 1984, challenging the Order dated 07.12.2023 passed by the learned Additional Principal Judge, Family



Court, West District, Tis Hazari Courts, Delhi (hereinafter referred to as, 'Family Court') in HMA No.1111/2023 titled *Ajay Khandelwal v. Nikita @ Rinki*, dismissing the application filed by the appellant under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC'), while observing as follows:-

“6. It is matter of fact that prior to filing of the present divorce petition, petitioner filed petition u/s 9 of The Hindu Marriage Act, 1955 against respondent for seeking decree of restitution of conjugal rights which was subsequently compromised between the parties. Petitioner alleges that respondent, despite settling the matter, has refused to join his company and resume her matrimonial obligations.

7. In view of above and as the parties have lastly resided together as husband and wife within the jurisdiction of this court, this court has necessary territorial jurisdiction to entertain, try and decide the petition filed by petitioner, in terms of section 19 (iii) of The Hindu Marriage Act, 1955.

8. The application filed by respondent is found to be without any basis. Same is dismissed accordingly.”

4. Brief facts as stated in the divorce petition and which led to filing of the present appeal are that the respondent has filed the above divorce petition, bearing No. 1111/2023, under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA'). In the said petition the appellant had filed an application under Order VII Rule 10 of the CPC, alleging therein that the learned Family Court at Tis Hazari Courts, Delhi, does not have the territorial



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jurisdiction to adjudicate on the Divorce Petition as the parties had not last resided together at Delhi but at Faridabad, Haryana.

5. The appellant claims that the marriage between the parties was solemnised on 23.01.2007 at Banquet Hall, NIT, Faridabad, Haryana, according to Hindu rites and ceremonies. After the marriage, the parties lived and cohabited together as husband and wife at House No.52/39, Gali No.17, Nai Basti, Anand Parbat, New Delhi-110005. Their marriage was duly consummated and out of the said wedlock, a male child was born on 02.04.2009 at Vandana Nursing Home, Sector-22, Faridabad, Haryana, who is in the care and custody of the appellant. It is stated that since the widowed mother of the appellant was residing in Faridabad, Haryana, the appellant used to often visit her there.

6. The main grievance as put forth in the instant appeal is that the learned Family Court, while dismissing the application under Order VII Rule 10 of the CPC, has overlooked the fact that the respondent has purposely invoked the jurisdiction of the Court near to him by concealing the material fact that the parties last resided together at the Faridabad residence of the appellant, for a period of six years, from 2013 to 2018. It is further stated that in the year 2013, the appellant/wife had shifted to her parental home at Faridabad along with her son, who was then admitted in DAV Public School, Faridabad. It is further stated that in 2013, the respondent - husband also started residing with the appellant at her parental home at Faridabad and used to commute to Delhi for his business. It is further



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stated by the appellant that there is no assertion in the plaint as to where the parties lastly resided together, which fact the learned Family Court has failed to consider.

7. On the other hand, it is contended by the learned counsel for the respondent that, in paragraph no. 33 of the petition for divorce, filed by the respondent, it is categorically mentioned that the parties resided together as husband and wife at Anand Parbat, New Delhi. It is further submitted by the learned counsel for the respondent that, the learned Family Court, while hearing the arguments, had enquired from the respondent as to where he had last resided together with the appellant, and it was submitted by the respondent that they had last resided together at Anand Parbat, New Delhi.

8. It is also stated by the learned counsel for the respondent that even in various paragraphs of the written statement, the appellant has duly admitted the fact that after the marriage, she resided in the matrimonial house, which is situated at Anand Parbat, New Delhi.

9. It is stated by the learned counsel that the respondent had earlier filed a petition under Section 9 of the HMA, seeking restitution of the conjugal rights, before the learned Family Court, and in those proceedings, no objection regarding the territorial jurisdiction was ever raised by the appellant and, in fact, in the said petition, the appellant had entered into a compromise with the respondent and agreed to join him at the matrimonial house situated at Anand Parbat, New Delhi. Later, when the appellant did not join the respondent at the said matrimonial house, the respondent was constrained to file the



petition for divorce under Section 13(1)(ia) and 13(1)(ib) of the HMA.

10. It is stated that in view of the aforesaid submissions, there is no infirmity in the order passed by the learned Family Court.

11. We have considered the submissions of the learned counsel for the parties and perused the records.

12. Order VII Rule 10 of the CPC deals with the power of a Court to return a plaint. It reads as under:

“10. Return of plaint.—(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint.—On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

13. It is a settled position of law that the question of whether a plaint is to be returned under Order VII Rule 10 of the CPC is required to be examined solely on the basis of the averments in the plaint and the documents filed by the plaintiff therewith, and without considering the defence raised by the defendant.

14. Admittedly, the marriage between the parties was solemnised on 23.01.2007, at Faridabad. The matrimonial house of the appellant is situated at Anand Parbat, New Delhi, whereas her maternal house is claimed to be at Faridabad, Haryana.



15. The respondent had filed the divorce petition at Delhi and in paragraph no. 33 of the said petition, he has categorically stated that the parties resided together as husband and wife at the matrimonial house in Anand Parbat, New Delhi. The relevant paragraph no. 33 of the divorce petition is reproduced as under:-

“33. That the marriage between the parties was solemnized at NIT Faridabad, the parties resided together as husband and wife at Anand Parbat, New Delhi and at present the petitioner is residing at 52/58, Gali No. 17, Nai Basti, Anand Parbat, New Delhi- 110005, hence, this Hon'ble Court has got jurisdiction to try, entertain and decide the present petition.”

16. It is noteworthy to mention here that a Court can return a plaint if it has no territorial jurisdiction to try the same. To ascertain which Court can have the territorial jurisdiction to try a petition under the HMA, or which is the place where a party can file a divorce petition, the relevant provision is Section 19 of the HMA, which deals with the place where a petition for divorce can be filed by the parties. The relevant portion of the said Section has been reproduced as under:-

“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 original civil jurisdiction:-

(i) the marriage was solemnised, or

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

(iii) the parties to the marriage last resided



together, or

...”

17. In the present case, as per the respondent’s claim in his divorce petition, the parties last resided together as husband and wife at Anand Parbat, New Delhi. The said fact has also been confirmed in an enquiry made by the learned Family Court, as is reflected in the Impugned Order.

18. It is contended by the respondent that earlier also, the respondent had filed a petition under Section 9 of the HMA, seeking restitution of conjugal rights against the appellant, before the learned Family Court at Delhi. In the said petition, the parties entered into a compromise. However, what is relevant is that in those proceedings, the appellant did not raise any objection of the lack of territorial jurisdiction of the Family Court at Delhi.

19. Therefore, *prima facie*, on the basis of the averments made in the Divorce Petition, the jurisdiction to try the same lies with the learned Family Court, Tis Hazari Courts, Delhi and in view of the same, we find no infirmity in the Impugned Order passed by the learned Family Court dismissing the application filed by the appellant under Order VII Rule 10 of the CPC.

20. However, we deem it appropriate to clarify that the rejection of the application of the appellant under Order VII Rule 10 of the CPC, shall not come in the way of the appellant raising the question of lack of the territorial jurisdiction of the learned Family Court, Delhi, in her defence, which shall be considered when the issue of territorial



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jurisdiction is decided by the learned Family Court at the time of the trial of the petition for divorce.

21. Accordingly, the present appeal along with the pending application stands dismissed as being devoid of any merit.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

MAY 7, 2025/p/sm

Click here to check corrigendum, if any