

Himachal Pradesh High Court

Dr. Honey Johar vs Ramnik Singh Johar on 21 December, 2018

Bench: Honourable Mr. Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 330 of 2017

Date of Decision: 21.12.2018

Dr. Honey Johar

.....Petitioner

Versus

Ramnik Singh Johar

.....Respondent

Hon'ble Mr. Justice Sandeep Sharma, Judge.

of

Whether approved for reporting?

1

Yes.

For the Petitioner rt :

Mr. Anuj Nag, Advocate.

For the Respondent

: Mr. R.G.S Saini, Advocate.

Sandeep Sharma, Judge (oral):

Being aggrieved and dissatisfied with the order dated 17.7.2017, passed by learned District Judge, Shimla, District Shimla, H.P., whereby an application having been filed by the respondent (hereinafter referred to as the husband), seeking therein permission to lead additional evidence, came to be allowed, petitioner (hereinafter referred to as the wife), has approached this Court in the instant proceedings, praying therein to set-aside the order, referred hereinabove.

2. Briefly stated facts, as emerge from the record are that husband filed divorce petition under Section 13 of Whether the reporters of the local papers may be allowed to see the judgment?

the Hindu Marriage Act, against the wife in the Court of learned District Judge, Shimla, District Shimla, H.P. on the .

ground of cruelty. During the pendency of aforesaid divorce petition, husband filed an application under Order 18 Rule 17-A read with Section 151 CPC (Annexure P-1), seeking therein permission of the Court to allow him to lead of additional evidence, which may be necessary and just for the proper adjudication of the case. Husband averred in the rt application that on 27.5.2017 wife led her evidence as RW-1 and RW-2, wherein she categorically admitted that her parents had come to Shimla in the month of July, 2014 and had a meeting with the family of the husband. Husband claimed by way of application that he is having recorded version in the form of audio CD of the entire conversation of this meeting held in July, 2014, which may be helpful for the proper adjudication of the dispute/case inter-se parties.

Husband further averred in the application that in para Nos.

6 and 7 of the petition, he has categorically stated that he was subjected to physical and mental cruelty, which fact has been further reiterated in para 34 of the replication, wherein he has categorically averred that he is in possession of original recording of the conversation, wherein the wife has stated that she never wanted to marry the husband being asthmatic and hunchback. Husband in the application also stated that bare perusal of recording intended to be .

adduced on record by way of additional evidence would go to show that father of the wife has openly threatened him as well as his family members. Husband further averred in the application that during cross-examination, RW-1 and of RW-2 have admitted the factum of meeting held at Shimla in July, 2014, but completely stated false facts and as such, in rt order to ascertain truth and veracity of the depositions of wife and her mother, it is very crucial and important to bring this piece of evidence (Audio CD) on record, to enable the learned Court to render just and fair decision in the case.

3. Aforesaid application having been filed by the husband came to be hotly contested by the wife, who opposed the application on the ground of inordinate delay.

She stated in the reply that when matter is fixed for argument such application cannot be allowed and in case application is allowed at this stage, it would amount to filling up lacuna.

4. Learned District Judge taking note of the pleadings adduced on record by the respective parties, allowed the application vide order dated 17.7.2017 subject to cost of Rs.5000/- and also held husband liable to bear the to and fro expenses of the wife's witnesses on the .

production of the proof of the same by them. Vide same order, learned District Judge, adjourned the matter for 25.7.2017 with the direction to the wife's witnesses to remain present for their cross-examination. In the aforesaid of background, wife has approached this Court in the instant proceedings.

5. Having heard learned counsel representing the parties and carefully perused the material available on record vis-a-vis reasoning assigned by the learned District Judge, while passing impugned order, this Court finds that application under order 18 Rule 17-A CPC, which otherwise stands deleted came to be filed on behalf of the husband at the stage of argument. No doubt Court while exercising inherent power under Section 151 CPC can allow either of the party to produce additional document at any time/stage before rendering its judgment if it deems it necessary for the proper adjudication of the case, but same time such power is required to be exercised very cautiously, so that no prejudice, whatsoever, is caused to the other party.

6. Interestingly, husband in replication to the reply filed by the wife has stated in para-34 that he is in possession of audio recording of wife and her father, wherein wife has stated that she never wanted to marry husband.

being asthmatic and hunchback and her father openly threatened the husband and his family members and as such, this Court finds considerable force in the arguments of Mr. Anuj Nag, learned counsel representing the petitioner-

of wife that once such CD containing audio recording of wife and her father was in possession of husband then what prevented him from placing it on record before commencement of trial or at the time of cross-examination of wife and other witnesses.

7. Careful perusal of the application having been filed by the husband, seeking therein permission to lead additional evidence, clearly suggests that by way of additional evidence husband intended to prove factum with regard to threats extended to him and his family members by the father of the wife, which fact was very much in his knowledge at the time of filing replication. Careful perusal of cross-examination conducted upon the wife witnesses, nowhere reveals that suggestion, if any, was ever put to the wife with regard to existence of audio CD or recording of the conversation qua the meeting held at Shimla. No doubt, wife in his examination-in-chief or cross-examination has admitted the factum with regard to meeting held at Shimla, but there appears to be no attempt on the part of the

husband to put a suggestion to wife that during meeting at Shimla he and his family members were threatened and he was in possession of the CD, which omission on the part of the husband certainly compels this Court to agree with Mr. Anuj Nag, learned counsel representing the petitioner-wife that application having been filed by the husband at the time of arguments is an afterthought merely to fill up the lacuna. Husband by way of placing audio CD on record wants to prove misbehavior of father of wife and statement given by wife at one point of time, but interestingly, no such suggestion came to be put to her in her cross-examination, rather such suggestion came to be put to RW-2 in her cross-

examination i.e. mother of the wife, which in my mind could not be of any help.

8. Leaving everything aside, once pleadings adduced on record by the husband itself suggest that audio CD sought to be produced on record by way of additional evidence was very much in existence

before commencement of trial or cross-examination of wife or her family member, learned Court below ought not to have allowed the application having been filed by the husband, seeking therein permission to lead additional evidence that too at the stage of arguments because it would amount to .

filling up of lacuna.

9. Basic purpose of Rule 17 is to enable the Court to clarify any position or doubt. While exercising power Under Order 18 Rule 17-A CPC, Court may, either suo motu or on of the request of any party, recall any witness at any stage in this regard. No doubt, power can be exercised at any stage, rt once the Court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the Court. The power under Rule 17 cannot be stretched any further, however said power cannot be invoked to fill up omission in the evidence already led by a witness.

10. In this regard, reliance is placed upon the judgment rendered by Hon'ble Apex Court in Ram Rati versus Mange Ram(Dead) through legal representatives and others, 2016(11) Supreme Court Cases 296, wherein it has been held as under:-

" 11. The respondent filed the application under Rule 17 read with Section 151 CPC invoking the inherent powers to the court to make orders for the ends of justice or to prevent abuse of the process of the Court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either such motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any .

stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The Power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in of the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. " No prejudice is caused to either party " is also not a permissible ground to invoke Rule 17. No doubt, it is a rt discretionary power of the Court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground."

11. It is quite apparent from the aforesaid exposition of law that though it is discretionary power of Court to allow parties to adduce on record additional evidence at any stage of the trial, but such power is required to be used sparingly so that it is not abused. The Hon'ble Apex Court has specifically held that in case Court decides to invoke this provision, it should see that the trial is not unnecessarily protracted on that ground. In the judgment(supra) Hon'ble Apex Court has held that " no prejudice is caused to either party is also not a permissible ground to invoke Rule 17 and as such, there is no force in the arguments of learned counsel representing the husband that no prejudice

would be caused in case order passed by the District Judge is .

allowed to sustain, rather it would help to ascertain the truth. This Court finds from the record that matter is repeatedly being adjourned on one pretext or the other on the request of learned counsel representing the parties.

of Hence, this Court having taken note of the fact that since factum with regard to existence of audio CD sought to be rt adduced on record as additional evidence was very much in the knowledge of the husband before commencement of trial and at the time of leading evidence, has no hesitation to conclude that application filed under Order 18 Rule 17-A CPC is nothing, but an attempt to protract the trial and as such, same deserves to be dismissed.

12. Consequently, in view of the discussion made hereinabove, the present petition is allowed and impugned order dated 17.07.2017, passed by the learned Court below is quashed and set-aside.

13. The parties through their respective counsel(s) are directed to appear before the learned Court below on 4.01.2019, to enable it to proceed with the matter. Having taken note of the fact that the matter is hanging fire since 2014, this Court hopes and trust that learned Court below shall conclude the case expeditiously, preferably on or before 15th March, 2019. Interim order dated 28.07.2017 is .

vacated.

14. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this petition alone.

21st December, 2018
(shankar)

rt

of
(Sandeep Sharma),
Judge