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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Decision delivered on: 14.05.2024*+ **MAT.APP.(F.C.) 138/2024 & CM No.24132/2024**

MANJUL JOSHI

..... Appellant

Through: Mr Prateek Jindal, Mr Gurtinder Singh,
Ms Sangita and Mr Y.R. Sharma, Advs.

versus

BHAVNA KHURANA

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal is directed against the judgment and order dated 28.03.2024 passed by the learned District Judge, Family Court-02, South-East District, Saket, New Delhi.

2. *Via* the impugned judgment and order, the Family Court deleted respondent no.3, i.e., Ms Devanshi Gupta from the array of parties.

2.1 The impugned judgment and order was passed by the Family Court in exercise of powers conferred under Order I Rule 10(2) of the Code of Civil Procedure, 1908 [in short, "CPC"].

3. The rationale supplied by the Family Court in passing the said direction



is that the assertions made in the divorce petition preferred by the appellant would embarrass respondent no.3, i.e., Ms Devanshi Gupta, and possibly delay the trial.

3.1 In this context, reference has also been made to Order VI Rule 16 of the CPC.

4. Thus, consequent directions were issued to the appellant to amend the memo of parties.

5. In short, the Family Court has directed that respondent no.4 should be shown as respondent no.3 and material particulars should be provided *qua* the said respondent.

6. Learned counsel for the appellant, in the course of the hearing, informed us that respondent no.s 2 and 4 are also paramours of respondent no.1, i.e., the wife.

7. On being queried, whether paramours have to be arrayed as parties in a divorce petition, the response that we received from learned counsel for the appellant is that the rules framed by the Delhi High Court in this behalf required impleadment of paramours in a divorce action.

7.1 In support of this submission, learned counsel for the appellant has placed before us the following extract from the Delhi High Court Rules, which are contained in Part E of Chapter 1:

*“PART E
RULES TO REGULATE PROCEEDINGS UNDER THE HINDU MARRIAGE
ACT, 1955, (CENTRAL ACT NO.25 OF 1955)
HIGH COURT OF DELHI
Delhi, the 6th October, 1980
No.262/Gaz./OSD (R) – In exercise of the powers conferred by Sections 14 and*



21 of the Hindu Marriage Act, 1955 (Central Act No.25 of 1955) and all other powers enabling in this behalf, the High Court of Delhi hereby makes the following rules to regulate the proceedings under the said Act.

xxx xxx xxx

7. *Contents of petition – In addition to the particulars required to be given under Order VII Rule 1 of the Code and Section 20(1) of the Act, all petitions under Section 9 to 13 shall state:*

xxx xxx xxx

(g) *The matrimonial offence or offences alleged or other grounds, upon which the relief is sought, setting out with sufficient particularity the time and places of the acts alleged, and other facts relied upon, but not the evidence by which they are intended to be proved, e.g.*

xxx xxx xxx

(iii) *In every petition for judicial separation/divorce by either the husband or the wife on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained, the specific acts of sexual intercourse and the occasion when and the place where such acts were committed.”*

8. A careful perusal of the above extract would show that where a divorce petition is based on the ground that one of the spouses, after the solemnization of marriage, indulged in voluntary sexual intercourse with any person other than his/her spouse, the material particulars with regard to the said person are required to be mentioned.

8.1 Clearly, there is no requirement to array the person, with whom one of the spouses is having an adulterous relationship, as a party in a divorce action.

9. Therefore, the argument put forth by learned counsel for the appellant that the extant rules framed under the Hindu Marriage Act, 1955 [in short, “HMA”] by this court required impleadment of the paramour as a party to the divorce action is not borne out from the rule placed before us.

10. Thus, according to us, although, the conclusion reached in the impugned



judgment in deleting respondent no.3, i.e., Ms Devanshi Gupta as a party to the proceedings is correct, we are not in agreement with the rationale provided in the impugned judgment.

10.1 According to us, a paramour can always be produced as a witness, if deemed necessary. That said, a paramour is certainly not a necessary or even a proper party in a divorce action.

11. In our opinion, the appellant was right in setting forth the material particulars in support of the allegation that respondent no. 1 had indulged in voluntary sexual intercourse after solemnization of marriage, as this would afford an opportunity to respondent no. 1 to address the allegations made against her.

12. The pleadings, however, should be confined to the requirements of Rule 7(g)(iii) of the Delhi High Court Rules.

13. Therefore, for the reasons given hereinabove, we are inclined to sustain the order passed by the Family Court.

14. We may also observe that since, according to the appellant, respondent no.2, i.e., Bijender Singh and respondent no.4, i.e., Anuj Sharma are the other paramours of respondent no.1/wife, the Family Court could exercise powers under Order I Rule 10(2) of the CPC to delete them as well from the array of parties.

15. The Family court will ensure that only those parts which give material particulars concerning paramour(s), as conceptualized in Rule 7(g)(iii) of the Delhi High Court Rules, are retained in the pleadings.

16 The appeal is disposed of in the aforesaid terms.



17. The Registry will ensure that the order passed today is placed before the concerned Judge.
18. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MAY 14, 2024

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