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

+ **FAO(OS) 262/2019 & CM APPLs.55517/2019, 3314-3315/2020**

MANPREET KAUR Appellant

Through **Mr.Hrishikesh Baruah with
Ms.Radhika Gupta, Advocates.**

versus

HARJYOT SINGH Respondent

Through **Mr.Amit Gupta with Ms.Malvika
Tiwari, Advocates.**

% **Date of Decision: 12th March, 2020.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present appeal has been filed challenging the order and judgment dated 18th November, 2019 passed by the learned Single Judge of this Court, whereby the appellant/defendant-wife's application being I.A.No.15976/2019 under Order VII Rule 11 CPC filed in CS(OS) No.444/2019 was dismissed.

2. Learned counsel for the appellant/defendant emphasises that the plaint filed by the plaintiff/husband is barred by law i.e. under Section 4 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Hindu Marriage Act') read with Sections 7 and 20 of Family Courts Act, 1984 (hereinafter referred to as the 'Family Courts Act'). The said sections are reproduced hereinbelow:-

“4: Overriding effect of Act— Save as otherwise expressly provided in this Act,—

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

Section 7 read with Section 20 of Family Courts Act, 1984

“7. Jurisdiction—(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

*Explanation.—*The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.”

“20. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act” .

(emphasis supplied)

3. Learned counsel for the appellant/defendant contends that the suit filed by the respondent-plaintiff falls under Explanation (d) to Section 7 of the Family Courts Act.

4. Learned counsel for the appellant/defendant submits that another learned Single Judge of this Court in *Vidyanidhi Dalmia Vs. Nilanjana Dalmia, 150 (2008) DLT 19* has held that there is no valid legal basis for the claim for injunctions by the plaintiff/husband and he cannot assert an actionable cause in a civil court; whatever be his remedies under the Hindu

Marriage Act. The relevant portion of the said judgment relied upon by learned counsel for the appellant is reproduced hereinbelow:-

“2. *The plaintiff has, in the suit, seeks the following reliefs:*

(a) Pass a decree of permanent injunction restraining the defendant from entering into or attempting to enter into or approach within 100 metres of the plaintiff's residence at F-1, Anand Niketan, New Delhi and from speaking to or approaching the plaintiff's staff in any manner whatsoever.

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23. *What can be deduced from the above discussion is that where special rights, not existing previously, are created by a statute, which provides a machinery for their enforcement, then, even in the absence of express exclusion, the civil court's jurisdiction over those matters is barred. Though the plaintiff here has framed the relief in such terms as to be seemingly different from the remedies available under HMA, a closer scrutiny of the plaint averments would show that in reality they are all factual assertions of cruelty, or unacceptable behavior which constitute grounds for seeking judicial separation or divorce. If granted after a trial, they would be deemed binding- at least in personem, inter parties. The plaintiff husband would then have no difficulty claiming the relief of his choice under the HMA, as the defendant would be bound by principles of res judicata as well as issue estoppel on the factual aspects. Surely this circumlocutory manner of getting round the provisions of the HMA, with its regime of special rights, special obligations on spouses, and special responsibility on the courts constituted under it, was never envisioned. Parliamentary intention, while enacting HMA was to codify whatever were existing rights, and create new ones, with the objective of enforcing them through a special mechanism. The entire bundle of mutual rights and obligations relating to marriage, treatment of marital discord and offences, and the remedies, was to be dealt with under the Act. So viewed, there is no basis for the assertion of the plaintiff that he has a special zone of privacy, outside of the Act, which can form the basis of the reliefs claimed here.*

24. Another aspect which cannot be lost sight of is the stark reality that if the injunctive relief claimed here is granted, it would practically amount to decreeing judicial separation of the parties, without the observance of requisite standards mandated by law.

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31. Having regard to the above legal position in India, as well as decisions from courts in other countries, there is no valid legal basis for the claims for injunction sought by the plaintiff. He cannot therefore assert an actionable cause in the civil court; whatever be his remedies under the HMA. Taking all the plaint averments as a whole, the court is satisfied that the suit is barred in law and therefore, the plaint deserves to be rejected.”

(emphasis supplied)

5. Learned counsel for the appellant/defendant further submits that the learned Single Judge while passing the impugned judgment and order could not have overruled the judgment and order passed by another learned Single Judge of this Court in **Vidyanidhi Dalmia** (supra) relying on the decision of the Supreme Court in **Samar Kumar Roy Vs. Jharna Bera, (2017) 9 SCC 591**. According to learned counsel for the appellant/defendant, the decision of the Supreme Court in **Samar Kumar Roy** (supra) is *per incuriam* as the said decision is contrary to the statutory provision i.e. Explanation (b) to Section 7 of the Family Courts Act.

6. He lastly submits that a Division Bench of this Court in **Rita Vashista Vs. Anil Kumar Vashishtha; 264 (2019) DLT 594** has held that defamatory allegations made against a spouse would amount to cruelty in terms of Section 13(1)(ia) of the Hindu Marriage Act.

7. Per contra, learned counsel for the respondent/plaintiff emphasises that the present suit seeks to protect the plaintiff/respondent from discharging his functions as a Judge in the Subordinate Courts.

8. Having heard learned counsel for the parties, this Court is in agreement with the argument of the learned counsel for the appellant/defendant that a Coordinate Bench cannot overrule a judgment of another Coordinate Bench. If a learned Single Judge does not agree with another judgment of a Single Judge, he can only refer the matter to a Division Bench. [See: *SI Rooplal vs. Lt. Governor, (2000) 1 SCC 644*].

9. This Court also reiterates that the Family Court is a one stop forum for family litigations. In *Jasmeet Kaur vs. Navtej Singh; 251 (2018) DLT 233*, wherein one of us (Manmohan, J) was a member of the Bench, this Court has held as under:-

“26. This Court is also of the view that the Family Court is a one stop forum for all family litigations. This interpretation would ensure speedy disposal and prevent conflict of judgments. In the opinion of this Court, it would be incongruous if a suit for maintenance or custody of minor children is transferred to the District Court, while an anti-suit injunction filed by the same spouse seeking stay of maintenance and/or custody proceedings filed by the other spouse in a foreign jurisdiction is heard and decided by this Court.”

(emphasis supplied)

10. It is however settled law that it is not open to the High Court to hold a Supreme Court judgment as *per incuriam*. In *South Central Railway Employees Cooperative Credit Society Employees Union Vs. B. Yashodabai & Ors; (2015) 2 SCC 727*, the Supreme Court has held as under:-

“14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] was per incuriam.

15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside.”

(emphasis supplied)

11. Consequently, the submission of learned counsel of the appellant/defendant that **Samar Kumar Roy's** judgment (supra) is *per incuriam* is untenable in law.

12. In a catena of cases, it has been held that at the stage of consideration of Order VII Rule 11 CPC application, only allegations in the plaint will be considered and not the defences put forward by the defendant. Further, if the plaint and the reliefs are partially maintainable, then the application under Order VII Rule 11 CPC would have to be dismissed.

13. It is also settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. In **Dhulabhai vs. State of M.P. (1968) 3 SCR 662**, the Supreme Court has held that the jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The ouster of the jurisdiction of a Civil Court is not to be lightly inferred and can

only be established if there is an express provision of law or is clearly implied.

14. Keeping in view the aforesaid mandate of law, it is important to examine the averments in the plaint as well as the reliefs prayed for in the suit. The relevant averments and the prayers in the suit being CS(OS) No.444/2019 are reproduced hereinbelow:-

“36. That the Defendant also sent SMSs and Whatsapp messages to the professional colleagues, court staff (Stenographer and orderly) anti to the spouses of professional colleagues and friends as also to residents of Saket Court Residential Complex. The Plaintiff has received some messages from his well wishers, which were sent by the defendant by a number +918750821611 in a Whatsapp group called “Saket Kitty Club” (a Whatsapp group having female Judicial Officers and spouses of male Judicial Officers residing at Saket Court Residential Complex as members). Some such messages sent by the defendant are reproduced hereinafter:

(a) Mon, 11 Feb, 9:31 PM

Hey well sorry I had asking u.....and.....number from you. Nothing much tell harjyot to stop having alcohol and get his impotency cured It has been 8 year he has been torturing. U..... ,her well wisher. Its-very easy to blame girl. M I fool I have compromised for 8 years. He has started staying with his parents at farm. I am only saket. If he had problems why be got married to me to spoil my life.

(Names of Judicial Officers withheld)

(b) to Saket kitty dub – sometime in March/April 2019

Harjyot has not come to the house for the last one half month and not disclosed the reason. I am really under threat and strain. All out efforts are being made to throw me out of house again. As the family of in laws are conniving with him and are not openly coming forward, I have stopped my parents to wait and watch as Jam trying my best to call him back....I had gone to request him on 21st feb, 27 Feb and march at lunch time, and after court but despite assurance

he has not turned up I had been tolerating his withdrawal symptoms when he would consume liquor and not turn up till 2 am. I was compelled to inform you about his conduct as he had been spreading a word you that I was not letting him in.....any harassed lady would seek help from the Judicial officer and his family bhalla and specially his parents could guide him best I hope someone would advise him to visit his wife in his house, instead of going to parents house Is not solution. I have self respect right to live with human dignity. Whatever is his final decision I should know soon....

Regards

Manpreet Kaur bhalla

W/o

Harkot Singh bhalla

I have self respect only I and my God know what TORTURED I have FACED and still facing It's easy to blame a lady.. He is judge not kid He has house keys. He is running away from all responsibilities.

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40. That since April 2019, the Defendant started visiting the work place, including chamber and the court room of the Plaintiff. The Defendant accessed the Plaintiff's court room unauthorizedly through the Judge's passage.

41. That innumerable times the Defendant has shouted in the corridors, stood in front of the Plaintiff in court room while the Court was in session, and accessed the dias from the judge's entry.

42. That on 11.04.2019, the Defendant put posters in the court room presided by the Plaintiff while the court was in session. The said act was committed in the presence of court staff, lawyers and police officials. One of the poster placed on the court wall addressed the Plaintiff as "violent to wife".

43. That the Defendant acted maliciously with the intent to injure the reputation of the Plaintiff and to cause harassment and embarrassment to him. The conduct of the Defendant in coming in an open court presided by the Plaintiff and making a mockery of

Plaintiff as well as browbeating the Plaintiff by putting posters is an ultimate act of defamation, criminal intimidation and extortion. The Plaintiff has already written that the CCTV footage of the incident be preserved and be forwarded to this Hon'ble Court. The Plaintiff has received a communication that the same has been preserved but the same cannot be supplied without the permission of the High Court of Delhi.

44. That the Defendant came to the Plaintiffs office in Saket Court Complex on 24.05.2019. The Defendant prevented the Plaintiff from attending an official function scheduled for 24.05.2019 in Seminar Hall on the 7th Floor, Saket Court. The Plaintiff was threatened that the Defendant would enter the Seminar Hall, where the interaction with the four Ld. District & Sessions Judges-had been organized on their elevation to the High Court of Delhi. The Defendant threatened that if the Plaintiff tried to enter the function, the Defendant would also follow the Plaintiff inside and creates a scene. The Plaintiff tried his even illegible son with the Defendant and tried to explain her illegible plaintiff at his work place. The Plaintiff was thus, not able to attend the function for the whole hour. The Defendant left threatening the Plaintiff with dire consequences and false litigation.

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52. That the Defendant is also sending messages to the Court Staff of the Plaintiff informing them about cases filed by her against the Plaintiff at Chandigarh. The Defendant has also been asking the Court Staff to inform the Plaintiff about personal errands of the Defendant.

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60. That the Defendant has no legal right to enter the court room of the Plaintiff which the Court is in session. The Defendant is a lawyer by profession and is aware of the same. The circulation of the defamatory material inside the court room premises and obstructing the court proceedings, cannot be condoned in any manner whatsoever. The Defendant cannot be allowed to carry on her personal vendetta by entering the court room of the Plaintiff and blocking the Plaintiff in discharging his official duties and attending official events. The visits by the Defendant to the Plaintiff's

workplace have been intended to defame as well as to intimidate the Plaintiff.

61. That the repeated insult that the Plaintiff is an alcoholic, or that he is impotent, or that he is not fit to be a judge, or questioning his appointment as a judge is an ultimate act of defamation. The Defendant has no right to so address and insult the Plaintiff and to so defame him in the society. There is no public good in spreading such allegations in the society and in the professional work space of the Plaintiff. The allegations being made by the Defendant are even false to the knowledge of the Defendant.

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64. That the Defendant has acted with the malafide intention and knowledge that they would lower the moral and intellectual character and professional credit of the Plaintiff in the eyes of his colleagues at the Bar, Hon'ble members on the Bench, staff and the public illegible. The Defendant is reprehensible of disparaging the integrity honour and reputation of the Plaintiff and wreck, vengeance upon and his family."

Prayers:

- (a) Pass a decree of permanent injunction restraining the Defendant and all her servants/agents/representatives from publishing/sending/circulating/posting/propagating any kind of abusive or threatening or intimidating or defamatory content in any manner whatsoever, either by print or electronically, to the Plaintiff or the Plaintiff's relatives, friends, staff, colleagues and their spouses as well as other residents of Saket Court Residential Complex;
- (b) Pass a decree of permanent injunction restraining the Defendant and all her servants/agents/representatives from visiting the workplace of the Plaintiff and more specifically from entering his court room and chamber and all other places where the Plaintiff has to be present in discharge of his official duties;
- (c) Direct the Defendant to unconditionally apologise to the Plaintiff;

(d) Pass a decree for damages in the sum of Rs. Two Crores and one Rupee only (2,00,00,001/-) against the Defendant and in the favour of the Plaintiff;

(emphasis supplied)

15. Upon consideration of the aforesaid pleadings and prayer clause, this Court is of the view that the present case is entirely distinguishable from the case of *Vidyanidhi Dalimia* (supra). Unlike in *Vidyanidhi Dalimia's* case (supra), the plaintiff/husband in the present case is not seeking a judicial separation or divorce on the ground of cruelty or to restrain the defendant/appellant from entering or attempting to enter his personal residence. In fact in the present instance, the plaintiff/husband primarily seeks non-interference with judicial and official proceedings and payment of damages for defamation and harassment. This Court is of the view that interference/disruption of judicial proceedings and/or defamation even by a spouse would not fall under Explanation (d) to Section 7 of the Family Courts Act and/or within the expression 'family litigation'. A marital relationship between the parties is irrelevant or incidental at the highest to the present proceedings. Consequently, in the present case, there is no implied or explicit exclusion of jurisdiction of the Civil Courts.

16. In our view, the learned Single Judge in the impugned order and judgment has also correctly held as under:-

“19. I have in Manita Khurana supra held Explanation (d) to Section 7(1) of the Family Courts Act which is invoked by the defendant to oust the jurisdiction of this Court that the words “circumstances arising out of marital relationship” in Explanation (d) to Section 7(1) do not qualify the words “suit or proceeding” but qualify the words “order or injunction”. The order or injunction claimed by the plaintiff in the present suit is of recovery of damages for defamation and harassment and for injunction restraining the defendant from

indulging in acts aforementioned which are per se not permissible in law to be committed by any person, even if in a matrimonial relationship with the other. Supreme Court, in S. Nambi Narayanan Vs. Siby Mathews (2018) 10 SCC 804 observed that the reputation of an individual is an insegregable facet of his right to life with dignity. In Kiran Bedi Vs. Committee of Inquiry (1989) 1 SCC 494, it was observed that the right to enjoyment of a reputation, unassailed by malicious slander is of ancient origin and necessary to human society and a good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, none, including a spouse, has a right to publish, circulate, propagate, abuse, threaten to disseminate defamatory content, to visit the work place of the other spouse and to interfere in discharge of official duties by the other spouse. The fact that the parties are in a matrimonial relationship would, in my view, make no difference. Rather, all communications between spouses are confidential and no spouse has a right to defame other. Only proceedings in accordance with law can be taken.

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22. Seen in this context, the present is a suit by a husband against the wife to restrain the wife from defaming the husband and/or from harassing the husband and interfering in the husband performing his work and for damages therefor, and merely because the parties are married to each other, would not be determinative of the jurisdiction. The injunction and other reliefs sought cannot at all said to be arising out of marital relationship as is the requirement of Explanation (d) to Section 7(1) for a proceeding to fall in the domain of the Family Court”.

(emphasis supplied)

17. Moreover, public interest, which is to be placed at the highest pedestal, demands that no one including a disgruntled spouse does anything that impedes administration of justice or puts a judicial officer under any stress or embarrassment. After all, public confidence in judicial proceedings is of utmost importance. If anyone including a spouse interferes or

embarrasses a Presiding Officer by putting up posters in Court and by sending messages to the Court staff or to other Judicial Officers who are the husband's colleagues, then not only a suit but a writ petition or contempt proceeding would be maintainable.

18. Keeping in view the aforesaid observations, the present appeal being bereft of merits is dismissed along with all pending applications.

MARCH 12, 2020
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MANMOHAN, J
SANJEEV NARULA, J



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