

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

Pet u/s 104 No.157/2015

Date of Order:28.03.2016.

Dr. Sonia Dogra vs Arvind Kumar Langhay and Anr.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the petitioner(s)	:	Mr. C M Koul, Advocate.
For the Respondent(s)	:	Mr. Rahul Bhau, Advocate.

(i) Whether approved for reporting in press/media: ----.

(ii) Whether approved for reporting in Law Journal/Digest: Yes.

1. Order dated 31.10.2015 passed by the Court of Learned Additional District Judge (Matrimonial Cases) Jammu is sought to be quashed on the ground that the application filed for recall of the order by invoking powers under Section 151 of Code of Civil Procedure was not tenable.

2. Precise factual matrix:

Sonia Dogra-petitioner wife of respondent No.1 and as such daughter-in-law of respondent No.2 has filed petitioner under Section 13 of the Hindu Marriage Act before the Court of Additional District Judge (Matrimonial Cases) Jammu on 31.08.2013 titled Dr. Sonia Dogra vs. Arvind Kumar Langhay and Anr. Interim order recorded on 01.11.2013 by the trial court suggests that the learned counsel for the parties were advised to ensure presence of the parties for reconciliation. Then on

17.12.2013, it has been recorded that in view of absence of defendant/respondent No.1, reconciliation could not progress. As such, respondent No.1 had been directed to remain present. On 08.01.2014, trial court has recorded that reconciliation between the parties has failed. As such respondent (one applicant therein) was asked to file objections. On 18.02.2014, last opportunity has been granted to the respondent for filing objections but on the next date fixed i.e. 01.03.2014, respondent failed to file objections despite last opportunity having been granted. Therefore, his right to file objections has been closed. Confronted with that position, respondent No.1 filed an application for recall of the said order dated 01.03.2014. After filing of objections, application has been heard and finally decided on 31.10.2015 vide impugned order. The order closing right to file objections has been recalled for the detailed reasons recorded subject to costs of Rs.2,000/- (Two thousand only). Case has been posted for depositing costs as well as for filing objections.

3. Aggrieved by the said order dated 31.10.2015, instant petition has been filed. According to learned counsel for the petitioner, once the respondent had failed to file objections, in terms of order 8 rule 10 CPC while closing the right, the court had to pronounce the judgment or to

make such order as it would think fit. Learned counsel for the petitioner would contend that the trial court has invoked powers under Section 151 CPC which was impermissible because other remedy i.e. respondent could seek review of the order under Section 114 of the CPC.

4. Learned counsel for the petitioner while projecting that the trial Court could not invoke the powers under Section 151 CPC placed reliance on various judgments such as (i) Arjun Singh vs. Mohinder Kumar 1964 AIR (SC) 993; (ii) Nain Singh vs. Koonwarjee 1970 AIR (SC) 997; (iii) J&K State Industrial Development Corporation Ltd. Vs. Bank of Maharashtra Branch Srinagar and Anr. 2003(3) JKJ 194 (HC) and (iv) S. Baldev Singh vs Life Insurance Corporation and Ors. 1993 KLJ-94. The ratio of the judgments as laid down is that resort to Section 151 CPC is not permissible when other remedies are available. According to learned counsel, the remedy of review of the order dated 01.03.2014 was available but same argument is misplaced as the grounds were not available as referred to above for seeking review of the said order.
5. Furthermore, it is contended that learned trial court while passing the order impugned has relied on call details as

were produced by respondent No.1 when against said call details, petitioner was not given chance to controvert. In opposition learned counsel for the respondents stated that scope of review is limited, therefore such remedy on the facts and circumstances was not available. The contention of the learned counsel for the petitioner as against the call details as were produced by the respondents, petitioner was not given chance to rebut is totally an argument for the sake of argument, otherwise trial court records are clear that petitioner has not opted to file any response.

6. The only question for determination is as to whether the learned trial court was justified in recalling the order dated 01.03.2014 by invoking powers under Section 151 CPC. The answer has to be in affirmative. The order dated 01.03.2014 passed by the trial court closing right of the respondent to file objections is neither appealable nor revisable. In addition thereto, review against such order cannot lie as the scope of review is limited. Reading Section 114 CPC and order XLVII, review is permissible only from discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge or could not be produced by him at the time order was passed or on

account of some mistake or error is apparent.

7. In the instant case, application for recall of order dated 01.03.2014 has been filed. Petitioner has filed the objections on 16.07.2014. Case has remained pending for argument but on 25.11.2014 when both the counsel were present, the counsel for the respondent had filed the call details, the counsel for the petitioner has not objected. By the same order dated 25.11.2014, the application has been posted for arguments. From time to time, adjournments have been sought. Finally, the arguments vis-a-vis application have been heard and reserved for orders on 30.10.2015. From 25.11.2014, almost on 16 dates of hearing as were scheduled, counsel for the petitioner has been present, he has nowhere requested and nowhere sought time for filing objections. Instead the case has been continuously posted for arguments. If there would have been any objection so as to rebut the call details produced by respondent No.1, the petitioner should have brought the same to the notice of the court which means in effect he has accepted that position and has not chosen to controvert the same.
8. Now as to what call details are. The call details are simply details of conversation as has happened in

between fathers of the petitioner and respondent No.1 in the direction of working out an amicable settlement. It is in the same background, in the application seeking recall of the order dated 01.03.2014, the respondent had projected that he was prevented from filing the objections in view of the reconciliatory attitude of the father of the petitioner which is evidenced by the said call details. Learned trial Court taking note of the same has observed that respondent No.1 had not filed the objection on 01.03.2014 because of being under the impression that the effort is made for settlement. The filing of objections would trigger animosity.

9. Respondent No.1 without any waste of time when confronted with the order dated 01.03.2014 closing his right to file objections has immediately filed application seeking recall of the said order by invoking inherent power of the court under Section 151 CPC.
10. The lucid and beneficial language of Section 151 CPC arms the Court to exercise inherent powers wherever it finds same to be necessary for the ends of justice or to prevent abuse of the process of the Court. No doubt, the inherent power is not to be exercised where there are other remedies by way of appeal, review, revision available. In the case on hand as against the order

closing right to file objections, respondent had no other remedy available. Learned trial Court has rightly exercised the power.

11. A delicate matter pertaining to matrimonial dispute has always to be handled delicately. In such matters, an effort in all respects for reconciliation is always for betterment. Nuptial knot when tied is really celebrated with love and affection by all concerned but when there is turn for its untying, same is always distasteful, bitter and not to the liking of all. Equally true, irrespective of the said stated position, when the discord reaches to the point of no return then untying of knot becomes unavoidable.
12. Learned trial court in the background of the facts and circumstances and the stand projected by the respondent has observed that respondent had a cause for non filing the objections in time, consequently has rightly invoked the power under Section 151 CPC which in fact is aimed at protecting the interest of justice as well as to prevent abuse of the process of the Court.
13. No ground whatsoever is made out which would warrant interference with the order impugned.
14. Delay has been occasioned in the progress of the case but both the parties have contributed to it as is evident

from the interim orders recorded by the learned trial court. Application for recall of the order closing right to file objections has remained pending from 02.06.2014 to 30.10.2015 for which both the parties are responsible. Still learned trial Court has for default, in filing objections, in time, recalled the order subject to payment of costs of Rs.2,000/- payable to the petitioner.

15. In the totality of the facts and circumstances, petition is found devoid of merit, as such **dismissed**. While parting, it is apt to observe that the Trial Court shall conclude the proceedings of the case with promptitude. Trial Court records along with copy of this judgment be sent to Trial Court so as to reach there well before 11.04.2016. Parties are directed to appear there on 11.04.2016.

(Mohammad Yaqoob Mir)
Judge

Jammu
28.03.2016
Raj Kumar