IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5938-2023 (O&M)

Date of decision: 22.12.2023

....Appellant

V/s

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gurinder Singh Dhillon, Advocate for the appellant-wife.

Mr. Ashok Kumar Jindal, Advocate
for the respondent-husband.

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SUMEET GOEL, J.

1. The appellant-husband has preferred the present appeal against the order dated 25.09.2023 passed by learned Principal Judge, Family Court, Gurugram (hereinafter to be referred as 'Family Court') whereby the application filed by the husband raising objections to the wife's affidavit of evidence has been rejected.

2. Succinctly facts first, as stated in the pleadings as also affidavit(s) filed and evidence led so far by rival parties.

2.1 The husband filed a petition for grant of divorce on the grounds of cruelty and desertion against the wife before the learned Family Court. It was stated in the petition that the marriage between the appellant (herein)-husband and respondent (herein)-wife was solemnized on 04.05.2016 at Ghaziabad in Uttar Pradesh. It was stated that no child was born out of this wedlock. It was averred in the petition that it was the second marriage of appellant as he was earlier married to one Ms. Bhawana on 25.01.2011. The said marriage was stated to be dissolved vide a decree of divorce dated

05.04.2013 by mutual consent. The parties to the instant *lis* resided and cohabited together as husband and wife. On 22.08.2016, the appellant was transferred to Kolkata and he had requested the respondent to accompany him which was flatly refused by her. Thereafter, the parties continued to reside separately in different cities and met intermittently. The alliance soon turned abnormal and both the parties levelled allegations and counter allegations against each other. The appellant-husband was thus, constrained to file a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter to be referred as '1955 Act') before the Family Court at Gurugram seeking dissolution of marriage by grant of a decree of divorce on the grounds of cruelty and desertion.

2.2 Upon notice by the learned Family Court, the wife appeared and filed a written statement denying the allegations made in the petition seeking decree of divorce. She denied that she was aware of the fact that appellant was a divorcee and rather he misrepresented to her being unmarried at the time of her marriage with him. She further stated that it was the appellant and his family members who had committed cruelty upon her. She averred that appellant had miserably failed in discharging his duties as a husband and deliberately avoided her company thereby depriving her of conjugal relationship. Dismissal of divorce petition was accordingly prayed for.

2.3 From the pleadings of the parties, issues were framed by learned Family Court vide order dated 06.07.2019, which order reads as under:-

> *"Written statement filed. Copy supplied.*
> *From the pleadings of parties, following issues are hereby framed:*
> 1. *Whether the marriage between the parties is liable to be dissolved by passing a decree of divorce on the grounds mentioned in the petition? OPP*

> *2. Whether the petitioner is stopped by his own act and conduct from filing the present petition? OPR*
> *3. Relief*
>
> *No other issue is pressed or claimed by the learned counsel for the parties. Onus is not disputed.*
>
> *For an early settlement of Family dispute, wherever possible, only a memorandum of the substance of what the witness deposes shall be recorded and affidavit of formal witnesses shall be recorded through affidavits only.*
>
> *To come up on 19.11.2019 for evidence of the petitioner. Parties shall file PF, DM and list of witnesses etc. if any, within seven days, failing which they shall bring the witnesses at own responsibility. Advance copy of affidavits be supplied to the respondent/counsel well in time so that cross-examination shall be conducted.*"

2.4. To prove their respective stand, both the parties sought to lead their evidence.

2.5 The appellant-husband submitted his evidence by way of affidavit and he was cross-examined on behalf of the wife. Vide order dated 10.08.2023, the counsel for the husband closed evidence on his behalf. An affidavit of evidence was submitted on behalf of the wife to which objections were raised by the husband by filing an application/objections. The wife filed her reply to this application/objections.

2.6. In this backdrop, learned Family Court passed the order dated 25.09.2023 thereby rejecting the objections raised by the husband & dismissed the application filed by him. It is this order dated 25.09.2023 which is impugned in the present appeal.

3. Learned counsel for the appellant-husband has argued that the impugned order has been passed in derogation of provision contained in Order VIII Rule 1-A of CPC since the documents had not been produced by wife along with the written statement filed by her. It has been further argued that there was no application filed by wife for grant of leave of Court in terms of Order VIII, Rule 1-A (3) of CPC. It has also been argued that the rejection of objections raised by the husband has caused grave prejudice to

him as wife had introduced new documents before the Court at the time of leading evidence and, therefore, the impugned order deserves to be set-aside.

4. Per contra, learned counsel appearing for the respondent-wife submits that the impugned order has been passed keeping in view the provisions of the Family Courts Act, 1984 and no prejudice has been caused to the husband as he is yet to cross-examine the wife. He also argued that any material which may not be otherwise admissible or relevant under Indian Evidence Act, 1972 may still be taken into evidence by Family Court to decide a matter before it. In his submission the impugned order does not call for any interference by this Court.

5. We have heard learned counsel for the parties and have perused the available record with their assistance.

6. The prime issue for determination in the present appeal is as to whether the provisions of Civil Procedure Code, 1908 (hereinafter to be referred as 'CPC') and Indian Evidence Act, 1872 (hereinafter to be referred as '1872 Act') are applicable to proceedings under the Family Courts Act, 1984 (hereinafter to be referred as '1984 Act') and if yes, to what extent? The analogous issue for determination in the present appeal is as to whether the learned Family Court ought to have permitted the respondent-wife to adduce into evidence the documents which were not annexed by her along with the written statement filed by her.

Relevant Statute

7. Order VIII Rule 1-A of the Code of Civil Procedure, 1908 reads as under:-

> *"**1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him**.—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the*

written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

xxxx xxxx xxxx xxxx

[(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]"

The Family Courts Act, 1984 stipulates as under:-

***10. Procedure generally.**—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.*

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

***13. Right to legal representation:-** Notwithstanding anything contained in any law, no party to a suit or proceedings before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:*

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.

***14. Application of Indian Evidence Act, 1872**.—A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).*

***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.*

Relevant Case Law

8. The precedents, germane to the matter(s) in issue, are as follows:

(I) ***Golden Rule of Interpretation/Literal Rule of Interpretation***

(i) A Five Judges Bench of Hon'ble Supreme Court in a judgment titled as ***Chief Justice of A.P. vs. L.V.A. Dikshitulu, 1979(2) SCC 34*** has held as under:-

> *"63. The primary principle of interpretation is that a constitutional or statutory provision should be construed according to the intent of they that made it"(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognized rules of construction, such as its legislative history, the basis scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation."*

(ii) In a judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Laxmi Narain Dhut, 2007(3) SCC 700,*** it has been held as under:

> *"29. "Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to 'rule of legislative intent'. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical."*

(II) ***Generalia specialibus non derogant***

In a judgment titled as ***Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira & anr., 2019(20) SCC 85,*** the Hon'ble Supreme Court held as under:-

> *"29. It is a well settled principle of statutory interpretation that when there is a conflict between the general law and the special law then the special law shall prevail. This principle will apply with greater force to special law which is also additionally a local law. This judicial principle is based on the latin maxim generalia specialibus non derogant, i.e., general law yields to special law should they operate in the same field on the same subject. Reference may be made to the decision of this Court in R.S. Raghunath vs. State of Karnataka & Ors., (1992) 1 SCC 335, Commercial Tax Officer, Rajasthan v. Binani Cements Ltd. & Ors, (2014) 8 SCC 319 and Atma Ram Properties Pvt. Ltd. vs. The Oriental Insurance Co. Ltd., (2018) 2 SCC 27."*

(III) ***Heydon's Rule of Interpretation/Mischief Rule of Interpretation***

(i) A Seven Bench Judges of Hon'ble Supreme Court in a judgment titled as ***Bengal Immunity Co. Ltd. Vs. State of Bihar and others, AIR 1995 SC 661,*** it has been held as under:-

> *"(22) It is a sound rule of construction of a statute firmly established in England as far back as 1584 when – 'Heydon's case, (1584) 3 Co Rep 7a (V) was decided that –*
>
> > *".....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:*
> >
> > *1st What was the common law before the making of the Act*
> >
> > *2nd What was the mischief and defect for which the common law did not provide,*
> >
> > *3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and*
> >
> > *4th The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro private commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico' ".*
>
> *In – Ín re, Mayfair Property Co.' (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported 'Heydon's case (V)', In – Éastman photographic Material Co. v. comptroller General of Patents, Designs and Trade marks', 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows :*
>
> *"My Lord, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."*
>
> *It appears to us that this rule is equally applicable to the construction of Art, 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."*

(ii) The Hon'ble Supreme Court in judgment titled as ***R.M.D. Chamarbaugwalla and another vs. Union of India and another, 1957 AIR (Supreme Court) 628***, held as under:

> *"6..... Now, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literally interpretation of the words used in disregard of all other materials. "The literally constructions then", says Maxwell on Interpretation of Statutes, 10tjh Edn., p.19, "has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not*

provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy". The reference here is to Heydon's case. These are principles well settled, and were applied by this Court in ***Bengal Immunity Co. Ltd. v. State of Bihar, 1955-2 SCR 603 at p.633.*** *To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statutue……."*

(IV) The Bombay High Court in a judgment tiled as ***Shivanand Damodar Shanbhag vs. Sujata Shivanand Shanbhag, 2013(16) RCR (Civil) 623,*** held as under:-

"Section 14 of the Family Courts Act provides for exception to the general rule of evidence regarding admissibility of statements and documents if permissible by the Court etc It has been so provided looking to the nature of the cases which are decided by the Family Courts. The Court should not go into techanicality and should take a decision on the material before it in a broad based manner. The parties appear before the Court personally and advocates are not allowed, hence the technical aspect is to be ignored and whatever material is placed before the Court, which it considers necessary to assist it and to deal it effectively can be looked into. Section 14 of the Family Courts Act is a special legislation and the principles of admissibility of documents as provided under the Evidence Act are not relevant in such cases.

16. In view of the above legal provision, there is no doubt that the Family Court is competent to receive the document though not proved as per the strict proof as per the Evidence Act."

(V) The Hon'ble Supreme Court in judgment titled as ***Sugandhi (dead) by Lrs & Anr. Vs. P. Rajkumar Rep. By His Power Agent Imam OLI, 2020 (10) SCC 706,*** has held as under:-

7. Rule 1A of Order 8 of C.P.C. provides the procedure for production of documents by the defendant which is as under:

*"**1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.***

xxxx xxxx xxxx

Sub-rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the

> *court. Rule (1) of Order 13 of C.P.C. again makes it mandatory for the parties to produce their original documents before settlement of issues.*
>
> *8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.*
>
> *9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”*

Analysis (re law)

9. Sections 10(1) of the 1984 Act empowers a Family Court to be a Civil Court for the purposes of exercising all powers vested in a Civil Court and the provisions of CPC have been made applicable to the proceedings before the Family Court, but at the same time it has been expressly stipulated in Section 10(1) of the 1984 Act itself that such application of CPC shall be *“subject to the other provisions of this Act and the Rules”*. Section 10(3) of the 1984 Act postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own procedure so as to deal with the matter in issue before it i.e. for arrival at a settlement in respect of the *lis* of any suit/proceedings before it or to determine the truthfulness of the facts in dispute. This provision by itself shows that the legislature, while broadly mandating for application for CPC to proceedings before a Family Court, has vested discretion in favour of such Family Court to devise a procedure on its own. The provisions of Section 10(1) and Section 10(3) of 1984 Act, when juxtaposed, reflect the clear legislative

intent to the effect that CPC does not apply compulsorily to proceedings before Family Court.

9.1 Further a perusal of Section 20 of the 1984 Act shows that it contains a clause having overriding effect viz-a-viz anything contained in any other law for the time being in force.

9.2 The Golden Rule of Interpretation (Literal Rule of Interpretation), as relied upon by the Hon'ble Supreme Court in the judgments of ***Dikshitulu's case (supra)*** and ***Laxmi Narain Dhut's case (supra),*** when applied in the present scenario to the provisions of 1984 Act, shows that the language as also phraseology employed in the legislation in question is precise, plain, unambiguous and unequivocal. The legislative intent, that CPC does not mandatorily apply in full force to proceedings under 1984 Act, is clearly decipherable from a bare reading of the legislation in question.

10. The statement of objects and reasons recorded for enactment of the Family Courts Act, 1984 reads;

> "*The Law Commission in its 59th Reporot (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure, 1908 was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest to establish Family Courts for speedy settlement of family disputes.*

10.1 The Statement of objects and reasons for the enactment in question i.e. Family Courts Act, 1984 further states:

> *"The Bill, inter alia, seeks to,-*
> *(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by a legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;*

> *(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute"*

10.2 A critical analysis of the above, when interpreted in light of the Heydon's Rule of Interpretation (as relied upon by the Hon'ble Supreme Court in the judgment of ***R.M.D. Chamarbaugwalla's*** case-supra), reflects that the 1984 Act was enacted to adopt a radically different approach from that adopted in ordinary civil proceedings & simplify the rules of evidence/procedure so that a Family Court could more effectively deal with a matrimonial dispute. This aspect, when examined in the backdrop of Section 13 of the 1984 Act (where entitlement, as of right, to a legal practitioner has been denied and discretion has been vested with the Family Court to allow assistance of a legal expert) clearly indicates that the technicalities & intricacies of the CPC are not to apply to the proceedings before the Family Court. A bare perusal of Section 14 of the 1984 Act shows that the same has also been introduced to wither away the rigours of Indian Evidence Act, 1872 & the Family Court has been empowered to take any material into evidence which as per its opinion furthers the cause of effective adjudication of a matrimonial dispute. The Bombay High Court in ***Shivanand Damodar Shanbhag's case (supra)*** has also held that the Family Court should not go into technicalities of the Evidence Act and should take a broad decision on the material placed before it.

11. The 1984 Act is a special law brought in by legislation exclusively for adjudicating matrimonial *lis.* CPC is a general procedural law for civil litigation. Also, CPC was enacted in the year 1908 whereas the Family Courts Act has been enacted in the year 1984. The 1984 Act has been brought into force in Haryana w.e.f 02.11.1992, in Punjab w.e.f 01.01.2013 and in Union Territory, Chandigarh w.e.f. 16.02.2015.

Therefore, it is clear that the 1984 Act is not only a special legislation but has also been enacted subsequently in point of time than CPC. Hence, it would be pragmatic approach; as per principle of *generalia specialibus non derogant* (as relied upon by Hon'ble Supreme Court in judgment of ***Jose Paulo Coutinho's case- supra***) as well, to come to an inevitable conclusion that Family Courts are not fully bound by provision of CPC.

12. The provision of Order VIII Rule 1-A was inserted in CPC by way of Code of Civil Procedure (Amendment) Act, 1999 w.e.f. 01.07.2002. As per sub-rule (1), a defendant is required to produce documents, sought to be relied upon by him, at the time of filing his written statement. Sub-Rule (3) provides that in case it is not so done, the defendant may still produce the same in evidence on his behalf at the time of hearing of the suit *albeit* with leave of the Court. In other words, a document not produced by a defendant along with his written statement may still be received in evidence on his behalf at the time of hearing of suit with leave of the Court. An evaluative analysis of this provision, in light of judgment of Hon'ble Supreme Court in ***Sugandhi's case (supra)***, leads to the conclusion that a Court is required to liberally consider the issue of grant of permission to bring into evidence such documents which have not been produced by a defendant along with the written statement. The Hon'ble Supreme Court in ***Sugandhi's case (supra)*** was seized of a matter arising out of a civil suit whereas the instant appeal arises from an order passed by a Family Court. This aspect assumes more significance in light of the statutory scheme of the 1984 Act, especially the provisions contained in Sections 10, 13, 14 and 20 of the 1984 Act.

13. As an upshot of above discussion, the following principles of law can be culled out:

(I) Sub Section (3) to Section 10 read with Section 20 of the Family Court Act, contains non-obstante clause and gives supremacy to the provisions of the said Act, vis-à-vis the provisions of other enactments/Acts.

(II) CPC, 1908 is not applicable with its full rigours to proceedings under the Family Courts Act, 1984. In other words; a Family Court is entitled to lay down its own procedure, as warranted by facts/circumstances of a given case and it is not bound by the procedural rigours of CPC, 1908. However, while devising its such own procedure, the Family Court ought to ensure that such procedure is in consonance with the basic cannons of the jurisprudence such as principles of natural justice, good conscience and equity.

(III) A Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a *lis* before it whether or not such material fulfills the requirements of Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

(IV) Order VIII, Rule 1-A CPC of 1908 is not a mandatory provision and rather it is a directive in nature only especially with respect to the proceedings under Family Court Act, 1984. A Family Court will be well within its judicial discretion to take into evidence any material in terms of sub-rule (3) of Order VIII, Rule 1-A of CPC, 1908 without any formal application for grant of leave by the defendant. However, while exercising such discretion the Family Court is required to pass a reasoned order.

Analysis (re facts of the present case)

14. Now we revert back to the facts of the present case.

14.1 The appellant-husband had filed the petition for grant of divorce on the ground of cruelty as also desertion and referred to certain instances in order to substantiate his allegations. The respondent-wife had filed her written statement wherein the allegations were denied. It was further stated that the attitude and conduct of the husband as also his family members became so unbearable that she was constrained to leave her matrimonial home. While framing issues vide order dated 06.07.2019, the learned Family Court had directed that only a memorandum of a substance of what the witnesses deposes, shall be recorded. It was further directed that the evidence of formal witness shall be recorded through affidavits only. It is, thus, clear that the Family Court had taken a conscious decision to devise its own procedure and not follow the procedural rigorous of CPC or 1872 Act. Both the parties sought to lead evidence in pursuance to the issues framed vide order 06.07.2019 and it can be safely inferred that they were well aware of the nature of procedure adopted by the learned Family Court for adjudication of the case before it. Both the parties were also conscious of the nature of litigation, rival contentions and issues framed by Court for determination of the *lis* between them and hence they were expected, in all reasonableness, to be aware to put forward their evidence accordingly.

14.2 The issue in hand hovers around objections raised by the husband to the wife's seeking to produce documents, along with her affidavit of evidence, which were not produced by the wife along with the written statement and that no formal application for grant of leave in terms of sub-rule 3 of Order VIII Rule 1-A of CPC was filed by the wife. However, the husband filed an application raising objections to the wife

producing such documents along with her affidavit of evidence. The wife filed reply to this application filed by the husband. The same was dealt with by the learned Family Court, vide impugned order, and the objections filed by the husband were rejected. The learned Family Court has also recorded in the impugned order that the husband has been provided with copies of all documents (appended with the affidavit of evidence filed by the wife) and he will be permitted to cross-examine the wife on all aspects including such documents. Accordingly, no prejudice can be said to have been caused to the husband. We do not find any infirmity in the impugned order calling for interference therein.

14.3 There is no gain saying that the husband, if so advised, may lead evidence in rebuttal and/or may make a plea for additional evidence. We have no doubt that if such plea(s) is raised, the same shall be dealt with by the learned Family Court, in accordance with law.

Decision

15. As a sequel of above said discussion, the impugned order dated 25.09.2023 passed by learned Family Court is upheld and the instant appeal is dismissed. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case. No order as to costs.

(SUMEET GOEL)
JUDGE

(SUDHIR SINGH)
JUDGE

December 22, 2023
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No