

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAT.APP.34/2009

Judgment delivered on: 08.12.2010

DEEPA @ SUNITA Appellant
Through: Mr.J.P.Mishra, Advocate.

Versus

MANOJ KUMAR VAID Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under Section 96 read with Section 28 of the Hindu Marriage Act, 1955 the appellant seeks to challenge the judgment and decree dated 02.03.2009

passed by the learned Addl. District Judge, Delhi, whereby the petition for divorce filed by the appellant under Section 13(1)(ia) of the Hindu Marriage was dismissed .

2. Brief facts of the case relevant for deciding the present appeal are that the marriage between the parties was solemnized on 16.4.2003 at Delhi according to Hindu rites and ceremonies. The marriage was duly consummated but no child was born out of the said wedlock. It is the case of the appellant that the respondent was a habitual drinker and used to beat her under the influence of liquor. She has also alleged that the respondent and his family members harassed her for bringing insufficient dowry. Consequently, the appellant filed a petition for divorce on the ground of cruelty which vide judgment and decree dated 2.3.2009 was dismissed. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Counsel for the appellant states that the appeal filed by the appellant was not opposed by the respondent and therefore, it was obligatory on the part of the learned trial

court to have passed the decree of divorce in favour of the appellant. Counsel also submits that even in the present appeal the respondent has not chosen to appear to contest the appeal and this in itself is sufficient to allow the present appeal.

4. I have heard learned counsel for the appellant.

5. Admittedly, the respondent has not contested the divorce proceedings either before the learned trial court or before this court. But still this court does not find any force in the submission of counsel for the appellant that this should be the ground for passing a decree of divorce in the favour of the appellant. Merely because the respondent did not choose to appear in the divorce proceedings, this circumstance by itself will not entitle the appellant to claim grant of decree of divorce in her favour.

6. Coming to the merits of the case, the appellant has claimed the decree of divorce on the ground of cruelty. It is the case of the appellant that the respondent was a drunkard person and used to beat the appellant under the influence of

the liquor. The learned trial court held that the appellant has not even mentioned a single specific incident in this regard. The other allegation of the appellant is that she was harassed by the respondent and his family members for dowry, which again has also not been substantiated with any details or dates. It would be useful here to reproduce the observations of the learned trial court in this regard here:

8. *Counsel for the petitioner also pleaded that the respondent and his family members were not happy with the dowry articles given by the parents of the petitioner and they used to beat her for bringing insufficient dowry. The said plea of the petitioner is vague in nature because the petitioner has not mentioned when and what amount had been demanded by the respondent and his family members and at what time, which place and before whom she was beaten up on the said account.*

9. *Counsel for the petitioner further pleaded the incident of 20.10.2004 and submitted that the respondent misbehaved with the mother of the petitioner on the occasion of Diwali and threw away the sweets and gift items, as they were expecting the house. It is not the case of the petitioner that the respondent and his family members demand a house from her or her parents. As such, the said plea is vague in nature. Surprisingly, mother of the petitioner, PW-2, being the victim of the said act, has not mentioned about the said incident in her testimony. It implies that no such incident had happened with the mother of the petitioner. Hence, the plea of the petitioner is without substance.*

10. *Counsel for the petitioner also pleaded that on 20.02.2006, the petitioner was thrown out from her matrimonial home but she was taken back to her matrimonial home 30 days thereafter. But there was no change in the attitude of the respondent and he asked the petitioner to give divorce as he wanted to remarry. Hence, a complaint was lodged on 15.05.2006. However, the said*

plea lacks material particulars and no document has been filed to substantiate the fact of complaint dated 15.05.2006. Even PW-1 and PW-2 have not deposed to that effect in their testimony. Hence, the said plea of the petitioner is not sustainable”.

7. It would be useful to mention here the mandate of Rule 7 of the Hindu Marriage Rules, 1979 of this High Court provides that:

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

(a)

(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.:

(i)

(iv) in the case of alleged desertion, the date and the circumstances in which it began; in the case of cruelty the specific acts of cruelty and the occasion when and the place where such acts were committed....."

It would be evident from above that the rule prescribes that a petition filed under Sections 10 & 13 shall state the alleged acts of cruelty with significant particulars and the places of the acts alleged. Hence, this Court does not find any infirmity,

illegality or perversity in the said judgment and decree passed by the learned trial court taking a view that the allegations of cruelty leveled by the appellant not only lack in particulars, but are also trivial in nature. The appellant has miserably failed to establish her case on the ground of cruelty as her pleas are not only vague but are also not backed by any supporting or corroborative evidence.

8. Cruelty has not been defined in the Hindu Marriage Act and rightly so as the concept of cruelty is of wide amplitude and cannot be put into a strait jacket formula. The conscience of the court should be satisfied that the relationship of the parties has deteriorated to such an extent that it has become impossible for the two to live together without mental pain, torture and agony. In the case at hand the level of cruelty alleged has not touched the pitch of severity that would satisfy the requirements of Section 13(1)(ia) to seek dissolution of marriage. The Apex Court in various judicial pronouncements has held that for seeking a decree of divorce on the ground of cruelty, the petitioner

approaching the court has to make out a strong case for seeking the said relief. It is also not the normal wear and tear of domestic life which should entitle the petitioner for the grant of decree of divorce. It would be pertinent to refer to the judgment of the Apex Court in the case of ***Gurbux Singh vs. Harminder Singh*** MANU/SC/0829/2010 where while referring to the judgment in the case of ***Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511*** where instances of cruelty have been detailed, held as under:

"The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty."

In the light of the foregoing, it is clear in the face of the circumstances of the case at hand that the conduct complained of by the appellant does not constitute cruelty for the grant of decree of divorce.

9. Hence, in the light of the aforesaid position, this Court does not find any merit in the present appeal and the same is hereby dismissed.

December 08, 2010
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KAILASH GAMBHIR, J