

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 346/2008

Judgment delivered on: 20.10.2010

Lt.Cdr. Narender

..... Appellant

Through: Mr.Kuldeep Singh, Adv.

Versus

Ms. Smita

..... Respondent

Through:Mr. Gaurav Seth, Adv.

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:

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1. By the present appeal the appellant seeks directions for setting aside the judgment and decree dated

13.12.2007 passed by the court of the learned ADJ dismissing the petition for divorce filed by the appellant.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant and the respondent got married on 19.9.2002 at Arya Samaj Mandal, Vivek Vihar, Delhi as per Hindu rites and ceremonies. The marriage was duly consummated but no issue was born out of the said wedlock. The respondent was a widow and hence it was difficult for her to adjust to the new marriage. It has been alleged by the appellant that the respondent was not cooperative and did not fulfill her marital obligations. Consequently the appellant filed for divorce under section 13(1) (ia) of the Hindu Marriage Act which vide judgment and decree dated 13.12.2007 was dismissed. Feeling aggrieved with the same the appellant has preferred the present appeal.

3. Mr. Kuldeep Singh, counsel for the appellant states that the order passed by the learned trial court is contradictory as in para 20 of the impugned judgment the learned trial court has contradicted itself by stating that the

argument of the counsel for the appellant was of no merit when he stated that even a single act of cruelty can amount to cruelty while in the next line itself the learned Court has observed that a single act of cruelty can amount to cruelty only when the same is coupled with the other facts.

4. Counsel further states that the single act of cruelty which was proved on record by the appellant was that the appellant was humiliated in the presence of his colleagues when he along with his wife was invited for dinner at the mess in the evening on 23.9.2002. Counsel further states that after the dinner the respondent wife complained about one officer colleague of the appellant asking about her personal sexual life and she also accused the appellant of treating her as a prostitute. Counsel thus states that this revelation from the side of the respondent caused great mental shock and the appellant felt embarrassed to hear the said narration from the respondent while in fact the appellant kept sitting next to the respondent throughout the dinner and no such talks could be held during the dinner with any of the officer colleague of the

appellant. The contention of the counsel for the appellant is that this act alone by itself was enough to prove the cruelty as required under Section 13(1) (ia) of the Hindu Marriage Act for the grant of divorce. Counsel also states that the appellant was not given any opportunity to file replication to rebut the allegations made by the respondent in her written statement. Counsel also submits that the learned trial court did not frame the issues out of the pleadings and therefore grave illegality has been committed by the trial court in deciding the controversy without framing any specific issues.

5. Refuting the submissions of the counsel for the appellant, counsel for the respondent submits that the respondent had stayed with the petitioner only for a short period during which period the relations between the appellant and the respondent remained cordial and no act of cruelty was committed by the respondent. Counsel for the respondent further submits that neither any fault can be found with the findings given by the learned Trial Court nor any material infirmity has been pointed out by the appellant in the

same. Counsel for the respondent further submits that the appellant in his cross-examination duly admitted the fact that his day on 24.9.2002 started in a very normal manner after he had taken his breakfast and left for his office. The contention of counsel for the respondent is that if any untoward incident as alleged by the appellant had occurred on the evening of 23.9.2002 then at least the morning of 24.9.2002 would not have been normal between the parties. Counsel for the respondent further submits that the appellant even failed to disclose the name of the officer with whom the alleged conversation took place between such officer and the respondent. Counsel further submits that the appellant never took any objection before the learned Trial Court with regard to non-framing of issues. Counsel submits that both the parties led their respective evidence fully conscious of the controversy and the pleas raised by them in their respective pleadings. Counsel for the respondent also submits that it was the third marriage of the appellant and within a short period of 15 days time he moved out of the marital ties with the

respondent. Finally, counsel contends that not even a single act of cruelty has been committed by the respondent towards the appellant and nor any such act of cruelty has been proved on record by the appellant, therefore, no illegality or perversity can be found by this Court in the impugned judgment passed by the learned Trial Court.

6. I have heard learned counsel for the parties.

7. Section 13(1) (ia) of the Hindu marriage acts makes cruelty as a ground for divorce. Cruelty has not been defined under the Act and nor it could have been defined in black and white terms. In the case at hand, the appellant has brought forth only one incident on the basis of which he seeks his marriage with the respondent to be dissolved. It has been contended by the counsel for the appellant that the incident that took place on the evening of 23.9.2002 caused embarrassed and mental shock to him. It cannot be lost sight of the fact that the appellant in his cross examination stated that his day on 24.9.2002, that is the next day from the date of the alleged incident, was normal between the parties. By

any stretch of imagination it cannot be understood that if any such distasteful event has taken place the night before, the next day the parties are carrying on normally, more so when such an incident is the sole basis for claiming dissolution of marriage.

8. Marriage is one of the most delicate relationships where many incidents of love-hate, decency-indecency and anger-togetherness take place. Leveling the allegation of cruelty on the other spouse is a serious matter and cruelty as envisaged under section 13(1)(ia) should be such that it is no more possible for the spouse to live with the other without mental pain and agony. It has to be something concrete and not a far flung incident that happens between married couples. In this context, it would be useful to refer to the decision of the Apex Court in the case of ***Naveen Kohli vs. Neelu Kohli AIR 2006 SCC 1675*** where it was held that :

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the

conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

9. Therefore it has to be something more than the ordinary wear and tear of life. It cannot be lost sight of the fact that the parties remained together for only a short span

of time and in such a brief period they cannot give up the hope of living together in matrimony because of one bitter event. Here it would be useful to the recent judgment of the Apex Court in the case of ***Gurbux Singh vs. Harminder Singh*** MANU/SC/0829/2010 where while referring to the three bench decision of the Apex Court in the case of ***Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511***, the court observed 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. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty. Both the appellant and respondent being highly qualified persons, the appellant being Principal in ITI College, the respondent working as a Librarian in a Government Institute, an isolated friction on some occasion like festival of Lohri even in the presence of others cannot be a valid ground for dissolving the marriage".

10. Hence in the present case as well it would not be appropriate to dissolve the marriage of the parties as this

court is of the considered view that the ground of cruelty is not made out.

9. In the light of the aforesaid discussion, the present appeal is thereby dismissed.

October 20, 2010

KAILASH GAMBHIR, J