

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **MAT.APP. NO. 112/2009**

% Judgment delivered on: 03.03.2011

Dr. Anshuman Bhatt Appellant

Through: Mr. Narender Mukhi, Advocate.

versus

Smt. Mithlesh Respondent

Through: Mr. Rajeev Shukla, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 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 this appeal filed under section 28 of the Hindu marriage Act, the appellant seeks to set aside the judgment

and decree dated 16.7.2009 passed by the learned trial court whereby the petition filed by the appellant under section 10 of the Hindu Marriage Act, 1955 was dismissed.

2. Brief facts of the case relevant for deciding the present appeal are that the parties got married on 20.10.2001 at Delhi according to Hindu rights and ceremonies. It is alleged by the appellant husband that the behaviour of the respondent wife was not cordial right from the very inception of marriage and consequently he filed a petition for judicial separation under section 10 of the Hindu Marriage Act, 1955 on the ground of cruelty which vide judgment and decree dated 16.7.2009 was dismissed. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the order of the learned trial court, counsel for the appellant submits that the learned trial court has failed to take into consideration that 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 13(1)(ia) of the Hindu Marriage Act. Citing the instances of cruelty committed by the respondent qua the appellant, counsel pointed out that the respondent right from the inception of her marriage started insisting the appellant to live separately from his parents. Counsel also submitted that the respondent used to disrespect and humiliate not only the appellant, but his old parents as well. Some of the incidents cited by the counsel for the appellant are:

- On 2nd January, 2002 at about 9.30 a.m. the respondent shouted at the mother of the appellant when she had entered in the kitchen without there being any rhyme or reason.
- On 21st January, 2002 at about 8.00 p.m. the respondent shouted at the parents of the appellant and said that all the time they are sitting at home why they do not even go to their native place.

- On 26.1.2002 at about 7.00 p.m. the respondent threw a glass of water on the face of the appellant when he just asked her to provide him the dinner.
- On 10th March, 2002 the respondent again scolded the parents of the appellant with the remarks that they always keep watching TV and they do not take recourse to the path of religion.
- On 21.4.2002 at about 7.30 p.m. the father and brother of the respondent came to the matrimonial home of the respondent and started shouting at the parents of the appellant on the instigation of the respondent.

4. Counsel further submitted that to save the matrimonial home the appellant took a rented accommodation in Netaji Nagar and where they had shifted on 18th May, 2002. The respondent further submitted that at about 11.00 p.m. the respondent compelled the appellant to go to the office of the CPWD to lodge a complaint as the said rented premises required immediate repair work and on refusal of the

appellant the respondent started insulting the appellant. Counsel further submitted that on 19th May, 2002 the respondent called her parents and told that it was not possible for her to live any more with the appellant. Counsel for the appellant further submitted that the appellant had arranged another accommodation on rent i.e. house bearing No. 29/B (III floor) behind temple, Ber Sarai, New Delhi, but the respondent flatly refused to join the appellant at the said accommodation and put a condition that the appellant should ask his parents to vacate the Munirka flat.

5. Based on the aforesaid allegations and cruel acts committed by the respondent towards the appellant and his family members, counsel for the appellant submits that the appellant was entitled to the decree of judicial separation.

6. The said allegations leveled by the appellant have been totally denied by the respondent. Counsel appearing for the respondent submits that it was the appellant who used to misbehave and harass the respondent and at times also use to

give merciless beatings to the respondent without any provocation from the side of the respondent. Counsel also submitted that the appellant and his family members used to taunt the respondent for not bringing sufficient dowry and also demanded more money from the parents of the respondent. The respondent also denied happening of any incident on 2nd January, 2002 as at the alleged time she was in her office. The respondent also denied the other instances which were alleged by the appellant to attribute cruelty on the part of the respondent. Counsel thus submitted that the respondent always gave full love and respect not only to the appellant but to his parents as well.

7. I have heard learned counsel for the parties at considerable length and gone through the records.

8. The appellant has claimed the decree for judicial separation based on the above allegations leveled by him against the respondent. In support of his case the appellant gave his own evidence as PW 1 while the respondent examined herself as RW 1. Both the parties did not choose to lead any

other evidence to corroborate their side of the story. Besides adducing oral evidence, the respondent has also placed on record some documentary evidence to prove the fact that she was having cordial relationship with the appellant and also some of the complaints filed by her with various authorities. The learned trial court after referring to some of the judgments of the Supreme Court came to the conclusion that the allegations leveled by the appellant are only trivialities of the life and they can be termed as only wear and tear of the marital life and are not so grave which could raise apprehension in the mind of the appellant that it would be harmful and injurious to live with the respondent.

9. Cruelty has not been defined in the Hindu Marriage Act, and rightly so as it varies from case to case. What may be cruelty in one case may not be cruelty in the other. The concept of cruelty is of wide amplitude and cannot be put into a strait jacket formula. It may be intentional or unintentional, physical or mental. However the Apex Court through a catena of judgments has developed the benchmark for judging the

cruelty. The conscience of the court has to be satisfied that the conduct complained of is grave and weighty to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other. The relationship between the parties should have deteriorated to such an extent that it becomes difficult for the petitioner spouse to live with the other without mental pain agony and stress. The Hon'ble Apex Court in the case of ***Samar Ghosh vs. Jaya Ghosh (2007)4 SCC 511*** after analyzing all the authorities, Indian and foreign, gave a non exhaustive list of the acts which may amount to mental cruelty. It would be pertinent to reproduce the relevant paras here:

"74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

It is a settled legal position that for constituting mental cruelty the conduct complained of has to touch a pitch of severity. It has to be something more than the ordinary wear and tear of married life. Matrimony is the metaphor of bittersweet events coupled with conjugal kindness and at times coldness and neglect. The court cannot on a few isolated acts complained of by the petitioner dissolve the holy bond of matrimony magnifying the petty differences which can be ironed out with perseverance and trust.

10. Coming to the facts of the case at hand, on careful analysis the allegations of cruelty leveled by the appellant

against the respondent appear to be totally concocted and baseless. The appellant has alleged that on 26.1.2002 at about 7.00 p.m. the respondent after getting irritated threw a glass of water on the face of the appellant when he asked her to provide dinner. This allegation absolutely sounds senseless as nobody would throw a glass of water merely because she was asked to provide a dinner. Similarly the allegation of 18th May, 2002 when at 11.00 p.m. the respondent asked the appellant to lodge a complaint with the CPWD office for getting tenanted premises repaired equally sounds illogical and incomprehensible as the respondent being an educated lady would not at least ask her husband to lodge a complaint at CPWD office at 11.00 p.m. when the CPWD office would not even be in operation at such odd hours. The other allegations leveled by the appellant also appear to be mere trivialities and based on the same, the appellant cannot claim the grant of decree of judicial separation. This Court therefore does not find any infirmity, perversity or illegality in the conclusion arrived at by the learned trial court.

11. in the light of the above discussion, this court does not find any merit in the present appeal. The same is hereby dismissed. The order dated 16.7.2009 passed by the learned trial court is accordingly upheld.

March, 03 2011

KAILASH GAMBHIR, J