

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAT.APP. 108/2010

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Date of Decision: 03.08.2012

ISHWAR

..... Appellant

Through : Mr. J.K. Dhingra, Adv. along with
appellant in person

versus

DARSHANA

..... Respondent

Through : Mr. Girish Kaul, Adv. along with
respondent in person

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.(ORAL)

1. Present is an appeal under Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') filed by appellant/husband wherein challenge has been made to impugned judgment/decreed dated 29.09.2009 passed by learned ADJ (Central Delhi) dismissing the divorce petition of appellant/husband under Section 13(1)(ia) and 13(1)(ib) of the Act.

2. The relevant facts for the disposal of present appeal are as under:-

The marriage between the parties was solemnized on 12.12.1993 according to Hindu rites and ceremonies. Two daughters, namely, Meenu and Deepu were born from their wedlock, who are presently in the custody of respondent/wife. The appellant/husband has alleged that the behaviour of

respondent/wife was not proper and good towards him. She was not liking him and used to abuse him and his parents before the persons of the colony and had also slapped him in the presence of her parents and other relatives at her parental home. It is alleged that appellant/husband has done his best to save the matrimonial life but respondent/wife was never interested in living with him. Even to save his marriage he had gone to live near the house of his in-laws by taking a rented accommodation where he started living with respondent/wife w.e.f. 14.04.2002. It is alleged that at the time of shifting respondent had taken all her jewellery. Even there, the mother of the respondent used to abuse him. He has also alleged that respondent/wife was having illicit relations with one Mahender resident of village of the respondent and after marriage she continued to meet said Mahender. He has also alleged that in the month of September 2001, the family members of the respondent had come to his house and gave him beatings and had also taken away jewellery and stole Rs. 10,000/- which were lying in the house of the appellant. It is alleged that appellant had made a complaint against them in P.S. Uttam Nagar. It is alleged that appellant had made various complaints against the respondent/wife. At one stage the matter was compromised in police station on 24.04.2002 but there was no change in her attitude. It is alleged that respondent continued threatening the appellant and gave him beatings on 30.04.2002 for which again he had to file a complaint in P.S. Uttam Nagar. It is alleged that respondent had not been living with him as husband and wife since May, 2002. There is no cohabitation between them since then. Respondent also threatened him many times to give poison to him. He has alleged that respondent has treated him with utmost cruelty and has also deserted him without any cause and reason.

3. Respondent/wife has contested the petition by filing a written statement. She has admitted the birth of two daughters out of her wedlock. However, she has denied that her behaviour was cruel towards appellant and family members as is alleged. According to her, it is the appellant and his family members who are of quarrelsome nature and they had turned her out of the matrimonial home number of times. They used to also give beatings to her and she had been tolerating their atrocities with the hope that husband would improve one day. She has denied the allegations of illicit relations as are alleged in the divorce petition. She has alleged that appellant/husband and his family members were not happy with the dowry given in the marriage due to which they were torturing her. Respondent/wife has also denied the allegations of desertion as are alleged by appellant/husband.

4. Replication was filed by appellant/husband denying the allegations of respondent/wife levelled against him in the written statement and had reiterated the content of divorce petition.

5. After completion of pleadings, the following issues were framed:-

“1. Whether after the solemnization of the marriage, the respondent has treated the petitioner with cruelty? OPP

2. Whether the respondent has deserted the petitioner for a continuous period of more than two years on the presentation of petition? OPP”

6. The appellant has examined himself in the evidence to substantiate his case. Respondent also filed her affidavit to prove her defence. Respondent

was partly cross-examined on 11.02.2009. Thereafter, as the counsel for appellant did not appear, the right of appellant to cross-examine the respondent was closed vide order dated 16.04.2009. The arguments were heard in the matter and vide separate judgment the divorce petition of appellant/husband was dismissed. Aggrieved with the same, the present appeal is filed.

7. Learned counsel for appellant has argued that appellant is an illiterate person and is a fourth class employee and due to non-appearance of his counsel he could not fully cross-examine the respondent/wife on her affidavit Ex.RW1/1. It is submitted that by not giving opportunity to cross-examine the respondent fully on her affidavit Ex.RW1/1, his case has been highly prejudiced. It is further submitted that in her affidavit Ex.RW1/1, the respondent/wife has made additional averments which were not even pleaded in the written statement. Learned counsel for appellant has further submitted that in her affidavit Ex.RW1/1 respondent has levelled false allegations against him. It is submitted that as the appellant/husband could not fully cross-examine the respondent due to non-availability of his counsel, he could not demolish the false allegations levelled by respondent/wife against him. Learned counsel for appellant has submitted that in the facts and circumstances of the case, impugned judgment may be set aside and the appellant be given full opportunity to cross-examine the respondent/wife.

8. In the present case parties are living separately for the past about 10 year. Efforts of reconciliation did not yield any result. The case of appellant is that respondent has treated him with utmost cruelty and has deserted him

without any cause and reason w.e.f. May, 2002 with an intention to bring cohabitation to an end. Appellant/husband has levelled various allegations of cruelty against her. On the other hand, respondent/wife has levelled serious allegations of dowry demand/beating against appellant/husband. It is admitted position that due to non-appearance of advocate for appellant/husband the appellant has not fully cross-examined the respondent/wife on her affidavit Ex.RW1/1. The learned trial court in the impugned judgment has observed that the assertion of respondent/wife in her affidavit has remained unrebutted and unchallenged. Keeping in view the serious allegations levelled by the respondent/wife against appellant about dowry demands, beatings, etc., it would be appropriate that full opportunity be given to appellant/husband to fully cross-examine her. The right of cross-examination is a valuable and independent right. The effect of not fully cross-examining the respondent has serious consequences on the appellant. Under these circumstances, it will be appropriate if full opportunity is given to him to cross-examine the respondent on her affidavit Ex.RW1/1.

9. Learned counsel for respondent has initially opposed the request of appellant. However, after some arguments, counsel for respondent has stated that he has no objection if the impugned judgment/decreed is set aside and the appellant be given right to cross-examine the respondent further on her affidavit Ex.RW1/1.

10. Accordingly, with the consent of the parties, the impugned judgment/decreed is set aside, subject to payment of cost of Rs. 15,000/- to respondent. The matter is remanded back to the learned trial court where the

parties shall appear on 04.09.2012 and on the said date the cost of Rs.15,000/- shall be given to the respondent. On the said date, the court shall give a date to the appellant for remaining cross-examination of respondent/wife on her affidavit Ex.RW1/1 as per its convenience. After completion of cross-examination the court shall further deal with the matter in accordance with law.

Appeal stands disposed of accordingly.

VEENA BIRBAL, J

AUGUST 03, 2012

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