

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

% *Judgment Reserved on : February 11, 2013*
Judgment Pronounced on : February 18, 2013

+ **MAT.APP. 72/2011**

ANIL SINGH Appellant
Represented by: Mr.Jai Bansal, Advocate.

versus

AARTI RANI @ SEEMA Respondent
Represented by: Mr.D.K.Santoshi, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. March 08, 2007 was the date when appellant and respondent got married. March 2008 is the date alleged by the appellant when respondent returned to her parental house. June 2008 is the date when as per the appellant the respondent returned to her matrimonial house. July 03, 2008 is the date when as per the appellant the respondent returned to her parental house. Complaints and counter complaints were made immediately thereafter. August 23, 2009 is the date alleged by the appellant when the respondent once again left her matrimonial house compelling the appellant to seek restitution of conjugal rights. January 20, 2010 is the date when parties reconciled and HMA No.468/2009 was dismissed by the Family Court since the respondent returned to her matrimonial house. April 09, 2010 was the date when a female child was born to the parties.

2. We have prefaced the aforesaid narration of facts which we have culled out from the petition seeking divorce filed by the appellant on November 03, 2010 and would simply highlight that the birth of a female child to the parties on April 09, 2010 would reveal that towards last week of June and the first week of July 2009 the husband and wife were cohabiting and had sexual intercourse, when the wife became pregnant, and the law pertaining to cruelty is that if a spouse forgives the other, alleged acts of past cruelty cannot be relied upon in a divorce proceedings unless they get revived by subsequent acts of cruelty.

3. We now proceed to note the alleged acts of cruelty after when the parties cohabited before end of June 2009 or the first week of July 2009, for the reason this date is crucial keeping in view the fact that on April 09, 2010 a baby girl was born to the parties. We shall then note the alleged acts of cruelty before said date.

4. The act of cruelty alleged after June – July 2009 is that the respondent told appellant that she was having an affair with a lover and wanted to get herself rid from the matrimonial bond with the appellant and the respondent picked up quarrel with the appellant followed by the respondent leaving her matrimonial house on August 23, 2009.

5. No particulars of the date when the respondent told the appellant that she was having a lover. No date and the acts constituting the quarrel have been set out in the pleadings. Even in the deposition towards examination-in-chief no particulars have been stated.

6. As we have noted above that the appellant admitted that the parties reconciled once again when the respondent returned to the matrimonial house and the appellant withdrew HMA No.468/2009 on January 20, 2010.

7. It is thus apparent that apart from the fact that the appellant has spoken and deposed facts which are neither here nor there pertaining to the period post June – July 2009 we find that by resuming cohabitation, acts of alleged cruelty got condone once again on January 20, 2010.

8. The alleged acts of cruelty post January 20, 2010 are that the respondent created a scene in the matrimonial home on June 23, 2010 compelling the appellant to summon the police by making a complaint Ex.PW-1/D, which we find makes general allegations without any particulars and refers to the fact that way back on June 22, 2008 the wife broke the bangles and opened her hair and when he tried to pacify her she bit him on his wrist, but we find that nothing of this kind has been pleaded in the petition seeking divorce or has been deposed to in evidence; in any case as we have noted above, acts up to said date have to be treated as condoned. Thus we find no worthwhile evidence with respect to any nuisance constituting cruelty statedly committed on June 23, 2010.

9. The next allegation of cruelty is that the respondent used to talk with her friends on the mobile phone.

10. We do not understand as to how come talking with one's friends, may be excessively, would be cruelty.

11. It is then alleged that the respondent demanded her jewelry before she left the matrimonial house and made a complaint to the police for dowry harassment. We do not understand as to how a justified demand by a wife for her jewelry to be returned could be an act of cruelty.

12. In a precise and a concise decision, the aforesaid facts have been noted by the Family Court to dismiss the petition seeking divorce filed by the appellant alleging cruelty but without highlighting that it would

be useless to discuss the pleadings and the evidence prior to the date when the husband and wife cohabitated, had sex and forgave each other.

13. Since we do not find any acts of cruelty after the date when the parties cohabited, had sex and were blessed thereafter with a baby girl, the petition seeking divorce must fail on said short ground alone.

14. But since we are the first Court of Appeal on law and facts we note that in the pleadings the alleged acts of cruelties commence their description from para 6 onwards and in no paragraph we find any particular instance with details mentioned. Similar is the position with the deposition of the appellant, and we concur with the learned Family Court Judge that vague and general allegations which merely remain assertions cannot take place of proof and that it appears to be a case of normal friction, wear and tear of life and especially keeping in view the fact that the parties come from a humble socio-economic background.

15. The city of Delhi is a costly place to live. Family budgeting and especially when a child is born is becoming a herculean task even for the financially well-off and even they come under financial stress and the same burdens and causes stress on the matrimonial bond.

16. The repeated acts of the respondent to return to her matrimonial house before and after she gave birth to a baby girl are a sign of her unhappiness in the matrimonial house; and the reason is financial constraints in her husband's house. Torn between the desire to live with her husband, but with happiness she would return to the husband in the matrimonial house and when things became unbearable would once again return to her parental house.

17. Our experience is showing that the failing Welfare State and rampant unauthorized colonization in Delhi is creating hell holes for the unfortunate people who live in these slums. The residential abode of the

appellant is an unauthorized colony in South West Delhi. This was the matrimonial abode of the parties.

18. A man who comes home to a poor, comfortless hovel after the days labour and sees all miseries around, has his spirits more often depressed than excited by it. He soon starts feeling that : Do his best he shall be miserable still, is too apt to fly for a temporary refuge to the liquor shop nearby or blow himself on the spouse. Likewise, the wife who stays all day in the comfortless hovel and sees all misery around also has her spirits more often depressed than excited. The pressure cooker has to explode, because there is no safety valve.

19. Neither party is to be blamed in such a situation. Surely not the wife as the perpetrator of cruel acts. As Judges, sometimes we feel helpless. The question : What to do? What is the way forward for the couple? Eludes an answer to us.

20. It saddens us to see the unfortunate young couple becoming victims of circumstances beyond their control and the judicial system looking on helplessly, because the failing is by the State. A good clean environment with a cozy small house would go a long way to soothe the roused tempers and feelings. It is only the State which can provide said environment. Perhaps, at least in the city of Delhi, the Government needs to seriously consider augmenting public housing with emphasis on sanitation. It is an herculean task for the reason, notwithstanding the miserable squalor in the slum dwellings in Delhi the influx of population from the rural areas continues for the low standard of living in the slums appears to be preferable to stagnation and starvation in the rural area. Way back in the year 1842, Edwin Chardwick, in the Poor Law Commission reminded : Quote : *'The removal of noxious physical circumstances and the promotion of civic, household and personal*

cleanliness are necessary to the improvement of the moral condition of the population'. And needless to state, a population with improved moral condition would be better equipped to cope with the normal wear and tear and stresses of a family life.

21. Finding that the learned Trial Judge has correctly appreciated the evidence and after re-reflecting thereon we reach the same conclusion, we dismiss the appeal.

22. We need to add a footnote. Trial Court Record was not summoned but learned counsel for the appellant was gracious enough to supply a photocopy of the evidence recorded by the learned Family Court Judge, and as regards the pleadings of the parties, the same have been filed along with the instant appeal.

23. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 18, 2013
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