

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

+ **MAT.APP.(F.C.) 40/2014**

SH. JAGDISH Appellant
Through: Mr.Anil Kumar Mehta, Advocate.

versus

SMT. MONIKA Respondent
Through: Nemo

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER (ORAL)

: REVA KHETRAPAL, J.

C.M.No.6056/2014

This is an application filed by the Appellant seeking condonation of 24 days delay in filing the petition.

In view of the grounds given in the application, the delay is condoned.

Application stands disposed of.

MAT.APP.(F.C.) 40/2014

1. The Appellant in the present appeal seeks to challenge the judgment of the learned Family Court dismissing the petition filed by the Appellant under section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage by decree of divorce on the ground of cruelty.

2. The facts as delineated in the petition (Annexure P-4) are that the marriage between the Appellant and the Respondent was solemnized on 8.12.2004 at Village Khandewla, Farrukhnagar, District Gurgaon according to Hindu rites and ceremonies. The marriage was duly consummated and one son was born to the parties from the wedlock.

3. The Appellant asserts in the petition that the Respondent had no respect for the Appellant and his family members and also did not take care of her minor son. It is also alleged that in order to harass the Appellant, the Respondent lodged a false FIR against the Appellant and his family members bearing FIR No.142/08 under Sections 498-A/406/506 IPC, P.S. Farukhnagar, District Gurgaon and also filed a criminal complaint under Section 125 Cr.P.C., which has since been dismissed as withdrawn. It is further averred that the Respondent left the matrimonial home in July, 2007 without any cause which led to the filing of a petition under Section 9 of the Hindu Marriage Act by the Appellant in the Court of the District Judge, Gurgaon seeking restitution of conjugal rights and in this petition the Respondent gave a statement to the effect that she was ready and willing to return to the matrimonial home, which led to the passing of the following order on 22.11.2011 (Annexure P-2 of the Appeal)

“Present: Petitioner in person with Shri Dilbagh Singh Advocate.

Respondent in person with Miss Shashi Bala,, Advocate.

By making a separate statement petitioner Jagdish has stated that he has compromised with the

respondent and as per compromise, he is taking the respondent and his son Lucky with him to village Munerika, New Delhi. He will keep his wife and son nicely and will not give any opportunity for any complaint against him. His son will complete the session of second standard in school at Luhari. In the next session, he will get him admitted in the school at his village. He has further stated that he would take the dowry articles lying in PS Farrukh Nagar to his house. His mother would reside with them. He has prayed that the application be dismissed as withdrawn.

By making a separate statement, respondent has stated that she has heard and understood the statement of the petitioner which is correct and the petition be disposed off as per the statement of the petitioner.

In view of the statements of parties, the present petition is dismissed as withdrawn. The parties shall remain bound by the statements made by them today in the court. File be consigned to the record room.

*sd/-
(Baljeet Singh)
District Judge Family Court,
Gurgaon 22.11.2011”*

4. The further case of the Appellant is that in June, 2012 the Respondent returned to the matrimonial home but her behavior remained the same with the Appellant and his family members and she started harassing the Appellant and his mother by using abusive language. On 21.6.2012, the Respondent left the house of the Appellant without informing him and subsequently the Appellant learnt that she had gone to Village Khandewla and had also taken ₹ 8,500/-, one gold chain and one ring with her. Despite several efforts made by the Appellant, the Respondent did not re-join the

matrimonial home. The Appellant accordingly prayed for dissolution of the marriage between the parties by a decree of divorce.

5. The Respondent was proceeded *ex parte* and in the course of *ex parte* evidence, the Appellant examined himself as PW-1 by tendering his affidavit by way of evidence Ex.PW-1/1 and relied upon certain documents Ex.PW-1/A to Ex.PW-1/C. The learned Family Judge by his impugned judgment dated 30th January, 2014 held that the Appellant had failed to establish the grounds of cruelty as mentioned in his petition. The relevant extract of the judgment of the learned Family Judge reads as under:-

“8. In the instant case the incidents stated in the petition by the petitioner appears to be normal tear and wear of a married life, where both parties are supposed to accommodate with each other to run matrimonial life. The petition is lacking specific allegation and incidents which caused petitioner cruelty making it impossible to live with the respondent. It need not be pointed out that the respondent joined the matrimonial home with the petitioner in June, 2012 unfortunately petitioner failed to mention any incidents after June, 2012 which caused him cruelty as per the provisions under section 13 (1) (ia). Needless to say that incidents of cruelty must be of such magnitude and nature which make other spouse impossible to live with him/her. However no such incidents have been mentioned by the petitioner in the whole petition. As it is clearly mentioned in Delhi High Court Rules to regulate proceedings under the Hindu Marriage Act, 1955 which read as under:-

7. Contents of petition:

In addition to the particulars required to 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:

(g) the matrimonial offence or offences alleged or other ground, 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.

9. Keeping in view the facts and circumstances, as discussed above, petitioner has failed to establish the ground of cruelty as mentioned in his petition. As such, petition is hereby dismissed.”

6. In the course of hearing, learned counsel for the Appellant vehemently contended that if both the spouses are living separately and there has been an irretrievable break down of marriage, such break down is considered a good ground for dissolution of marriage by grant of a decree of divorce. He relied upon the decisions of the Hon’ble Supreme Court in the following cases:

- (i) ***Sanghamitra Ghosh v. Kajal Kumar Ghosh, (2007) 2 SCC 220.***
- (ii) ***Ashok Hurra v. Rupa Bipin Zaveri, (1997) 4 SCC 226.***
- (iii) ***Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558.***

7. We have carefully gone through the aforesaid decisions and we are unable to uphold the contention of learned counsel for the Appellant that the marriage between the parties can be dissolved on the ground of irretrievable break down of marriage. The Hon’ble Supreme Court in the case of ***Vishnu Dutt Sharma v. Manju Sharma, (2009) 6 SCC 379*** and in the case of ***Neelam Kumar v.***

Dayarani, (2010) 13 SCC 298 has categorically held that since irretrievable break down of marriage is not a ground for divorce recognized by statutory law, no marriage can be dissolved on this ground under the Hindu Marriage Act, 1955 and it is for the Parliament to enact or amend the law on the subject.

8. As regards the judicial pronouncements relied upon by the Appellant, the same have no relevance to the facts of the instant case. In the case of *Sanghamitra Ghosh (supra)*, the Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution and with a view to do complete justice between the parties and on being satisfied that the marriage between the parties had irretrievably broken down held that it can grant divorce by mutual consent *in terms of the compromise between the parties set out in the petition*. Thus, this was a case where parties themselves had sought a divorce by mutual consent.

9. In the case of *Ashok Hurra (supra)*, a petition for divorce by mutual consent was filed by the husband and wife together satisfying the provisions of Section 13-B(1). It was averred that all the matters between the parties were settled *inter se* the parties and the wife had renounced her claim to maintenance. The parties simply sought a decree of dissolution of marriage by mutual consent. Subsequently, the husband *alone* moved an application praying for passing of a decree of divorce under Section 13-B(2) of the Act. The wife filed an application withdrawing her consent for mutual consent. The husband contended that the wife had withdrawn her consent *after* the expiry of the period of 18 months from the date of the institution of

the petition and this being the position it was incumbent upon the Court to pass a decree of divorce under Section 13-B(2) of the Act. Significantly, the husband in the interregnum had re-married and a male child was born out of the said wedlock. The trial court refused to grant divorce but a Single Judge of the High Court granted divorce on the ground of irretrievable break down of marriage. The judgment of the learned Single Judge was reversed by the Division Bench. On further appeal, the Supreme Court opined that there being no chance of revival and continuance of the marital relationship and there being a long lapse of time since the filing of the divorce petition, the grant of a divorce decree in exercise of the Supreme Court's jurisdiction under Article 142 was warranted. The facts in the said case are thus altogether distinguishable from the facts in the instant case. This judgment only serves to highlight the fact that a decree of divorce even in cases where the parties seek the same by mutual consent and which consent is withdrawn by one of the parties after the lapse of the statutory period of 18 months, can only be granted by the Supreme Court in exercise of its powers under Article 142 of the Constitution. The present case not being a case where parties at any point of time consented towards decree of divorce by mutual consent, this judgment is of no avail to the Appellant.

10. In the case of *Naveen Kohli (supra)* relied upon by the Appellant, the Supreme Court noted that irretrievable break down of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. However, it was observed that in view of the fact that the parties in the said case had been living separately for the last more

than 10 years and a very large number of criminal and civil proceedings had been initiated by the parties against each other, the matrimonial bond between the parties was found to be beyond repair. In such circumstances, the Supreme Court while upholding the judgment of the Family Court granting a decree of dissolution of marriage, set aside the judgment of the High Court refusing to grant divorce and held:

“91. Before we part with this case, on consideration of the totality of facts, this Court would like to recommend the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps.”

11. Thus, the judgment in the case of *Naveen Kohli (supra)* also does not come to the rescue of the Appellant.

12. In the instant case, we find that the Respondent had in fact on 22.11.2011 or thereabout joined the matrimonial home with the Appellant and prior to doing so had withdrawn her petition under Section 125 Cr.P.C. Resultantly, the Appellant was acquitted in case FIR No.142/08 under Sections 498-A/406/506 IPC, P.S. Farukhnagar, District Gurgaon on 18.5.2012. We cannot help but note that the parties had on 22.11.2011 settled their *inter se* disputes and differences and it is the Appellant's own case that the Respondent was residing with him till 21st June, 2012 when she left the matrimonial home. The Appellant's acquittal was during this period,

that is, in the period intervening 22.11.2011 and 21st June, 2012 and was presumably on account of the fact that the matter was not pursued by the Respondent wife and taken to its logical conclusion. It may further be noted that in the petition for dissolution of marriage filed before the Family Court, the Appellant had wrongly stated that the Respondent had given a statement in the petition under Section 9 of the Hindu Marriage Act that she would behave properly with the Appellant and his family members, whereas the actual position is that in that statement it was the Appellant who had undertaken to keep his wife and son nicely and further undertaken not to give any opportunity for any complaint against him.

13. Further, as noted by us hereinabove, in addition to the particulars required to be given under Order VII Rule 11 of the Code of Civil Procedure and Section 20(1) of the Hindu Marriage Act, 1955 all petitions under Sections 9 to 13 of the said Act shall by virtue of Rule 7 of the Delhi High Court Rules, state:

“(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.”

14. A specific query was put by us to the counsel for the Appellant in this regard but he was unable to point out from the petition any incident after June, 2012 which caused the Appellant cruelty as per the provisions of Section 13(1)(ia) of the Act. The petition in fact is bereft of any act or incident post 2012 which can be construed as an act of cruelty on the part of the Respondent *qua* the Appellant. The

Act and the Rules mandate that the Appellant shall spell out such instances of cruelty as are capable of yielding a decree of divorce, setting out with particularity the time and the places of the acts alleged and other facts relied upon. The Appellant has singularly failed to spell out even a single act of cruelty after June, 2012 as would entitle him to a decree of divorce under the provisions of Section 13(1)(ia) of the Act.

15. In view of the above, we affirm the judgment of the learned Family Court that the Appellant has failed to establish the ground of cruelty as mentioned in his petition.

16. The appeal is accordingly dismissed as being without merit.

**REVA KHETRAPAL
JUDGE**

**PRATIBHA RANI
JUDGE**

April 02, 2014
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