

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

Date of Decision: 26.03.2014

+ **MAT. APP. 53/2008, CM No. 7643/2005**

RAJENDER KUMAR Petitioner

Through: Nemo.

Versus

MANJU Respondent

Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The present appeal assails the judgment dated 30.03.2005 in HMA No. 140 of 1998 whereby the learned ADJ, Karkardooma Courts, Delhi rejected the appellant/husband's petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (the 'Act').

2. The parties were married as per Hindu rites on 05.05.1992. A girl Surbhi was born to them. The husband alleged that the wife's behaviour towards him and his family was not cordial and that she made demands which were beyond his financial means; that she and her family abused and also threatened him with physical violence; that she insisted on living separately from the parents of the husband; and she further threatened to implicate him and his family in false dowry demand cases. The petition narrates various dates and instances of acts of cruelty. Hence the husband/petitioner prayed for dissolution of their marriage on the ground of

cruelty.

3. The wife, in her Written Statement (WS), denied all the allegations. She submitted that, it was in fact, the husband and his family who were cruel to her; that she never abandoned her husband; that in fact she was subjected to physical brutality, even their minor daughter was not spared from the husband's act of violence and of his family members; that the extent of physical violence was so severe that the wife gave birth to a stillborn child, and even during this emotional trauma and physical tragedy, neither the husband nor his family members visited her in the hospital nor reached out to commiserate her; that the husband did not pay for any of the expenses incurred for the delivery, neither did he offer to reimburse the expenses to the family of the wife. It was submitted that the husband and his family made several demands for dowry on the wife and her failure to bring the amount demanded, only lead to more violence towards her. The family of the wife had to struggle to gather such large amounts in order to save her from being harassed any further. It was unequivocally denied that the wife ever asked the husband to live separately from his family or that he had complied with such a demand. It was submitted that the complaint made to CAW Cell was compromised with an assurance that the husband and his family members shall not make any more demands for dowry and instead would take care of the wife and their minor daughter in the matrimonial home. However none of the assurances were met.

4. The Trial Court framed the following issues:

- I. Whether the respondent has treated the petitioner with cruelty as alleged? OPP

II. Relief.

The Trial Court noted that the statements made by the husband on Oath stood successfully rebutted by the wife. As a result it was held that there was no cruelty towards the husband and his family. Instead, it was the husband who was cruel towards the wife. The Trial Court concluded that a demand for dowry of Rs.50,000/- was made by the husband and his family. That the wife could collect only Rs.30,000/- was found to be true. The record of bank transactions showed that the wife's father had withdrawn a sum of Rs.30,000/- and otherwise tried his best to pay the entire dowry amount demanded.

5. On finding that the husband had been unable to prove any of the allegations made against the wife and in view of the fact that the wife has discharged the burden of proving there was cruelty towards her, the Trial Court dismissed the petition.

6. This Court notices that this appeal has been pending since the year 2005 and this is its twenty-eighth listing. The appellant has not appeared before this Court since 27.11.2012. Consistently for the last six hearings and for earlier seven hearings too the appellant has not appeared. It is noted that over more than 65% of the time when the case was listed, the appellant has not appeared in the Court. This really shows a lackadaisical approach of the appellant towards the matter and the non-seriousness in pursuing it. The appellant is proceeded *ex parte*. However, the written synopsis of the appellant being on record is taken into account for adjudication of the appeal on merits.

7. The appellant has relied on the Supreme Court *dicta* in **Dastane v.**

Dastane AIR 1975 SC 1534 to contend that acts of cruelty are not restricted to life, limb or health alone but to reputation also. The appellant had averred that the wife was required to prove before the Court that she faced reasonable apprehension of danger to her physical and mental wellbeing while cohabiting with the husband; that solitary incidents or occasional outbursts towards the other spouse cannot be the sole basis of deciding if there were incidents of cruelty, but that such incidents should be regarded in light of the overall behaviour towards the spouse. To strengthen this argument, the appellant has relied upon the judgment in **G.V.N. Kameshwara Rao v. G. Jabbili (2002) 2 SCC 296**. It was also the husband's case that the wife often indulged in picking up quarrels with him and his family members; that he was often under the apprehension of being implicated in false cases by the wife, if he failed to fulfil her demands. He had listed acts of cruelties by the wife towards him which, it is averred, the Trial Court failed to take note of.

8. In the written submissions it is further contended that the Trial Court failed to take into consideration the various documents placed by the husband but took into account only the testimony of the wife and her father, while dismissing the petition. Reliance is placed on complaints to the police to show that there were threats of her committing suicide; and a legal notice sent to the wife requiring her to join the company of the husband, apropos a compromise having been made between them on 28.04.1997.

9. This Court is of the view that the appellant/husband has not been able to show or substantiate specific instances of cruelty. The burden of proving the allegation of cruelty lies upon the party alleging it. The appellant was

thereby required to bring all such documents and witnesses which would prove the allegations of cruelty. Mere allegations and bald averments are insufficient to make out a case of cruelty. This Court notices that as far as the documents brought before the Court were concerned, the learned Trial Court has indeed taken due note of them. Indeed, the impugned order diligently records that the legal notice requiring the wife to join the company of her husband and her reply to it to the effect that the promise of harmonious marital life was breached by the husband's dowry demands and threats; hence she chose not to join the company of the husband to avoid the threats. This Court is of the view that the Trial Court has taken into record all documents and the complete circumstances before dismissing the petition.

10. The written synopsis further alleges that the Trial Court has not taken into consideration the various instances of cruelty towards the husband thereby failing to arrive at logical conclusion. This Court, however, is of the view that the impugned order has systematically taken into record all the evidence produced by the both parties. Admittedly, the husband had filed for divorce petition on grounds of cruelty. The burden to prove cruelty lay on him. He failed to prove it. Therefore his petition was dismissed. This Court in ***Renu Bala v. Jagdeep Chiller* (2010)171 DLT 314** held that in a divorce sought on grounds of cruelty or desertion the facts are not to be proved beyond reasonable doubt, and like in civil proceedings it would be sufficient if such facts are proved by preponderance of probabilities. The said judgment observed that in matrimonial cases and civil proceedings Courts have to arrive at an intelligible deduction keeping in mind the normal

human conduct and the prevailing fact-situation, even though the same may not be specifically pleaded or proved by the parties. Such being the settled the position, the husband was not required to adduce all such evidence which would establish beyond reasonable doubt that he was being treated with cruelty by the wife. However, this Court notices that the husband has failed to bring any evidence at all to show that there were incidents of cruelty in the first place. The various letters, documents placed by the respondent only go to show that it was the wife who was being treated with cruelty by the husband.

11. The bank transactions showing withdrawal of the amount paid as dowry, the correspondence by the wife in response to the husband's legal notice and the letter written by the father of the wife to the husband, expressing his trepidation for his daughter's safety in the matrimonial home, only go to prove the veracity of the submissions made by the wife.

12. This Court finds no error in the impugned order. The petition is without any merit, and is accordingly dismissed.

NAJMI WAZIRI, J.

March 26, 2014/d/acm