

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

% *Order delivered on: December 16, 2013*

+ **FAO 12/2003**

SARDAR AVTAR SINGH Appellant
Through Ms.Payal Jain, Adv.

versus

AMARJEET KAUR GANDHI Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) for setting aside the impugned order dated 7th December, 2002 wherein the learned ADJ dismissed the petition of the appellant for divorce under Section 13(1)(ia) of the Act.
2. On 26th September, 1971 the parties were married according to Hindu (sikh) rites. Out of this wedlock, two male issues were born namely Manpreet Singh born on 27th February, 1974 and Gurpreet Singh born on 5th March, 1977.
3. It was the case of the appellant before the learned Trial Court that during her stay with the appellant, the respondent treated the appellant with cruelty and denied/refused to co-habitat with the appellant.
4. The parties are living separately since January, 1995.

5. On or about 16th February, 1995, the appellant filed a divorce petition on the ground of cruelty. The said petition was dismissed by judgment and decree dated 7th December, 2002 against which the appellant had filed the present first appeal.

6. The divorce was sought under Section 13(1)(ia) on the grounds of cruelty and desertion, it was alleged in the petition that the respondent/wife was a short tempered woman and did not give any respect to the appellant and his family. She used to humiliate them on small matters of domestic routine and always forced the appellant to leave his parental house. There used to be quarrels which was unbearable for the appellant and his family members. Many occasions the appellant used to call up the respondent's father who would then interfere in their matrimonial life. On one occasion when the appellant returned from his official tour from Bhubneshwar, the respondent completely stopped talking to him for without any reasons and the matrimonial discord only worsened. Even when the father of the appellant suffered a heart attack, the respondent did not come to see him and even refused to cook or serve food to him. The respondent was working as a teacher but refused to contribute her salary towards the household, the appellant alone had to incur expenses relating to upkeep of the house and education of the children. Thereafter on account of intolerable behavior of the respondent, the appellant had to leave his matrimonial house and has developed condition of high blood pressure. The respondent also denied cohabitation to the appellant and that made his life unhappy and caused him mental agony.

7. The respondent filed a Written Statement wherein she has admitted the marriage between the parties but vehemently denied the allegations

levelled against her in the petition. It was alleged that it was the appellant who used to abuse his own family. There was conflict amongst the family members. It was specifically denied that the respondent had forced the appellant to leave his parents. However, it was admitted by her that they were residing at a rented accommodation at Defense Colony. She has stated that the appellant himself was unhappy residing in joint family in view of small accommodation available. As the financial position of the parties was critical the respondent was compelled to find a job as none of the family members had come in support. The appellant shifted to a government accommodation not at the behest of the respondent but because it was convenient for him as it was close to his office. Thereafter after the birth of their first child, the relationship with the appellant's parent became cordial and they shifted back to their matrimonial home, where they were asked to build one room and for doing so the respondent had to raise money. Thereafter, once again the appellant started misbehaving with his parents and was asked to leave and the parties shifted to Lajpat Nagar. Thereafter a plot was purchased at Pitampura for which the appellant had sold her jewellery and some money was taken from her father. The appellant did not have cordial relations with the landlord and once again they had to move out and shift to another accommodation at Maurya Enclave, Pitampura. As both the parties were working at that time, the respondent called her father from Amritsar to take care of the constructions and also to arrange some money for the same. She denied averments made in the divorce petition that she would not speak cordially with him rather, it was he who was aggressive and an alcoholic and did not even look after his own son Gurpreet Singh when he had a surgery for bone tumor. It was she who was alone taking care of the son. She admitted that she called her father from Amritsar to lend a

helping hand as she had to work and look after the household also. The appellant even abused and humiliated the respondent's father. All other averments made by the appellant have been denied. It is submitted that the appellant used to come back home in a drunken position and he could not prove himself to be a good husband or a sincere father and he did not fulfill his responsibilities towards them. The respondent asserts that she has always been monetarily contributing to the home affairs and it is she who has been helping him purchase plots and construction thereon; the appellant is not giving any financial help towards the house or for upkeep and education of the children.

8. The following issues were framed in the Trial Court :

a) Whether the respondent has treated the petitioner with cruelty after the solemnization of marriage.

b) Relief

9. The learned ADJ held, by judgment dated 7th December 2002 dismissed the petition under Section 13(1) (ia) of the Act. Observed in the judgment with regards to issue No. 1 was that, in matters of cruelty all the facts of the case have to be take into consideration and their cumulative effect has to be seen. The allegations of cruelty cannot be vague and general in nature. It is a settled law that vague allegations of cruelty are not sufficient to grant divorce and the onus to prove is always on the appellant. Even though "mental cruelty" has not been defined in the HMA, however it can be broadly said that the conduct which inflicted upon the other party mental pain and suffering making it impossible for that party to live with the other amounts to cruelty and must be of such a nature that the parties cannot be reasonably expected to live together. In the present case, after perusing the allegations from both the ends, it shows that the allegations levelled by

the appellant against the respondent are absolutely vague, general in nature and lacking substance. The application for divorce was filed after 24 years of marriage and in the light of Section 23 of the Act it is obligatory on part of the court to be satisfied that there has not been any improper delay in instituting the proceedings. The learned ADJ observed without a doubt that the petition for divorce filed by the appellant has not been filed with clean hands. If the allegations of the appellant were to be true then the appellant ought to have filed for divorce earlier than 24 years and that the conduct of the appellant where the parties have lived together and cohabitated with the respondent and even 2 children were born out of the wedlock, shows that the alleged ill-conduct of the respondent has been condoned by the appellant. There is no material on record to suggest that the appellant had been forced by the respondent to arrange for a separate accommodation except for their matrimonial home. Even if this was true, such act of the respondent would not amount to cruelty and also the father of the appellant, during his cross examination, deposed that there are only 2 rooms in the house and that his family consisted of himself, his wife, appellant, his wife and 2 male children, and thus it can be presumed from the facts of the case that the accommodation available to the parties and other family members was less and that the respondent was justified in asking/pressurizing the appellant to arrange for separate accommodation, if at all.

It was observed in the impugned judgment that mere allegations of the appellant that the respondent is short tempered and a short tongued woman would not suffice to reach any conclusion that her behavior was rude towards the appellant and even during the course of evidence the appellant has only reiterated his vague averments already made in the petition. The

appellant also alleged that the respondent did not cater to his needs and also did not cook or serve any food and that he was forced to go out and eat. This statement has been rendered untrue by the testimonies of the two sons of the parties who have specially said that their mother used to wake up at 4 am every day to cook food for the whole family as well as the father. It has also come to the conclusion that the appellant has failed to prove on record that it is the respondent, on account of whose behavior, he was forced to leave his matrimonial home. Both the sons of the parties have specifically denied the suggestions that their mother used to misbehave with the appellant or their grandparents. Various investment documents were presented and a bare perusal of the same shows that the saving were made in joint name of both the parties and this falsifies the contention of the appellant that the respondent has been making her own savings at the cost of the children. None of the relatives appeared in the witness box to depose that the respondent was not in talking terms with them, and in the absence of any corroborative evidence, vague testimony of the appellant does not inspire any credence.

10. Para 19 of the judgment deals with the allegations of cruelty. The instance and averments of cruelty as mentioned in para 19 of the judgment are reproduced hereunder :

“....In the instant case as referred above, the petitioner has sought dissolution of his 30 years old marriage on the grounds of cruelty with the allegation that the respondent after marriage was found to be of nagging type, short tempered and short tongued woman who would not give due respect to the family of petitioner. Further allegations are that she did not adjust with the petitioner or his family members in the joint house and compelled him to leave his parental house. That to force the petitioner to separate from his parents, she left for her parents’

house at Amritsar and had put a condition for her coming back that he should arrange for a separate accommodation. That under pressure, the petitioner had to shift to Defence Colony and thereafter to R.K. Puram and again back to his parents house where again she could not adjust with her in laws and forced the petitioner to move out of the house and this time, they took a tenanted accommodation at Lajpat Nagar in April, 1978 and thereafter, they raised construction of their own house at Pitampura where the parties shifted in the year 1981. He has also alleged about the interference of her father in the matrimonial house. The allegations are that the respondent used to be uncooperative with the petitioner and at times, he had to go to his office without breakfast sometimes would not be even served with dinner. It is alleged that ultimately petitioner was forced to leave his matrimonial house in January, 1995 on account of cruel behavior of the respondent and he started residing at his brother's house at Vikas Puri. There are also allegations that the father of petitioner had remained admitted in the Escorts Hospital on account of heart ailment in the month of February, 1995 but the respondent did not visit him in the hospital and the petitioner had to face queries of the relatives in this regard which caused him humiliation. The allegations are also that the respondent never used to give her salary to the petitioner or to supplement the domestic expenses and was saving her salary in different kinds of bonds, whereas, the petitioner had to take care of the household expenses as well as the education of his both children as he admitted his elder son in Pharmacy College, Bangalore in 1992 and his second son in MBBS course in Calcutta. There are also allegations of misbehavior by the respondent with the family members of petitioner, that she used to hurl filthy abuses to them leaving the petitioner to be ashamed of her conduct....”

11. It is argued by the learned counsel for the appellant that all these instances of cruelty stated by appellant were brushed aside by the learned Trial Court by holding “allegations are vague and general in nature” and that “in view of the short accommodation available to the parties, the alleged demand of respondent for a separate residence was not unjustified” and that

“the appellant could have instituted the divorce proceedings earlier” and that “even after alleged exercise of force by the respondent upon the appellant, the parties have lived together”.

12. Besides the instances of cruelty detailed in the petition, there was another instance of cruelty i.e. the scandalous allegations leveled by the respondent against the appellant of illicit relationship with one Parvinder Kaur. This allegation was made by the respondent in the cross examination of the appellant as against all settled law, the learned Trial Court wrongly rejected this ground of cruelty by simply holding that one single act cannot be treated as cruelty. The relevant part of the judgment to this effect is reproduced hereunder :

“...The counsel for petitioner has contended that the respondent has also inflicted cruelty upon the petitioner as during cross examination, it was suggested to him that he had illicit relations with one Parvinder Kaur and was residing with the said woman. The counsel for petitioner objected to said cross examination of the petitioner being beyond pleadings of the respondent, so, counsel for respondent was not allowed to put further question to that effect to the petitioner. Admittedly, there are no pleadings of the respondent that the petitioner had illicit relations with one Parvinder Kaur and this suggestion to the petitioner was given beyond pleadings. Even perusal of the testimony of the respondent shows that once she had tried to contact the petitioner when he was residing at Rohini, she found one another lady inside the house and petitioner on that occasion had asked the respondent to leave the place or he would break her legs and throw her from the fourth floor. This incident appeared to have taken place subsequent to the filing of the petition and it should have been brought on record by the respondent through her counsel as subsequent event, however, it has not been done so in the present case. No doubt, leveling of scandalous allegations without proof do amount to mental cruelty but in the present case, keeping in view the totality of the circumstances and the conduct of the petitioner one single

act of the respondent that she disclosed before the court that petitioner was found living with another woman cannot be treated as cruelty for dissolution of their marriage, particularly, when the respondent till date wants to keep her thirty years old marriage with the petitioner alive....”

13. It is argued by the learned counsel appearing on behalf of appellant that the learned trial court did not appreciate that there is no cross-examination of the incidents as stated by the appellant in his statement vis-à-vis leaving the appellant's parents house and going to Amritsar and then coming back from Railway Station straight away to Defence Colony. No cross-examination of the respondent back biting with the neighbours thereby tried to humiliate the appellant. No cross-examination of refusal of sexual intercourse and refusal of cohabitation. No cross-examination of visiting Escort Hospital after the operation of appellant's father. No cross-examination of calling her father and giving threat to the appellant and leaving the house in the circumstances by the appellant. No cross-examination on the incident of appellant visiting to Bhubaneswar and coming back to Delhi and wishing the respondent. It is proved by the appellant in the case of need when the children were minor, she did not compel the appellant to leave the appellant's parent house and when children grew up she again compelled the appellant to the said house. Thus, the respondent is not only cruel towards the appellant but has been proved totally selfish.

14. It is also argued that the learned trial court did not appreciate the deposition of PW3 which clearly states the selfishness and cruelty of the respondent towards the appellant is as follows:

“Since the respondent was employed as a teacher and since the petitioner was also employed. Facing the problem to look after

the children, the respondent again came to reside in my house with the petitioner. The children were looked after by my wife and my unmarried daughter while both the parties were doing their job. When the children grew up, the respondent again came to reside in my house with the petitioner. The Children were looked after by my wife and my unmarried daughter while both the parties were doing their job. When the children grew up, the respondent again started quarrelling with the petitioner and other family members. She used to threaten the petitioner that in case he does not shift from this house, then she would commit suicide. Once she also put her fingers in the electricity plug in order to pressurize the petitioner to separate from the joint family.....”

15. The said findings of the Court below are contrary to decision of the Apex Court in the case of *A. Jayachandra vs. Aneel Kaur*, (2005) 2 SCC 22 the relevant part is reproduced hereunder :

“Though respondent tried to show that they were simple and harmless advice, yet on a bare reading thereof it is clear that these were clear manifestations of her suspecting the husband's fidelity, character and reputation. By way of illustration, it may be indicated that the first so-called advice was not to ask certain female staff members to come and work on off-duty hours when nobody else was available in the hospital. Second was not to work behind the closed doors with certain members of the staff. Contrary to what she had stated about having full faith in her husband, the so-called advices were nothing but casting doubt on the reputation, character and fidelity of her husband. Constant nagging on those aspects, certainly amounted to causing indelible mental agony and amounts to cruelty. The respondent was not an ordinary woman. She was a doctor in the hospital and knew the importance of the nature of duty and the necessity of members of the staff working even during off hours and the working conditions. There was another instance which was specifically dealt with by the trial court. Same related to the alleged extra marital relationships of the appellant with another married lady who was wife of his friend. Though the respondent tried to explain that she was not responsible for

making any such aspersions, the inevitable conclusion is to the contrary.”

16. The similar view was taken in *Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate*, AIR 2003 SC 2462 the relevant part is reproduced hereunder :

“The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross- examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

17. In *Hemwanti Tripathi vs. Harish Narain Tripathi*, 181 (2011) DLT 237, it is also held that :

“14.....That the ratio of Ashok Kumar v. Santosh Sharma (supra) and Savitri Bachman (supra) wherein it was held that a decree of divorce on the ground of cruelty can be passed on the strength of false, baseless, scandalous and malicious allegations in the written statement by one party on the other is thus found applicable to the facts of the present case because in the case at hand the husband has not led any evidence in support of his allegations. What surprises this Court the most is that despite the fact that the Trial Court gave the entire findings in favour of the Appellant but still passed the judgment against the Appellant merely on the ground that the acts alleged by the Petitioner against the Respondent at best can be termed as wear and tear of daily life and does not amount to cruelty. The learned Trial Court further held against the Appellant because she failed to produce any close relative including her uncle who was living in neighborhood to prove the instance of beatings given by the Respondent on various dates. This Court fails to comprehend as to how such a view could be taken by the learned Trial Court as clearly serious and malicious allegations of the Appellant having relationship with one Sadhu and her staying out of the house during nights also levelled by the Respondent and as per the settled legal position, casting such aspersions on the character of the other spouse has the affect of causing deleterious affect on the mind of such spouse and the same is a worse form of cruelty. It has not been denied by the Respondent that no evidence was led by him to prove that the Appellant used to go out during night to stay with that Sadhu. The Respondent has also not given any reasons in the Ex. PW 1/1 to sever his relationship with the Appellant.

15. In the light of the aforesaid discussion, this Court does not find any rationale or justification given by the learned Trial Court in its conclusion to dismiss the divorce petition filed by the Appellant. The reasoning given by the learned Trial Court is perverse and illegal on the very face of it and, therefore, the impugned judgment and decree dated 13.7.1998 is accordingly set aside.”

18. The learned Trial Court incorrectly ignored the evidence of the appellant on cruelty by observing as per under :

“....however, it has already been observed above that the father of the petitioner is an interested witness as he is being taken care of by the petitioner and even otherwise, he has not given any specific incident, as to when the petitioner or his any other family members was harassed or humiliated by the conduct of the respondent. Similarly, the testimony of the PW5 Shri Manmohan Singh who is the cousin brother of the petitioner does not inspire any credence although in Chief Examination, he has stated that he was on visiting terms with the petitioner’s family and found the respondent to be cruel towards the petitioner and his family and she used to quarrel with the petitioner and he was forced to leave the house due to her conduct, however, he has nowhere explained or given details as to when he had visited the matrimonial house of the parties and had found the nature of the respondent to be cruel....”

19. It is the admitted position that the parties are living separately since January, 1995, i.e. for more than sixteen years. The allegations of cruelty is also such which makes reconciliation between the parties have “irretrievable broken down” and as such there is no reason to carry on with the broken or dead marriage and continuation with such a marriage will cause further mental cruelty to the appellant. In such cases, it is expedient and necessary to dissolve the marriage with decree of divorce as it has been held in ***Samar Ghosh vs. Jaya Ghosh***, (2007) 4 SCC 511, the relevant part is reproduced hereunder :

“Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavor to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.”

20. The respondent did not appear inspite of repeated service of notices. Even by order dated 10th July, 2003, the notices were also sent to the sons in order to find out the possibility of reconciliation but they refused.

21. As the parties are living separately for more than sixteen years and there has been no reconciliation and the marriage has been irretrievable broken down, it is just and proper that the marriage between the parties is dissolved by decree of divorce for the reasons stated in paras 12 to 19.

22. The present appeal is accordingly partly allowed. The appellant is entitled to a decree of divorce on the ground of cruelty. The impugned judgment is set aside. The prayer made in the divorce petition to the extent as mentioned above is allowed. Pending application also stands disposed of.

23. No costs.

(MANMOHAN SINGH)
JUDGE

DECEMBER 16, 2013