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

MAT.APP.(F.C.)No.128/2014

Reserved on: 27th November, 2014

Date of Decision: 5th January, 2015

AMARJEET SINGH

..... Appellant

Through : Mr. Rajan Khosla, Adv. with
appellant in person.

versus

AMARJEET KAUR

..... Respondent

Through : Mr. H.S. Kohli, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J

1. The appellant assails the judgment and decree dated 24th July, 2014 on three grounds which have been pressed before us. It is firstly contended that the judgment and decree is premised on the solitary testimony of the respondent who examined herself in support of her case and did not produce any other witness. The second ground pressed before us is that the impugned judgment and decree is based

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on irrelevant incidents relating to the employment record of the appellant. It is lastly urged before us that the affidavit filed by the respondent is not in accordance with law and ought to have been disbelieved completely.

2. The respondent has appeared on caveat. We had called for the record of HMA No.658/2011 from the Family Court which has been placed before us. We have heard counsel for the parties and scrutinized the record as well.

3. The matrimonial alliance of the parties was finalized through a matrimonial classified advertisement published in the Tribune after a formal meeting at Hisar, Haryana in the first week of November, 1993. The marriage of the parties was solemnized as per Sikh rites and ceremonies on 30th December, 1993 at Hisar after an engagement ceremony on 29th November, 1993. From their marriage, the parties were blessed on 2nd March, 1995 with a daughter, presently aged about 19½ years, and on 15th December, 1998 with a son, presently aged about 17 years.

4. It is submitted that on 2nd June, 2006, the appellant had wilfully withdrawn from the society of the respondent and the parties have not cohabited as husband and wife ever since.

5. On the grounds of extreme torture and cruelty, the respondent ('wife' herein) in July, 2010 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 which is still pending before the Mahila Courts in the District Courts, Saket, New Delhi. In addition, on 11th August, 2011, the respondent filed a petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 praying for dissolution of their marriage by a decree of divorce on grounds of extreme cruelty and desertion.

6. From the record of the case, we may briefly notice certain proceedings in the divorce petition which was registered as HMA No.658/2011 and placed before the Principal Judge, Family Court, Dwarka, New Delhi. The appellant herein entered appearance in person with counsel on the 17th of October 2011 and was granted time to file the written statement within the prescribed statutory period on this date. The parties were sent to the counsellor for counselling and

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the matter was directed to be posted for issues on the 19th of December 2011. As the court did not conduct proceedings on the next date, the case came to be adjourned to 31st January, 2012 when again the appellant appeared in person. Instead of filing the written statement, the appellant filed an application under Section 148 read with Section 151 of the C.P.C. seeking enlargement of time for filing the written statement with supportive documents. The Family Court heard the appellant on the application when it was informed that the written statement was not yet ready and merely a draft had been prepared. The respondent opposed the application pointing out that in accordance with the court orders, all documents stood supplied to the respondent as back as on 24th October, 2011. The court noted that since more than three months had already expired, in view of the statutory prescription under Code of Civil Procedure, extension of time after expiry of 90 days could not be given. The court also found that there was no reasonable ground for granting adjournment to file the written statement and dismissed the application.

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It is noteworthy that this order was accepted by the appellant and has attained finality.

7. The matter was accordingly adjourned to 14th March, 2012 for recording of evidence of the respondent. The respondent filed her evidence on affidavit in support of her case which was tendered in her oral evidence on the 21st of November 2012. She examined herself as the sole witness in support of the case when the following statement was recorded:

“I tender my evidence by way of affidavit which is Ex.PW1/1 which bears my signatures at points A and B. I rely upon documents Ex.PW1/A, Ex.PW1/C to Ex.PW1/N. Document Ex.PW1/A is the petition filed by me u/s 13 (ia) & (ib) HMA.

Document Ex.PW1/B is de-exhibited as the same is not filed along with the affidavit nor already filed.

Document Ex.PW1/C/1 to C-7 are photocopies of bank certificates (original seen and returned). Ex.PW1/C-8 is de exhibited as the same is not filed along-with the affidavit nor already filed.

Document Ex.PW1/D is the photocopy of sale deed (original seen and returned).

Document Ex.PW1/E is the photocopy of Agreement to Sell with respect to fittings and fixtures (original seen and returned).

Document Ex.PW1/F-1 to F-24 are the photocopies of certified copies of bank statements. Documents

Ex.PW1/F-25 to F-37 are photocopies of passbook of savings bank account (original seen and returned).

Document Ex.PW1/G-1 to G-10 are the photocopies of employment record. Ex.PW1/G-4 is de exhibited being it is a photocopy and Ex.PW1/G-5 to G-7 are part of one document (original seen and returned).

Document Ex.PW1/H is the photocopy of my statement made to the police dated 18.03.2010.

Document Ex.PW1/I-1 is the photocopy of the carbon copy of the complaint made to the police. Document Ex.PW1/I-2 is the photocopy of medical certificate (original seen and returned).

Document Ex.PW1/J-1 to J-4 are the hand written documents by my mother in law.

Document Ex.PW1/K-1 to K-21 are de exhibited as the same are photocopies. The same are now marked as Mark K collectively.

Document Ex.PW1/L-1 to L-7 are de exhibited as the same are photocopies. The same are now marked as Mark L collectively.

Document Ex.PW1/M (collectively running into 24 pages) are photocopies of my income tax returns for the assessment years 1999 to 2010 (original seen and returned).

Document Ex.PW1/N (running into 15 pages) comprising of copy of FIR No. 188/2012 PS Vasant Kunj under Section 31 if DV Act with copy of certified copy of Kalandra and record annexed therewith and copy of FIR No.250/2012 with copy of certified copy of Kalandra and record annexed therewith.

XXXXXXXXXX by Sh. Rajan Khosla counsel for the respondent.

Deferred.”

8. We find that no objection of any kind was raised by or on behalf of the appellant to the affidavit tendered in evidence on behalf of the respondent. No challenge was made to the manner or mode of proof of the documents filed by the respondent which was also duly accepted as noted above. The appellant was duly represented by the counsel.

9. The cross-examination by counsel on behalf of the respondent by the appellant commenced on 1st December, 2012. It was continued thereafter on 9th January, 2013; 2nd February, 2013; 7th March, 2013; 10th April, 2013; 7th May, 2013; 6th July, 2013; 31st October, 2013; 4th January, 2014; 22nd February, 2014 and 25th February, 2014. It was finally closed on 5th March, 2014. The record of the Family Court would show that the cross-examination runs from pages 237 to 345.

10. At no point of time did the appellant raise any objection to the evidence of the respondent. There was no defence on record of the respondent. The appellant was cross-examined at length even on the merits of the allegations made by the respondent.

11. Learned counsel for the respondent has pointed out that her grievance against the appellant related to mental as well as physical cruelty inflicted on her which is briefly summed up thus:

Sr. No.	Brief description
A. MENTAL TORTURE	
(i)	Discovered, just 2 months after the marriage that the appellant consumes alcohol, which was totally contrary to the representations made by the appellant's family to the respondent wife's family at the time of marriage.
(ii)	Appellant failed to support the family either emotionally or financially. Appellant never participated in any discussion with regard to the future of the children, which was a great mental torture for the respondent wife since she alone managed all the financial affairs of home as well as educational expenses of the kids. The details of the various expenses incurred by the respondent wife is exhibited as Ex.-PW-1/F-1 to F-37. Appellant rather spent his entire income on alcohol.
(iii)	Under such compelling circumstances, the respondent wife had to undertake various consultancy works despite her health condition, soon after the birth of their daughter to meet out the financial expenses of the family.
(iv)	During the time of delivery of the second child, appellant even failed to accompany the respondent wife to the doctor. Moreover, the entire expense with regard to delivery of the child was borne by the parents of the respondent wife. Whereas to the contrary the appellant exploited the situation and did not turn out home for 20 nights on different occasions and lavishly spent Rs.85000 in hotel highway mood near Manesar on NH-8. The medical bills are exhibited as Ex.1/P & 1/Q.

(v)	Appellant also developed habit of smoking and used to Smoke and drink at a khokha near to their house and created various scenes either with the family members or in the colony. All these acts of the appellant created an embarrassing situation for the respondent wife and the children, since they were acquainted with everyone in the neighbourhood.
(vi)	Appellant was admitted to vimhans, Vishal Foundation Drug De-addiction & Rehabilitation Centre and other de-addictions centers on many occasions. However, all the efforts considerably failed since the appellant always started consuming alcohol from the next day of his discharge from the hospital, which always caused a great mental stress to the petitioner. Despite numerous treatments, appellant consumed around 4-5 bottles of liquor everyday and indulged in fights with the respondent wife which even went to the extent of physically assaulting the respondent wife. Apart from creating nuisance inside the house, appellant created many scenes around their area of residence. On many occasions the acts of the appellant also traumatized the children, which considerably affected the academic performance of the children and caused a strong psychological and emotional pressure on the kids. The medical documents reflecting chronic addiction of alcohol by the appellant is Ex.PW-1/K-1 to K-21.
(vii)	Mother of the appellant was indulged in black magic, which created a great mental agony and terror in the minds of the respondent wife and the children. The activities of performing black magic are Ex.-PW-J-1 & J-4. Apart from the above, the mother-in-law of the respondent wife intentionally tortured the petitioner by either no letting her to enter inside the home or by passing taunting remarks.
(viii)	Appellant on many occasions threaten to kill the father of the respondent wife, which caused a great terror in the mind of petitioner. A copy of complaint made to police by the

	respondent wife is Ex.PW-1/H.
(ix)	Apart from alcohol and smoking, appellant was also involved in prostitution and was found coming out of a room with a girl in compromising situation in Karnal. Moreover, appellant himself admitted before the respondent wife that he regularly visits prostitutes.
(x)	Appellant was thrown out of every job after 4-5 months because of his misdemeanor and conduct at work. Even when the respondent wife had started a consultancy firm under the name of Amarjeet & associates, company incurred huge losses in every project which was looked into by the appellant. A brief detail of the conduct of the appellant during his visit to various projects of Amarjeet and associates are: - Company faced huge losses in Gandhidham project. During foreign visits in respect of the aforesaid project, Appellant spent entire funds on alcohol and prostitutes during his visit to Thailand and Singapore, during his visit for the aforesaid project. - Altercations with the owner of REI agro Mr. Sandeep Jhunjhunwala at the project site under the influence of alcohol. - In the year 2002-2003, appellant visited Nepal for a project with K.L. Duggal Group. But to the dismay, the appellant could not meet the owner of the group since he was lying drunk in the hotel room and had lost his mobile and credit card. Situation became so worse that respondent wife had to send money through someone to the appellant. - During the project with Lal Mahal group at Kaki Nara Port, due to his misdemeanor and conduct with a women worker appellant had to spend a night in police lockup. Moreover, the owner of the group expressed his concern, since the appellant had created a scene in the hotel for not letting a sex worker to

	enter in his room. During the same project, appellant started absenting himself from the project site and started living in a hotel in vishakapatnam. Entire money was spent on alcohol and respondent wife was constrained to get Rs.95,000/- transferred to his account. However the situation became worse when the respondent wife was constrained to fly to Vishakhapatnam to fetch the appellant back.
<u>B. PHYSICAL TORTURE</u>	
(i)	Appellant threw anything which came in his hand upon the respondent wife under the influence of alcohol and started hitting and beating the respondent wife on slightest of reasons. Moreover, appellant gave merciless beatings to the respondent wife whenever she tried to discuss all these issues with him and even tried to strangle the respondent wife in front of kids.
(ii)	Appellant resisted access to the respondent wife into the house, followed by a physical attack in front of a stranger along with whom he was consuming liquor. A police complaint along with documents in this regard are exhibited as Ex.-PW-1/I-1 to I-2.
(iii)	Despite protection orders from the Mahila Court, appellant gave physical beatings to the respondent wife which eventually resulted in registration of case FIR no.188/2012 and 250/2012.
<u>C. DOWRY DEMANDS</u>	
(i)	Complaints regarding gifts given in connection of marriage. Explanations were given that the same were for smoothening relations with the relatives; therefore eventually father of the respondent wife started giving expensive gifts to the family of the appellant.
(ii)	All the jewelry of the respondent wife has been taken away by the appellant or his mother to meet out the expenses of the appellant.
(iii)	Details of various payments, cheques and cash paid by

	respondent wife father is exhibited as Ex.PW-1/C-1 to C-8.
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12. Mr. H.S. Kohli, learned counsel for the respondent has taken us through the cross-examination of the respondent. A perusal thereof would show that the allegations relating to dissatisfaction expressed by respondent with regard to the jewellery articles given at the time of marriage as such father of the respondent started giving expensive gifts to boy's family; discovered empty bottles of alcohol in the house contrary to representation that the appellant was teetotaler and; respondent filed a complaint u/s 12 of the Protection of Women from Domestic Violence Act, which is pending before in the Mahila Courts, Saket were not controverted in the cross-examination.

The appellant had also admitted that the respondent had to go for second delivery to her parents' place on the insistence of the appellant.

13. So far as the allegations of the respondent that the appellant and his mother were dissatisfied for dowry coupled with her assertion of financial assistance being extended by her father, no suggestion was

even given to the witness. No suggestion challenging the authenticity of the CD with regard to excessive smoking etc. by the appellant was given. The appellant also did not dispute the institution of the case under the Protection of Women from Domestic Violence Act, 2005 and the several police complaints lodged against him on the grounds of excessive domestic violence by the appellant and his mother before and subsequent to the filing of the divorce petition.

14. Mr. Kohli, learned counsel for the respondent has also pointed out that the respondent had proved in her evidence the fact that the mother of the appellant was indulging in black magic against the respondent and had proved the documentary evidence of writings by her mother-in-law as Ex.PW-1/J1 to 1/J4 which were also legally established on record.

15. As if the above noted treatment was not enough, the respondent proved several incidents of cruelty under the influence of alcohol by the appellant to her starting from 2004 and thereafter. With regard to such violence meted out to her under the influence of alcohol on 16th June, 2010, the respondent lodged a complaint dated 16th June, 2010

(PW-1/I-1 to I-2) against the appellant. Again in her domestic violence complaint in August, 2010, the respondent pleaded domestic violence under influence of alcohol which has not been controverted. In July, 2012 as well as September, 2012, despite a protection order under the Protection of Women from Domestic Violence Act, 2005 against him the appellant resorted to violence upon the respondent. This resulted in registration of an FIR under Section 31 of the Domestic Violence Act at P.S., Vasant Kunj. The respondent proved the copies of the FIR and the medical record before the Family Court (Ex.PW-1/N). Apart from a mere suggestion that the complaint was 'fictitious', there was no challenge to the fact that the complaint was made or FIR registered.

So far as alcohol related problem of the appellant is concerned, the respondent pointed out that the appellant was consuming 4 - 5 bottled of alcohol every day and that under influence of liquor, the appellant was not only meted out cruelty to the respondent but was creating severely embarrassing situation for the children as well resulting in extreme trauma to their psyche.

16. The appellant has not even put a suggestion to the respondent that he was earning sufficiently; supporting the family and not spending on alcohol.

17. The appellant does not dispute that he was admitted to de-addiction centres on different occasions (including VIMHANS for rehabilitation in January, 2010) for treatment of his alcoholism. The evidence of the respondent shows that despite these efforts of his de-addiction, the appellant would resume his drinking immediately after release therefrom. The evidence of the respondent with regard to the appellant's medical record at the de-addiction centres remains unchallenged.

18. In para 21 of the respondent's evidence on affidavit, the respondent refers to an incident as back as in 2004 when the drunken appellant took away the children of the parties in a car driving towards Manesar where after a narrow escape on the highway, he fell asleep on the roadside. The parties' daughter informed their location to the respondent who, with two relatives, could locate them only at around 11:45 p.m. With difficulty, he could be persuaded to permit return

home. While returning, the appellant physically assaulted the respondent in front of the kids. He physically thrashed the respondent on the next day as well and tried to strangle her.

19. In the light of the above evidence, the Family Court has placed reliance on the pronouncements of the Supreme Court reported at *AIR 1975 SC 1534, Dr. N.G. Dastane v. S. Dastane; AIR 1988 SC 121, Shobha Rani v. Madhukar Reddi; AIR 1994 SC 710, V. Bhagat v. D. Bhagat; AIR 2006 SC 1675, Naveen Kohli v. Neelu Kohli* and *AIR 2007 SC 1426, Maya Devi v. Jagdish Prasad* and concluded that the respondent had established that the acts of the appellant are detrimental not only to her but to the children as well and that the respondent was justified in contending that she does not feel secure with the appellant. The Family Court also held that the respondent had successfully proved the copies of the various complaints lodged by her with the police against the appellant and his mother and her evidence with regard to the conduct of the appellant's mother remain uncontroverted.

20. We may note that the observations in para 39 of the judgment to the effect that because the appellant is a highly qualified person and working on the post of Associate Professor in a college, there may not be the acts of physical cruelty. This certainly not a explainable position inasmuch as there is no correlation between education and violence. Even an educated person may be subjected to extreme violence which she may be compelled to bear, either because of timid temperament or because of her domestic and personal situation.

21. In fact in the case in hand, the respondent established the acts of mental cruelty by the same evidence by which she has established the acts of physical cruelty meted out to her by the appellant.

22. It is noteworthy that the impugned judgment and decree has been pronounced after hearing arguments of both the sides. No objection at all was taken by the appellant to the affidavit of evidence of the respondent or of any portion thereof including the verification. The appellant had failed to file a written statement. The appellant has also not led any evidence. The appellant accepted the order dismissing his application under Section 148 of the C.P.C. He neither

made nor pressed any objection with regard to the verification of the affidavit. The matter about which the deponent has deposed in the affidavit relate to incidents to which she has personal knowledge relating to the marriage of the parties. Respondent has established the cruelty meted out to her by the appellant entitling her to decree of divorce.

23. On the contrary, the respondent was extensively cross-examined on the merits of the allegations made by her in cross-examination which began on 1st December, 2012 and ended on 5th March, 2014 sparing several dates over a period of one year and three months.

24. So far as proof of the documents is concerned, the appellant has never taken any objection to the manner or mode of proof thereof and has waived any objection that he could have had to the filing of photocopies. It is trite that a party may wave formal proof of documents.

25. It is equally well settled that if found trustworthy, the court can pass its judgment on the solitary evidence of the party. It is

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completely unnecessary to burden record with repetition and corroboration.

In the light of the above discussion, we see no reason at all for disbelieving the unrebutted and controverted evidence of the respondent on affidavit.

26. We may note that before proceeding to hear the parties, we had in fact required the appellant to appear in person to examine whether any negotiation was possible. The appellant had categorically refused the same. We have proceeded to hear the appeal on merits only thereafter.

27. We may note that the Family Court has rejected the decree of divorce on the ground of desertion. It has been held that desertion is *“not proved against the respondent as respondent had been residing in the same duplex flat along with his mother”*. It is trite that desertion means intentionally forsaking and abandoning of one spouse permanently without the other's consent and without reasonable

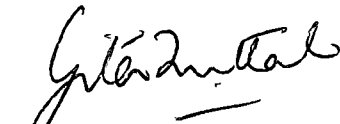
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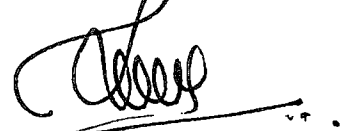
cause. Such abandonment or forsaking of the spouse does not necessarily require that the spouses must be living in two separate properties. Two persons may be residing in different portions of the same house without having any cohabitation or matrimonial relations.

28. So far as matrimony is concerned, it not only requires cohabitation, it requires discharge of conjugal and matrimonial responsibilities. Abandonment also takes into its compass not only abandoning a shared residence but would take into its spirit and scope, mental and physical abandonment of the other spouse. Leaving the matrimonial home is only one of instance wherefrom the necessary intention to desert a spouse may be established. In fact desertion is relatable to the matrimonial relationship and not to habitation in the matrimonial home alone. Thus, merely because one of the spouses is living at a separate place as per a job requirement, cannot be treated as tantamounting to desertion of the other spouse whereas a couple may be living under the same roof without any conjugal relations evidencing desertion of one spouse by the other. This therefore depends on the facts and circumstances of each case.

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29. For all these reasons, we find no merit in this appeal which is dismissed with costs which are quantified at ₹50,000/-.


(GITA MITTAL)
JUDGE


(J.R. MIDHA)
JUDGE

JANUARY 5th, 2015
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