

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

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Reserved on: 08.11.2019
Date of decision: 03.12.2019

+ **MAT. APP. (F.C.) 293/2019 & CM APPLs. 48509-510/2019**

VIPIN

.....Appellant

Through: Mr. Anurag Rawat and Ms.
Meenakshi, Advocates

versus

BHAVNA RAJPUT

.....Respondent

Through: None

CORAM:

**HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON**

ASHA MENON, J.

1. The present appeal has been filed by the appellant/husband being aggrieved by the judgment of the learned Family Court dated 31.08.2019, whereby it has dismissed his petition seeking divorce from the respondent/wife on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (in short, 'the Act').

2. The facts, as set out for the purposes of deciding this appeal, are that the parties had got married at Faridabad, Haryana on 20.11.2013, as per the Hindu rites and customs. The parties resided together at the matrimonial home i.e. premises No. E-284, Dakshinpuri, New Delhi whereafter they had shifted to a rented accommodation at premises No. A-1/307, Madangir, New Delhi. There is no child born to the parties. According to the appellant/husband, the respondent/wife was an ill-tempered woman and had

made life hell for him. He was thus driven to seek divorce from her only on account of her cruelty.

3. The appellant has filed for divorce on the grounds as paraphrased by the learned Family Court in the impugned judgment, which are as follows: -

“(i) Respondent neglected to perform her matrimonial duties such as cooking food etc;

(ii) The respondent was always found engaged on her mobile phone with her paramour. She herself had told the petitioner that she was in love with some other person and relations between them had developed before her marriage with the petitioner;’

(iii) On 17.10.2014 at about 8 p.m. there was some quarrel upon some issue. The respondent abused the mother of the petitioner and also kicked her in the abdomen; and

(iv) The respondent threatened to implicate the petitioner and his mother in false criminal cases.”

4. During the trial, the appellant/husband had examined himself as PW-1. The respondent/wife was proceeded against *ex parte* on 21.03.2018, but she elected not to apply for setting aside of the said *ex parte* proceedings. It is borne out from the record that by an earlier judgment and decree dated 24.07.2018, the learned Family Court had dissolved the marriage of the parties. This *ex parte* judgment was challenged by the respondent/wife by filing MAT.APP.(F.C.) 223/2018 and by an order dated 06.02.2019, passed by a co-ordinate Bench of this Court, the said judgment was set aside and she was granted an opportunity of cross-examining the appellant/husband and to lead her own evidence. Subsequent thereto, the respondent/wife had examined herself as RW-1 and her father as RW-2.

5. In the backdrop of the law laid down by the Supreme Court in a

number of cases as to what constituted cruelty [Refer: Parveen Mehta v. Inderjit Mehta, (2002) 5 SCC 706, Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511, Ravi Kumar v. Julmidevi, 2010 (4) SCC 476, Gurbux Singh v. Harminder Kaur, 2010 (II) DMC 706 SC, K.Srinivas Rao v. D.A.Deepa, 2013 (5) SCC 226 and Raj Talreja v. Kavita Talreja, MANU/SC/0493/2017], the learned Family Court concluded that the appellant/husband had failed to make out a case of mental cruelty by establishing that the conduct on the part of the respondent/wife was so negative and oppressive and of such a magnitude that it was impossible for him to reside with her and had caused a fear in his mind for his well-being. It also noted that the pleas taken did not meet the standards prescribed under Rule 7 of the Delhi High Court Rules, 1967 by setting out the specific acts of cruelty and the instances, the places and the time when such acts were committed. The Family Court also remarked adversely on the conduct of the appellant/husband and in the facts and circumstances of the case concluded that he was not entitled to seek dissolution of the marriage and accordingly, dismissed the divorce petition, as noticed above.

6. Aggrieved thereby, the present appeal has been preferred by the appellant/husband contending that the learned Family Court has erred in not appreciating the fact that the parties had been residing separately since November, 2015 and almost four years had elapsed and there was no possibility of the two residing together in the future. The judgment has been faulted on the ground that the facts have not been properly appreciated, namely, that the respondent/wife had kicked the appellant/husband's mother despite her age and her having undergone a surgical operation and the learned Family Court had wrongly insisted on medical papers while

overlooking the fact that the police had been called and the matter was subsequently settled through the intervention of the police on 17.10.2014. Further, it was submitted that the learned Family Court had overlooked the fact that in her written statement and evidence, the respondent/wife had levelled false allegations against the appellant/husband and his family members of having physically assaulted and abused her while, at the same time, overlooking the fact that the respondent/wife had called his elder sister-in-law by caste name and had otherwise also humiliated him and his family members. Thus, it is prayed that the impugned judgment be set aside and the marriage between the parties dissolved.

7. On going through the pleadings and the evidence led by the appellant/husband, it is crystal clear that he has not made out any case for divorce on the grounds of cruelty. Vague and general allegations have been levelled that the respondent/wife had refused to perform the household chores. No specific instances were put to the respondent/wife when she was being cross-examined by the appellant/husband to pin-point the occasion when she had refused to cook for him or take care of the house. Rather, in her cross-examination, she comes across as a conventional housewife. She had stated that she had never asked her husband about the salary that he drew or what were his duty hours. She stated that she had not visited his office and that she used to prepare the food whenever the appellant/husband used to ask her. It was asked of her and she had affirmed as correct, that she could cook non-vegetarian food, though she did not eat it, thus confirming the fact that she used to cook food for the appellant/ husband and his family. The respondent/wife denied the allegation that she used to wake up at 8 a.m. after her husband served tea and would go to bed by 9 p.m., though such

facts were never pleaded nor deposed to by the appellant/husband. On the other hand, the cross-examination of the respondent/wife establishes that she used to get up at 5 a.m. and take her breakfast around 12-1 p.m. and partake dinner whenever her husband used to come home i.e. around 11 in the night. During his own cross-examination, the appellant/husband had admitted to the fact that the respondent/wife used to do the household work when they started living separately from his parents and there was no maid in his mother's house. The learned Family Court therefore rightly concluded that these allegations of cruelty, as claimed by the appellant/husband, had no foundation.

8. The other allegation levelled by the appellant/husband was that the respondent/wife was perpetually on her mobile phone. But during her cross-examination, while denying this allegation, she also deposed that she would speak on the phone to her parents only when the talk-time was recharged by the appellant/husband. It was not put to her during the cross-examination that she had some other source for recharging the mobile phone talk-time and was not dependent for this on the appellant/husband. It defies logic as to why would have the appellant/husband paid money to recharge the mobile if the respondent/wife was always talking on the cell-phone, ignoring her other household work and to top it all, to enable her to keep in touch with her alleged paramour.

9. As regards the allegation of an affair, the appellant/husband did not even put a single question in this regard to the respondent/wife during her cross-examination. In his own cross-examination, he had admitted that he did not know the name of the so-called paramour and nor had he traced out the number of any such paramour on the mobile phone. It is apparent that

such allegations were baseless and were levelled most frivolously. To her credit, the respondent/wife had not filed even a single criminal case against the appellant/husband or his family. She only claimed maintenance under Section 125 Cr.P.C. and under the Protection of Women from Domestic Violence Act, 2005 and that too after the appellant/husband had filed the divorce petition.

10. The incident of 17.10.2014, when the respondent/wife had allegedly kicked the mother of the appellant/husband, has also not been clearly established, as recorded in the impugned judgment and nothing material has emerged from the testimony of the parties or any other evidence that would show that the conclusion drawn by the learned Family Court was erroneous in this regard. The said incident is stated to have occurred on 17.10.2014. However, in his cross-examination, the appellant/husband admitted that on 17.10.2014, when he had called the PCR, the respondent/wife had gone to her aunt's house. He further admitted that the matter was compromised between them at the police station after which the respondent/wife had gone directly from the police station to her parent's house at about 1/1:30 a.m.. It was the appellant/husband who had thereafter brought the respondent/wife directly from her parent's house to the rented accommodation where they stayed together for about one year. In these circumstances, the alleged incident of 17.10.2014, even if it had occurred, is not a fact available to the appellant/husband to seek divorce as he had condoned such an alleged act by cohabiting with the respondent thereafter. The appellant/husband has not mentioned that during the period of one year that the parties had lived together at the rented house, there was any problem in the matrimonial life.

11. As regards the last plea that the respondent/wife used to threaten that

she would implicate the appellant/husband and his mother in false criminal cases, it bears repetition that till date, no criminal case has been filed by the respondent/wife.

12. The petition for divorce was admittedly filed by the appellant/husband when the parties were staying together at the rented accommodation. During his cross-examination, the appellant/husband has admitted that he had filed this case in October, 2015, but till 21.12.2015, he had not filed the process fee for issuance of summons to the respondent/wife. Learned counsel for the appellant/husband has argued that it was too much to expect that the appellant/husband would have informed the respondent/wife in writing about filing the petition and urged that the petition could not have been rejected on that ground. This argument does not take the appellant/husband anywhere. Rather, it reflects upon the conduct of the appellant/husband which shows that despite staying together, he chose to file a petition seeking divorce from the respondent/wife without revealing his real intention, to put an end to the matrimony and he had thereafter, shifted to his mother's house even though she had allegedly disowned him. Thereafter, he had ensured that the respondent/wife would be served with the summons on 04.01.2016, in his absence. It is only after service of the summons on her that the respondent/wife left the matrimonial home alongwith her father to go back to her parental home.

13. In view of the aforesaid facts and circumstances, we do not find any error in the reasoning of the learned Family Court for declining to grant any relief to the appellant/husband. The learned Family Court has comprehensively assessed the evidence that has been brought on record and

we find no reason to differ with the conclusion drawn. The appeal being meritless, is dismissed alongwith the pending applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

DECEMBER 03, 2019

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