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

+ **MAT.APP.(F.C.) 249/2019 & C.M.Applns.43243-44/2019**

HEMA

..... Appellant

Through: Mr. Jitender Kumar Dhingra,
Advocate

versus

HARISH AGGARWAL

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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27.09.2019

1. This appeal has been filed by the wife being aggrieved by the judgment and decree dated 08.07.2019, passed by the learned Family Court whereby the marriage of the appellant/wife and the respondent/husband has been dissolved.

2. The brief facts, as are relevant for the disposal of this appeal, are that the marriage between the appellant/wife and the respondent/husband was solemnized on 22.01.2006 at Janakpuri, Delhi as per Hindu rites and customs. The couple was blessed with a daughter on 25.02.2008, who is presently in the custody of the appellant/wife. The respondent/husband filed a petition on 02.11.2012, seeking divorce from the appellant/wife on the grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act'). Largely, the petition of the respondent/husband was premised on the conduct of the appellant/wife since the inception of the marriage. It was his case that the appellant/wife was always indifferent in

her conduct and interaction with him and his family members. He alleged that the appellant/wife was abusive in her language and used to pick-up quarrels on trifles with the respondent/husband and his family members and refused to do household work on the plea that she was not a servant of the respondent/husband and his family members. She was also given to leaving the home without any information. Her nature was to demand that he act in accordance with her wishes and desires. The respondent/husband further alleged that with the passage of time, the appellant/wife had become more aggressive and used to throw tantrums by throwing objects at him. It is also stated that due to the pressure of the appellant/wife, the respondent/husband had to purchase a separate accommodation from her mother, but after they had shifted to the said house, the appellant/wife compelled his parents to leave the house and later, on 22.01.2008, even he was turned out of the matrimonial home. The respondent/husband also pleaded that the appellant/wife did not like his interaction with his ailing parents and it was after he had returned from a visit to his ailing father that the appellant/wife had locked him out of the matrimonial home on 22.01.2008 and thereafter, he had not returned.

3. The appellant/wife refuted all these allegations levelled against her and claimed that she was the one who has been ill-treated by the respondent/husband and his family members whereas, her father had tried to help him set up the business of Sale/Purchase of property alongwith her brother and had also fulfilled the demands of cash of Rs.3,33,000/-, Rs.31,000/- and Rs.3,02,000/-, on different occasions. According to her, though the respondent/husband had evinced willingness to purchase a floor in property No.A-1/217-A, Hastal, Uttam Nagar, New Delhi, from her

mother, but since he was unable to arrange the funds, he himself got the *bayana* receipt for a sum of Rs.1,50,000/-cancelled. She claimed that on account of the quarrel that had occurred on 14.05.2007, when her mother-in-law had pushed her to the floor, she was taken ill and was admitted in Amar Leela Hospital, where she remained till 17.05.2007. During this period, neither the respondent/husband nor his family members even made any enquiries about her well-being. The appellant/wife, however, claimed that on the next day, i.e. on 18.05.2007, she was given some medicine by the respondent/husband and his family members due to which, she lost consciousness and when she regained consciousness, she found that she was all alone and all the valuables, clothes, *sarees*, utensils and original documents of the property No.A-1/217-A, First floor, Hastal, Uttam Nagar and property No.A-1/76 were missing.

4. According to the appellant/wife, on 23.01.2008, it was the respondent/husband, who had intentionally and deliberately abandoned her company. Further, when the daughter was born to the parties, the respondent/husband did not fulfil his social, moral and legal obligations, which compelled her to file petitions under Section 125 Cr.P.C. and the Protection of Women from Domestic Violence Act, 2005. She claimed that she had always been willing to live with the respondent/husband as she was still living in the matrimonial home, taking care of her daughter whereas, it was the respondent/husband, who had refused to continue with the marriage.

5. Each side sought to prove their stand by leading evidence before the learned Family Court. The respondent/husband examined himself as PW1 and the appellant/wife examined herself as RW1. Both sides cross-examined each other at length. On an assessment of the evidence that was brought on

record, the learned Family Court concluded that the respondent/husband had fully established that the appellant/wife had been cruel to him, entitling him to a decree of divorce. The learned Family Court considered the facts that the appellant/wife had filed some 8-10 cases against the respondent/husband and had sent the police again and again not only to his house, but also to the houses of his married sisters, in order to humiliate and embarrass them. It also noted that the plea of the appellant/wife that she was willing to revive the relationship with the respondent/husband was not serious, as she, in her cross-examination, had flatly refused to stay in the matrimonial home with the aged parents of the respondent/husband. It was noted that the married sisters of the respondent/husband were finally discharged from the cases registered at the instance of the appellant/wife under Sections 498-A/406 read with 34 IPC, after six years and the respondent/husband had been sent to jail for 4-5 days. The Family Court observed that contrary to the averments made by her in her written statement, the appellant/wife had disputed the sale transaction in respect of House No.A-1/217A, Hastal, Uttam Nagar, towards which the consideration had been paid by the respondent/husband to her mother. It was observed in the impugned judgement that no evidence regarding the treatment and hospitalization of the appellant/wife at Amar Leela Hospital had been produced and proved nor could the appellant/wife prove that Rs.3,33,000/-, Rs.31,000/- or Rs.3,02,000/- were given to the respondent/husband at different occasions. Taking into consideration the fact that the parties had been living separately for more than 11 years, the Family Court found it fit to dissolve the marriage of the parties.

6. We find no reason to differ with the view expressed by the learned

Family Court. The attempt of the appellant/wife to hold herself out as the wronged party does not impress us. A perusal of the grounds taken in the present appeal reflects a lack of remorse or regret in her conduct of sending the police repeatedly to raid the residence of the respondent/husband and his married sisters and filing of criminal complaints against them, on the specious plea that she was only enforcing her legal rights. At the same time, the appellant/wife claims that mere filing of the FIR and criminal cases would not amount to cruelty as she had yet to lead her evidence in those cases, to substantiate the allegations levelled. The learned Family Court has rightly observed that the appellant/wife herself did not seem to be serious about reconciliation. She has not filed any petition under Section 9 of the Act despite her proclaimed readiness to revive marital ties with the respondent/husband.

7. With regard to the purchase of the immovable property, as stated by the appellant/wife in the grounds of the present appeal, the divorce petition was filed on account of the property dispute relating to premises No. A-1/217A, First Floor, Hastsal Road, Uttam Nagar. She claims that the said house had never been sold by her mother to the respondent/husband or his mother. However, the learned Family Court has referred to her cross-examination where she has admitted that earnest money of Rs.1,50,000/- had been given by the respondent/husband towards purchase of the said property. She also admitted that he alongwith his parents and the appellant/wife had shifted to this house and a *Hawan* ceremony was also organized. She claims to be residing in the said house till date and yet has the gumption to claim in the grounds of appeal that there was in fact, no sale. In the evidence of the respondent/husband, it has come forth that the

sale consideration was fixed at Rs.12,50,000/- out of which, Rs.1,50,000/- was paid immediately and Rs.11,00,000/- was to be paid in four months. However, the parents of the appellant/wife had sold the property to one Smt. Bhavnesh, just one month after the transaction and it was when he raised objections and threatened to report the matter to the police that they had transferred the first floor of the said property upon his paying the balance sale consideration amounting to Rs.11,00,000/- to the mother of the appellant/wife in her presence and in the presence of her family members. On 04.05.2007, this property on the first floor was transferred by the mother of the appellant/wife via a registered irrevocable General Power of Attorney in favour of the mother of the respondent/husband, but deceitfully, the sale consideration was mentioned only as Rs.60,000/-. Execution of this irrevocable power of attorney (Ex.PW1/5) in favour of the mother of the respondent/husband after payment of consideration of Rs.60,000/- has been admitted by the appellant/wife as RW1 and she has also admitted that the said document was cancelled on 05.12.2017.

8. The appellant/wife has further alleged that the respondent/husband was living with another woman and in order to substantiate this allegation, she had brought on record the photographs (Mark X21) alongwith a CD, which according to her, as mentioned in ground (P) of the grounds of appeal, have been wrongly overlooked by the learned Family Court. However, there seems to be a discrepancy in ground (P). The photographs are referred to as Mark X21 whereas, in para 2(x) of the appeal, the documents (Mark X to X21) are different. Significantly, counsel for the appellant/wife has not been able to demonstrate as to how the answers given by the respondent/husband during the cross-examination in respect of this lady, were not answered by

him properly. In the absence of any admissions, a bald plea that the learned Family Court has ignored such a vital piece of evidence, would be insufficient to arrive at a conclusion that the marriage of the parties has been erroneously dissolved.

9. Ever since the decision in Dr.N.G.Dastane v. Mrs. S.Dastane, reported as **AIR 1975 SC 1534**, courts have consistently held that the inquiry required to be conducted has to be as to whether the conduct of a spouse alleged as cruelty, is of such a character as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for him to continue living with the respondent. The courts are not dealing with ideal husbands and wives, but disputant couples. Cruelty would always depend upon the social background of the parties, their way of life, relationship, temperament and emotions. We are of the opinion that in the present case, the conduct of the appellant/wife has been disclosed to be of such a quality, magnitude and impact as to have caused mental pain, agony and suffering to the respondent/husband on a regular and continuous basis, which clearly amounts to cruelty. The learned Family Court had rightly granted a decree of divorce in favour of the respondent/husband.

10. The appeal is accordingly dismissed *in limine* being meritless alongwith the applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

SEPTEMBER 27, 2019/s