

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

% Date of decision: 01.05.2020

+ **MAT.APP.(F.C.) 73/2020 and CM APPLs. 8528-29/2020**

RAJNI KANT SRIVASTAVA

..... Appellant

Through: Mr. Puneet Jaiwal, Advocate with
appellant in person

versus

KUMUDINI SRIVASTAVA & ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred by the petitioner being aggrieved by the judgment dated 16-11-19 passed by the Family Court Tis Hazari, whereby it dismissed the petition filed by him under Section 13(1)(i a) Hindu Marriage Act 1955 (the 'Act', for short) seeking divorce from his wife, the respondent, on grounds of cruelty.

2. The brief facts as are relevant for the disposal of this appeal are as follows. The parties were married on 6-11-1995 as per Hindu rites and ceremonies. After marriage, they started residing at the ancestral home of the appellant/husband at Ballia. The couple also resided for eight months at Varanasi, where the appellant/husband was employed. As the health of his mother, who was residing with them, deteriorated, they returned to Balia.

3. It is the further case of the appellant/husband that the respondent / wife was of easy virtue, inasmuch as on 15.06.1997, he had found her sleeping with his nephew in an objectionable position and she promised never to repeat it again. Much later, in the year 2000, he found her to be talking to one Bahadur, the servant of her maternal uncle, Sh. Bharat Sahai at Delhi and this raised his suspicion as the respondent/wife wanted to remain at her uncle's house at Delhi and even proclaimed that Bahadur was better than him. The appellant/husband has accused the respondent/wife of being in an adulterous relationship with Bahadur as well as her maternal uncle, Bharat Sahai and several other men.

4. It may be noted here that initially the petition for divorce was filed by the appellant/husband at Varanasi and it was directed only against the respondent/wife. The said petition was transferred to Delhi whereafter an application was moved by him to implead Bharat Sahai and Bahadur as co-respondents. During the pendency of the said application, Bharat Sahai died and only Bahadur was impleaded as respondent no.2 in the proceedings, who however, did not chose to participate.

5. The appellant/husband also alleged that the respondent/wife began neglecting him and his aged mother and began talking cruelly to them and she pressurized him to let her continue staying at Delhi, on the pretext of getting treatment for conceiving a child and also for curing T.B. She began such treatment in the year 1997 and 1998 but despite the doctor ruling out her chances of conception, upon her

insistence, the appellant/husband allowed her to go to her uncle's house in Delhi in the year 2000 when, during his stay there, he found the respondent/wife to be indulging in illicit relationship with her uncle and his servant. The appellant/husband found that his complaints to the younger sister of the respondent/wife produced only antagonism towards him. In the above circumstances the appellant/husband claimed that he found it impossible to continue to reside with the respondent/wife and sought divorce from her.

6. The respondent/wife opposed the divorce petition and described it as an abuse of the process of law, being full of libelous content made malevolently, recklessly and mischievously by the appellant/husband. She denied that she had behaved badly with the appellant/husband or his mother and claimed to have resided with him at different places over a period of time. It was her contention that the appellant /husband was unhappy as her maternal uncle, Bharat Sahai was unwilling to keep his mother in his house at Delhi as he himself was 80 years old. Further, all expenses for travel to and from Delhi were borne by her maternal uncle, much to the satisfaction of the appellant/ husband. Thus all her visits to Delhi were with his explicit consent.

7. The respondent/wife further submitted that the appellant/husband had pressurized her maternal uncle to pay them Rs.5000/- every month for taking suitable premises on rent at Varanasi and ultimately, her uncle paid him a sum of him Rs.12 lakhs for purchasing a house. According to her, her visit to Delhi in May

2000, was not for any treatment as alleged by the appellant/husband in the petition, but was for the purpose of collecting the gift cheque for Rs.12 lakhs. She also pointed out that she had opened a joint S/B account in the name of the appellant/husband and herself with the City Co-operative Bank with Rs.5000/- that she had saved over time, from out of the various payments made to her by her maternal uncle and the gift cheque was deposited into the said joint account, which she would not have done had she intentions other than that of a loyal wife and had she harboured the feelings that she was being accused of. She admitted that subsequently she was diagnosed with T.B. for which she came to Delhi for treatment. She thus prayed that the divorce petition be dismissed as meritless.

8. The appellant/husband filed a rejoinder denying the averments made in the written statement. On the basis of the pleadings of the parties, the following issues were framed by the learned Family Court: -

- i) *Whether respondent, after solemnization of the marriage had voluntarily sexual intercourse with the persons other than petitioner, as stated in the petition? OPP*
- ii) *Whether respondent, after solemnization of the marriage has treated the petitioner with cruelty as stated in the petition? OPP*
- iii) *Relief.*

9. The appellant/husband examined himself as PW1 and brought on record, his affidavit of evidence, as Ex.PW1/A. He examined a

clerk from Canara Bank, Sh. R.P.S.Grover as PW2. Both the witnesses were cross examined by the learned counsel for the respondent/wife but she chose neither to examine herself or any other witness on her behalf.

10. After analyzing the evidence brought on record and considering the arguments advanced on behalf of both sides, the learned Family Court concluded that the appellant/husband had failed to prove his allegation of infidelity and cruelty and in case there were any acts of cruelty, these had been condoned and thus dismissed the petition. Aggrieved, the present appeal has been filed.

11. Mr. Jaiwal, learned counsel for the appellant/husband argued that the learned Family Court has erred in dismissing the divorce petition as the respondent/wife had led no evidence and upon the uncontroverted evidence led by the appellant /husband, he had proved that the respondent/wife was in illicit relationships with her maternal uncle and his servant. He further submitted that as the parties have been living separately since the year 2000, the Family Court ought to have granted divorce since it is apparent that the marriage had broken down irretrievably.

12. It is no doubt true that the respondent/wife did not lead any evidence. But the onus of proof was squarely placed on the appellant/petitioner and he had to prove his allegations of adultery and cruelty against her through cogent and incontrovertible evidence. Fact also remains that the respondent/wife had succeeded in eliciting

support for her case through extensive cross examination of the appellant/husband.

13. We have had occasion to hold that pleadings in a petition for divorce must contain specific averments of cruel conduct [See: **MAT.APP.(F.C.) 209/2019**, titled as Vikram Solanki vs. Suman Lata, decided on 06.12.2019]. We therefore proceed to note the following specific instances that have been pleaded by the appellant/husband in the instant case: -

- (a) That the respondent /wife was found sleeping with the nephew of the appellant/husband on the night of 15.6.97 and she had apologized for such behavior, vowing never to repeat it.
- (b) Under the guise of treatment for conceiving a child, she insisted on going to Delhi as she was interested in living there and not at Varanasi/ Gorakhpur, with the appellant/husband.
- (c) She used to neglect him and his aged mother and pressurized him to separate from his mother.
- (d) She used to taunt him as being a low salaried person who was unable to give her all facilities, unlike her maternal uncle.
- (e) On 4.7.2000 when the appellant /husband sought to bring back the respondent/wife from Delhi where she

had gone in May 2000 for medical assistance for conception, she had insisted that her uncle's servant return to Delhi as her uncle was alone but when he did return, she refused to go back to her matrimonial home on the plea that she had to get treatment for T.B. in Delhi.

- (f) When he visited Delhi, her maternal uncle had asked the appellant/husband to sleep on the Takht in the front room while asking the respondent/wife to sleep in his room.
- (g) On 22.7.2000 the respondent/wife proclaimed that Bahadur was better than the appellant/husband and she remained awake the entire night.
- (h) On 23.7.2000, in the forenoon, he found the respondent/wife whispering something to Bahadur in the bathroom, which she stopped on seeing him.
- (i) On 28.7.2000, he saw the respondent/wife talking to Bahadur in the kitchen, that no family member usually visited.
- (j) That night, the appellant/husband found her trying to slink to the room of Bahadur, but as the appellant/husband woke up due to a sound, the

respondent/wife pretended to go to the bathroom and returned.

- (k) Though the respondent/wife and her sister had come to tend to the ailing mother of the appellant/husband on 26.8.2000, she insisted on returning to Delhi on 9.9.2000 and refused to take care of the mother and also threatened the appellant/husband that if he tried to come to Delhi to bring her back, he would be beaten with shoes.
- (l) After much persuasion, she agreed to accompany him to Varanasi on 10.9.2000, but once again the respondent/wife quarreled at the Varanasi Railway Station and took a train to Delhi from there itself.
- (m) Finally, in response to his telegram demanding that she return by 18.9.2000 after her medical check-up, the maternal uncle of the respondent/wife conveyed to him telephonically that she would not be joining him again and threatened to file cases against him for demanding dowry.

14. Thus, asserting that as the respondent/wife had an aggressive nature, having her own life style and was sexually attracted to her maternal uncle and his servant, Bahadur and several other males, despite his having filed a petition for restitution of conjugal rights in

the year 2000[bearing No.387/2000] the appellant/husband desired a divorce from her.

15. The above narration does not contain anything to reflect cruel conduct on the part of the respondent/wife, except for the wild allegations of infidelity leveled by the appellant/husband. Even if the evidence in the form of the affidavit of the appellant/husband containing all of these allegations stood uncontroverted through his cross-examination, there would have been absolutely nothing to hold in his favour, entitling him to a divorce. While on the one hand, the appellant/husband alleges that the respondent/wife was hostile to his mother, he himself admits that on his sending a telegram, she and her sister had come to tend the ailing mother. Further, these averments also indicate that the respondent/wife had been residing with the appellant/husband at different places. The allegation of infidelity appear to be based only on the suspicious mind of the appellant/husband, without any concrete evidence brought on record to substantiate the same.

16. But interestingly, the affidavit of evidence, Ex.PW1/A filed by the appellant/husband, has gone beyond the pleadings which tantamounts to improvements and embellishments that are impermissible. Moreover, the appellant/husband has said nothing about the alleged cruel behaviour of the respondent /wife towards himself and his aged mother. His entire deposition is on her deviant behaviour. A closer reading of the affidavit would also show that the deposition is restricted to such alleged behaviour that relates back to

the year 2000. Therefore, the incidents of the years 1998 & 1999 as pleaded by the appellant/husband, have not been referred to in Ex.PW1/A or proved by him.

17. In the year 2000 the incidents referred to in the petition as noticed above, allegedly took place in May, on 22nd July, 23rd July and 28th July. However, in his affidavit, Ex.PW1/A, the appellant/husband has deposed in respect of incidents of 17th May, 21st May, 4th July, 22nd July, 23rd July, 26th July, 27th July, 28th July, 29th July and 30th July occurring in 2000 and on 25.01.2001.

18. As regards the alleged incidents of 17th & 18th of May, 2000, what the appellant/husband claims to have seen was that the respondent/wife was sitting with her maternal uncle on the bed or she was sleeping on the bed which really does not establish anything. It is in respect of all the additional dates mentioned in the affidavit, Ex.PW1/A that some explicit details have been given, which are obnoxious to say the very least and do not deserve to be reproduced here. But such embellishments shall have to be discarded as a rule of prudence, since their very purpose is to strengthen a weak case and cannot be given any weightage particularly when such details do not find mention in the pleadings.

19. It must, however, be noted that despite allegedly finding the respondent/wife in intimacy with her maternal uncle and his servant in the months of May and July, 2000, the appellant/husband claims to have worked to maintain the matrimonial relationship with her, which

seems to be very strange behavior. In August 2000, he even called her by a telegram to tend to his ailing mother and the respondent/wife did come to Gorakhpur with her younger sister and thereafter, she resided with the appellant/husband till September 2000. Had there been an iota of truth in the allegations of infidelity leveled by the appellant/husband, neither would he have informed the respondent/wife of the illness of his mother, nor would she have come in response to the call and nor would the parties have resided together for a month thereafter.

20. Moreover, the appellant/husband filed a petition under S.9 of the Act which he withdrew after filing the divorce petition. However, this would establish that despite all this alleged promiscuous behavior of the respondent/wife, he was interested in continuation of the marriage and thus, had condoned the alleged behavior, if at all it was true. He has admitted in his cross examination that despite the incident that took place on 28.07.2000, when he allegedly saw the respondent/wife and Bahadur standing close to each other in the dark, in the kitchen and engaging in pleasantries, he had requested the respondent/wife 'several times' to join her matrimonial home and live with him. This unnatural attitude of the appellant/ husband not only falsifies his plea of adulterous behaviour of the respondent/wife, but also dis-entitles him to a divorce on such grounds.

21. In any event, the falsity of the allegations leveled by the appellant/husband are established beyond doubt from the facts averred in the affidavit, Ex.PW1/A and the answers of the appellant/husband

to questions put to him during his cross-examination. It has been admitted by him that it was in the year 2000, that the maternal uncle of the respondent/wife had gifted a sum of Rs.12 lakhs to the parties for purchasing a house. Had the uncle and niece been in any relationship, why would the uncle have financed the purchase of the house for the parties to reside together in Lucknow? Why would the respondent/wife have agreed to opening of a joint account with the appellant/husband to facilitate encashment of the demand draft, admittedly issued in her name, if she was really interested in residing in Delhi with her maternal uncle and his servant? Significantly, the appellant/husband admitted during his cross-examination that he had not purchased a house with that money and he was unable to explain why he had not done so. Rather, he admitted that he had issued a cheque for the purchase of a house in the vicinity of Lucknow, but had stopped payment of the cheque and claimed that he was not interested in purchasing a house. Pertinently, he never returned the money to the uncle.

22. The level to which the appellant/husband has stooped is evident from the fact that he knew that the respondent /wife had lost her parents early in life and it was her maternal uncle, Bharat Sahai who had brought her up and got her married off and had agreed to bear all her expenses including the sum of Rs.12 lakhs given for purchasing a house. He has admitted that it was the very same maternal uncle who had performed the kanyadaan of his wife. Yet he did not think twice before giving obnoxious details of an imaginary illicit relationship

between the two, despite the fact that the respondent/wife had stoutly denied the said allegations in her written statement. To top it , he even attempted to drag the elderly eighty years old uncle of the respondent/wife to court by making him a co-respondent. Mercifully death pre-empted his ignominy at the hands of a thankless and perverted appellant/husband. The learned Family Court has rightly observed that while he had absolutely no grounds to show cruel treatment at her hands, the respondent/wife had been the one to have been subjected to utter cruelty at the hands of the appellant/husband who has made such unfounded and defamatory accusations against her.

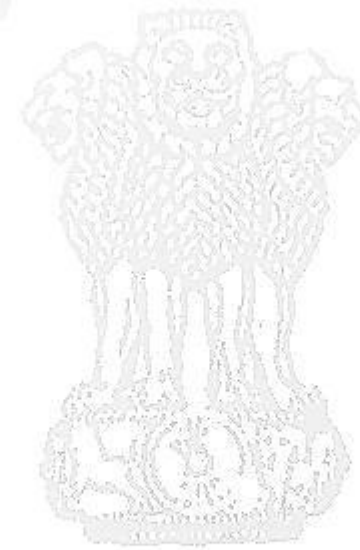
23. Then, to turn around and claim that as the marriage had irretrievably broken down, divorce be granted in his favour, is the pinnacle of insolence. None can be allowed to take advantage of his own wrongs. Once the appellant/husband had got Rs.12 lakhs from the uncle of the respondent/wife, he decided to put an end to the relationship. At the same time, he did not even think it necessary to refund that money to the respondent/wife till date. What is worse is that he concedes to having written to the Bank instructing that the respondent/wife be not permitted to withdraw any money from the joint account in which the money given to her by her maternal uncle, had been deposited. In other words, there is nothing on record to establish irretrievable breakdown of the marriage, as the appellant/husband seems to be continuing to reap benefit from it.

24. In the light of the foregoing discussion, we find no reason to interfere with the judgment passed by the learned Family Court and the same is accordingly upheld. The appeal is dismissed as being meritless alongwith the pending applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

MAY 01, 2020
pkb/s



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