

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAT. APP. (F.C.) 72/2020 and C.M. APPL. Nos. 8489-90/2020**

Date of decision: 01.05.2020

IN THE MATTER OF:

INDER SINGH

..... Appellant

Through: Mr. Kamal Mehta, Advocate.

versus

SAVITRI DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

HIMA KOHLI, J.

1. The appellant/husband has challenged the judgment dated 22.10.2019 passed by the Additional Principal Judge, Family Court, West District, Tis Hazari Courts, dismissing a petition filed by him for seeking divorce from the respondent/wife under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 (in short '**HMA**') on the ground that he has failed to prove that the respondent/wife had treated him with cruelty or that she had deserted him.

2. The factual matrix of the case is as follows. The marriage of the appellant/husband and the respondent/wife was solemnised on 4.5.1980, as per Hindu rites and customs. Though the appellant/husband disputes their paternity, there are two children born from the marriage, a son, Parveen Kumar was born on 21.10.1983 at Pataudi, Haryana which is the parental

home of the respondent/wife and a daughter, Indu Priya was born on 9.6.1985 at Nangloi, Delhi which is the matrimonial home of the respondent/wife. Both of them were residing with the respondent/wife since birth and are married. After about 35 years of their marriage, the appellant/husband filed a divorce petition on 27.2.2015.

3. As per the factual narration in the divorce petition, both, the appellant/husband and the respondent/wife were school teachers employed with the Government of Haryana. They were posted as teachers at different places, during the course of their service. The appellant/husband retired from service in March, 2012. It is his version that right from the date of the marriage, the respondent/wife used to taunt him claiming that the status of her family was much higher than his status; that she was in the habit of picking up quarrels with the appellant/husband and also abused him; that she never prepared food for him; that she created scenes in front of his relatives and humiliated him and his family members; that she was in the habit of staying at the matrimonial home just for a few days and thereafter she would go to her parental home and remain there for periods spanning over six months; that she was in the habit of avoiding social and family functions of the appellant/husband and lastly, that she did not permit him to establish a physical relationship with her thereby causing him mental torture.

4. The appellant/husband has alleged that ever since the year 1985, the respondent/wife had left the matrimonial home and his company and had started residing at Pataudi, Gurgaon, Haryana with her father and refused to return despite several requests made by him. Matter was sought to be resolved through relatives and other well wishers of the parties who had approached the respondent/wife, but she refused to return to her matrimonial

home. The appellant/husband has alleged that he has no concern with the children of the respondent/wife and ever since the year 1985, he has had no relationship with the respondent/wife as they have been living separately.

5. It appears that what instigated the appellant/husband to file the divorce petition was an incident that took place in March, 2014, when he claims that in his absence, the respondent/wife had entered his house alongwith the children without his prior permission, by taking the keys from his neighbour and despite his repeated requests, she refused to vacate the house and instead, threatened him and warned that she would implicate him in false and fabricated cases.

6. Notice of the petition was served on the respondent/wife, who filed her written statement in opposition and denied all the averments made by the appellant/husband in the petition. The respondent/wife denied that she ever taunted the appellant/husband or refused to do the household works. Instead, she stated that the appellant/husband is a habitual drinker and after consuming liquor, on the instigation of his brother, used to physically assault her on several occasions. He not only harassed the respondent/wife, but also locked her and the children in a room in the matrimonial home and most of the time, he was living at his brother's house and it was at the instance of his brother and *bhabhi* that she used to be harassed and tortured by the appellant/husband.

7. The respondent/wife further denied that there was any separation between the parties since the year 1985. She stated that she and the children are living in the matrimonial home, which is an ancestral property and in an attempt to dispossess them, the appellant/husband has executed a GPA in respect of the property in favour of his brother, so as to show that the same

is owned and purchased by him. The respondent/wife further stated that the appellant/husband has filed a civil suit against the children, calling upon them to handover physical possession of the house and has demanded damages and occupation charges. The respondent/wife submitted that she had filed a petition against the appellant/husband under the Domestic Violence Act and a civil suit claiming *inter alia* that he has fabricated the documents in respect of the ancestral property where the parties are residing.

8. On completion of the pleadings, the Family Court framed the following issues:-

“(1) Whether petitioner is entitled to decree of divorce on the ground of cruelty under Section 13 (1) (ia) HMA? OPP

(2) Whether petitioner is entitled to decree of divorce on the ground of desertion under Section 13 (1) (ib) of HMA? OPP

(3) Whether petitioner is not entitled to relief prayed on account of preliminary objections taken in her WS? OPR

(4) Relief.”

9. To prove his case, the appellant/husband examined himself as PW1 and tendered his affidavit by way of evidence, marked as Ex.PW1/A. Similarly, the respondent/wife examined herself as RW1 and tendered her affidavit by way of evidence, marked as Ex.RW1/A. After going through the evidence, the Family Court opined that the appellant/husband had levelled vague and unsubstantiated allegations of cruelty against the respondent/wife and he had failed to mention any date or specific instance relating to the cruelty allegedly suffered by him at the hands of the

respondent/wife. Rather, the Family Court observed that questioning the paternity of his two children without proving that he was not their biological father, itself would amount to cruelty qua the respondent/wife. Thus, holding that the appellant/husband was unable to prove that he is entitled to divorce on the grounds of cruelty, issue No.1 was decided in favour of the respondent/wife.

10. As for issue No.2, as to whether the appellant/husband was entitled to a decree of divorce on the ground of desertion, the Family Court outright disbelieved the allegations levelled by him that the respondent/wife was afraid of establishing a physical relationship with him or that she had forcibly gained entry into the matrimonial home in the year 2014. Noting the fact that the appellant/husband had admitted that the marriage of both the children had taken place from the matrimonial home in the years 2011 and 2015, the Family Court refused to believe his version that it was at the request of the respondent/wife that he had permitted her to conduct the marriages from his residence. It was observed that if the respondent/wife had really deserted him and there was no relationship between the parties since the year 1985, then there was no reason for the appellant/husband to have waited for so long and file a divorce petition in the year 2015, after the passage of 30 years and even then, he had failed to establish desertion on the part of the respondent/wife for a continuous of period of two years preceding the presentation of the petition, as required under the statute. With these observations, the second issue was also decided in favour of the respondent/wife and the divorce petition filed by the appellant/husband was dismissed. Aggrieved thereby, the present appeal has been filed.

11. Mr. Kamal Mehta, learned counsel for the appellant/husband assails

the impugned judgment on the ground that the Family Court has failed to appreciate the evidence led by the parties in the correct perspective and has wrongly arrived at the conclusion that the appellant/husband was unable to demonstrate that the respondent/wife had treated him with cruelty; that the respondent/wife had herself admitted at several places in the written statement that there was a separation between the parties since the year 1985, which fact has been overlooked by the Family Court while rejecting the plea of desertion; that during her cross-examination, the respondent/wife had herself stated that she and the appellant/husband were residing separately and since the year 2014 and she had no concern with him. He contended that the said statement itself was sufficient for the Family Court to have allowed the divorce petition filed by the appellant/husband on the ground of desertion.

12. We have given our thoughtful consideration to the arguments advanced by learned counsel for the appellant/husband, perused the impugned judgment and examined the trial court record that had been summoned.

13. It is well established through a catena of decisions that the word ‘*cruelty*’ may not have been defined in the HMA, but it encompasses conduct of such a nature, both mental or physical, intentional or unintentional, that would cause a reasonable apprehension in the mind of the aggrieved spouse that it would be harmful or injurious to live with the other spouse. For deciding as to whether the aggrieved spouse has suffered cruelty at the hands of the other spouse, the court must examine the social and economic background of the parties, their life style, their cultural moorings and the moral values imbibed by them. The yardstick for testing as

to whether the aggrieved spouse has been caused danger to her/his life or health, would have to be taken as more than a reasonable apprehension that it would be harmful and injurious for her/him to live with the other spouse. The fact situation of each case being naturally different, there can be no standard formulae that can be applied to a given set of facts. Each case must be examined on its merits as the nuances of a relationship between a husband and wife can never be identical and much would depend on their inter-se relationship, their behaviour with each other and their family members over the years, for any court to conclude as to whether the effect of such a conduct, whether physical or mental, would be such as to cause a genuine apprehension in the mind of the aggrieved spouse that it would be harmful and injurious for her/him to live with the other spouse (Refer: Dr. N.G. Dastane Vs. Mrs. S. Dastane reported as **AIR 1975 SC 1534**, Shobha Rani Vs. Madhukar Reddi reported as **(1988) 1 SCC 105**, V. Bhagat Vs. D. Bhagat reported as **(1994) 1 SCC 337** and Swati Vs. Arvind Mudgal reported as **2015 (2) LRC 301 (Delhi)**]

14. Reverting back to the instant case, it is an admitted position that the marriage of the parties was solemnised on 4.5.1980 and the matrimonial home of the parties was at Nangloi, Delhi. The appellant/husband has challenged the paternity of the two children, who the respondent/wife has asserted, were born from out of the marriage of the parties. The records reveal that the appellant/husband did not lead any evidence to establish that the children were not born from out of the wedlock. In his cross-examination, the appellant/husband admitted to the fact that he had never applied for getting the DNA of both the children tested, so as to verify their paternity; that though in the school records of the children, he was named as

the father and similarly, in the Aadhar Card of the son, Parveen Kumar, his name has been recorded in the column of father, he had not taken any step to challenge the said documents. Instead, he pleaded that the said documents were prepared after he had retired from government service in the year 2014, which was rightly discounted by the Family Court that observed that it was not possible that the school documents of the children were prepared subsequently. Having regard to the fact that both the appellant/husband and the respondent/wife were employed as school teachers with Haryana Government and in the course of their career they were posted at different places, we are of the opinion that the learned Family Court was correct in arriving at the conclusion that while the appellant/husband was residing at Nangloi, Delhi, due to her professional commitment, the respondent/wife was residing at Pataudi, Haryana. The appellant/husband has admitted in his cross-examination that sometimes, the respondent/wife used to come to the matrimonial home on weekends and on Saturdays, which itself demonstrates that the parties were cohabiting and continuing their matrimonial relationship. It is not even the case of the appellant/husband that he had objected to the respondent/wife visiting the matrimonial home at Nangloi, from time to time. In such circumstances, the inevitable inference is that by his conduct the appellant/husband had condoned any act of cruelty on the part of the respondent/wife, including his claim that she had refused to establish a physical relationship with him.

15. Another material fact that goes against the appellant/husband is that in one breath, he has questioned the paternity of the children and in the other, he admits to the fact that the marriage of both the children had taken place from his home at Nangloi, in the year 2011 and 2015, respectively. It is

hard to believe that though the children were not born from out of the wedlock, as claimed by him, the appellant/husband was so generous that he acceded to the request of the respondent/wife and permitted their marriage ceremonies to be performed from his home. The appellant/husband also failed to place on record any documentary evidence to demonstrate that at any point in time, he had objected to the respondent/wife using his name as the father of the children or that he had approached the court of law or any other forum, questioning the paternity of the children. It is also not in dispute that the son, Parveen Kumar was born at Patuaudi, Haryana, which was his maternal grandparents' residence and the delivery of the daughter, Indu Priya had taken place at the matrimonial home at Nangloi, Delhi. This fact itself demolishes the plea taken by the appellant/husband that he never had any access to the respondent/wife or that the parties had been living separately throughout.

16. In the above circumstances, the claim of the appellant/husband that the parties had no relationship after the year 1985 or that the respondent/wife had deserted him for the past 30 years, is untenable and has been rightly rejected by the learned Family Court. The allegation of the appellant/husband that the respondent/wife had forcefully gained entry into his Nangloi house in the year 2014, when he had gone to Sonapat, by taking the keys from a neighbour, also appears to be meritless when admittedly, he did not lodge any complaint with any authority or the police station alleging that a forceful entry had been made by the respondent/wife and the children, nor did he lead any evidence by summoning his neighbours or family members, who could have deposed on the above incident. The self-serving statements made by the appellant/husband cannot be accepted as the final

word.

17. We are therefore in complete agreement with the opinion expressed by the learned Family Court that the appellant/husband has miserably failed to prove that the respondent/wife had treated him with cruelty for claiming dissolution of the marriage on the ground of cruelty.

18. As regards the second plea that the respondent/wife had deserted the appellant/husband and ever since the year 1985, she was residing with her father at Pataudi, Haryana, as noted above, both the husband and wife were working as school teachers in government schools run by the Haryana Government and the nature of their service was such that they could be posted at different places. Thus, the respondent/wife had to live away from the matrimonial home when posted out but she used to come over to her matrimonial home at Nangloi during weekends. This position has been admitted by the appellant/husband. For claiming desertion, the appellant/husband was required to prove that the respondent/wife had deserted him for a period of not less than two years immediately preceding the presentation of the divorce petition. However, it is the appellant/husband's own version that the respondent/wife had gained entry into the matrimonial home at Nangloi, in the year 2014. The appellant/husband has stated in his cross-examination that the respondent/wife is living in one room on the ground floor and he is living in the adjacent room, whereas the son, Parveen Kumar is residing with his wife and children on the first floor of the Nangloi house. If the statement made by the appellant/husband that the respondent/wife had forcibly gained entry into the matrimonial home in March, 2014 is correct and it is also true that ever since then, she is continuing to reside there, then this itself is sufficient

ground to non-suit him on the second issue of desertion keeping in mind the fact that the petition for divorce was filed by him on 27.2.2015, which was within a period of 11 months, reckoned from March, 2014. Thus, the ground of desertion was not even available in law to the appellant/husband.

19. In view of the aforesaid discussion, we have no hesitation in upholding the impugned judgment. The present appeal is accordingly dismissed as meritless alongwith the pending applications, with no order as to costs.



(HIMA KOHLI)
JUDGE

(ASHA MENON)
JUDGE

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