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

% ***Date of decision: 26th September, 2023***

+ **MAT.APP.(F.C.) 66/2023 & CM APPL. 10887/2023**

ANITA

..... Appellant

Through: Mr. Vaibhav Vats, Advocate
(DHCLSC).

Versus

AMIT

..... Respondent

Through: Ms. Radha Yadav, Advocate through
video conferencing with respondent
in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 10888/2023 (Condonation of delay)

1. The present application under Section 5 of the Limitation Act read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the applicant/appellant seeking condonation of 30 days' delay in filing the present appeal.

2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 30 days in filing the present appeal is condoned.



3. Accordingly, the present application is disposed of.

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4. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/wife against the Judgment dated 24.12.2022 passed by the learned Judge, Family Court, Karkardooma, Delhi, whereby the Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) filed by the respondent/husband seeking divorce on the ground of cruelty, was allowed.

5. The parties got married on 18.11.2011 at Saurav Marriage Home at Johripur Delhi, as per the Hindu rites and customs. According to the respondent/husband, the relationship did not blossom from the first night itself. It took a lot of cajoling and convincing for the respondent/husband to be able to establish physical relationship on the first night.

6. It is claimed by the respondent/husband that the appellant/wife was rude and quarrelsome and had compelled him to sell his house to purchase a new one near the house of her parents.

7. The respondent/husband further asserted that the appellant/wife was diabetic since her childhood, but she failed to disclose this fact at the time of marriage and he came to know about this fact subsequently.

8. It was further claimed that the appellant/wife levelled false allegations against him and his family members of having severely beaten up the appellant/wife on 28.08.2013 which resulted in her abortion/ miscarriage. Further, the appellant/wife made false allegations of the respondent/husband having an extramarital relationship. The appellant/wife also made allegations of dowry demand which were without any basis. It is claimed that the appellant/wife finally left the matrimonial home on 08.10.2013



along with her younger brother and took all her costly items, jewellery and gold without any reason. It was thus asserted that the respondent/husband was subjected to cruelty and hence, the divorce was sought under Section 13(1)(ia) of HMA, 1955 on the ground of cruelty.

9. **The said divorce petition was contested by the appellant/wife** who refuted all the averments made in the divorce petition. The appellant/wife asserted that the respondent/husband was very cruel in his behaviour, but she continued to tolerate with the hope that his conduct would improve with the passage of time.

10. It was claimed by the appellant/wife that the respondent/husband used to consume liquor habitually and used to spend all the money on his comfort and luxury. She was deprived of all the basic amenities and was not even provided with two square meals. A demand for a Santro Car was made consistently and due to non-fulfilling of the demand, she was given beatings. She was even threatened to be killed by the respondent/husband and his family members.

11. In the month of July, 2013, the appellant/wife became pregnant, but she was given severe beatings on 28.08.2013 which resulted in her abortion. The appellant/wife was beaten up also on 08.10.2023 at about 09:00 A.M. and demand for more dowry and cash and was thrown out of her matrimonial home.

12. It was asserted that despite the efforts of the appellant/wife and her family members to resolve the disputes, the respondent/husband continued to be adamant in his behaviour which compelled the appellant/wife to file a complaint before the CAW Cell on 02.04.2014.

13. All the allegations of cruelty were refuted.



14. On the basis of pleadings, the issues were framed by the learned Judge, Family Court on 15.01.2019 which read as under: -

“(i) Whether respondent has committed the acts of cruelty as specified in the petition? OPP.

(ii) Whether petitioner has committed cruelty upon the respondent and is guilty of constructive desertion as stated in the written statement and is taking advantage of his own wrongs? OPR.

(iii) Whether petitioner is entitled to decree of divorce u/s 13(1)(a) HMA? OPP.”

15. The respondent/husband examined himself as PW1 in support of his assertions. The appellant/wife appeared as RW1 in support of her case.

16. **The learned Judge, Family Court** on the basis of evidence concluded that the false allegations of extramarital affair and of giving beatings resulting in abortion, were made by the appellant/wife which amounted to cruelty. Hence, the petition for divorce vide Judgment dated 24.12.2022 was allowed.

17. Aggrieved by the impugned Judgment dated 24.12.2022, the present Appeal has been preferred by the appellant/wife.

18. **Submissions heard from the learned counsels for the parties and the documents as well as the evidence perused.**

19. Admittedly, the parties got married on 18.11.2011 and they separated on 08.10.2021 i.e., within a period of two years of their marriage. The respondent/husband had made allegations of appellant/wife being rude and quarrelsome. On perusal of the record, we find no evidence from where it could be concluded that the conduct of the appellant/wife was not conducive



to a happy marital life. There is no evidence to show that she was quarrelsome or rude or that there were inherent issues in establishing physical relationship. These grounds have been rightly rejected by the learned Judge, Family Court.

20. The other grounds of cruelty as claimed by the respondent/husband was that the appellant/wife was suffering from diabetes since her childhood, but this fact was not disclosed at the time of marriage and he came to know by the appellant's father after one and a half month of marriage.

21. The learned Judge, Family Court has rightly observed that irrespective of whether the fact of the appellant/wife being diabetic was disclosed or not disclosed at the time of marriage, it was not an ailment of a nature that would affect the marital life. The ailment may be incurable but could be managed and controlled with effective medication and would in no manner interfere in discharge of the duties of the appellant/wife. Therefore, merely because the appellant/wife was a diabetic, is no ground to attribute any cruelty to the appellant/wife. We observe that this ground as an act of cruelty has also been rightly rejected by the learned Judge, Family Court.

22. The most significant ground of cruelty was the serious allegation made by the appellant/wife against the respondent/husband was that he was having an extramarital relationship with different women. The appellant/wife in her Written Statement had not denied having made such allegation. In the evidence, the appellant/wife had tried to explain it by asserting that the mother-in-law used to say that they should have selected other girl, Neeraj who was better than the appellant/wife. Merely because the mother-in-law had been claiming that there was another girl whom she thought was better than her, can by no way a logic or interpretation, be a



basis for the appellant/wife to taunt the respondent/husband by saying that he was having an extramarital relationship.

23. In the case of Vijay Kumar Ramchandra Bhate vs. Neela Vijay Kumar Bhate 2003 6 SCC 334, it was held that the position of law is well settled that levelling of disgusting accusations of unchastity and indecent familiarities with a person outside the wedlock and allegations of extramarital relationship which has a grave assault on the character, honour, reputation as well as status of the spouse are sufficient by itself to substantiate cruelty in law warranting the ground of divorce.

24. Placing reliance on this judgement, the Supreme Court, in the case of Nagendra vs K. Meena (supra), observed that unsubstantiated allegations of the extra-marital affair with the maid levelled by the wife against the husband, amount to cruelty. When there is a complete lack of evidence to suggest such an affair, the baseless and reckless allegations are serious actions which can be a cause for mental cruelty warranting a decree of divorce.

25. Thus, the learned Single Judge has correctly held that such taunts by the appellant of an extra-marital affair amount to cruelty.

26. The appellant/wife had also asserted that she became pregnant in July, 2013 despite which she was given severe beatings by the respondent/husband and his family members on 28.08.2013 which resulted in her abortion/ miscarriage.

27. Further, the appellant/wife had claimed that she was pregnant and eventually suffered abortion but has failed to produce any document whatsoever to support her averments of there being a pregnancy or abortion on account of beatings. Mere averments not supported by any



comprehensive evidence or documents, coupled with the medical documents relied upon by the respondent/husband, where there is no mention of pregnancy, makes it clear that these are frivolous allegations. As has been rightly observed by Learned Judge, Family Courts, there is no evidence of these allegations made by the appellant/wife against the respondent/husband. In light of lack of any evidence, it has to be held that the allegations are clearly an afterthought.

28. Significantly, the matter did not rest there but the appellant/wife admittedly made a complaint in Delhi Commission for Women on 06.01.2014, wherein pertinently there was no mention of the beatings allegedly given on 28.03.2013. This complaint was subsequently followed by another complaint in CAW Cell on 02.04.2014, wherein the incident of 28.03.2013 finds a mention.

29. As has been observed by the Apex court in Raj Talreja v. Kavita Talreja (2017) 14 SCC 194, mere filing of complaints does not amount to cruelty, if there were justifiable reasons to file the complaints. Undoubtedly, a person who is aggrieved by the alleged criminal acts of another party is well within its right to approach the appropriate authority for redressal. However, it must be noted that she did not make an immediate complaint of such a grievous incident and only filed one after several months of the incident. The onus was on the appellant/wife to substantiate her allegations of dowry demands, beatings and forced abortion which she has miserably failed to prove.

30. Learned Judge, Family has, therefore, rightly concluded that the respondent/husband was subjected to cruelty and granted the divorce under Section 13(1)(ia) of the Act.



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31. For the foregoing discussions and conclusions, we find no merit in the present Appeal, which is hereby dismissed along with pending application, if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 26, 2023
S. Sharma

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 09.11.2023
02:23:09

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