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

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

+ **MAT.APP.(F.C.) 78/2019 & CM APPLs. 12334/2019, 9471/2020**

DIMPLE THAREJA

..... Appellant

Through: Ms. Meera Kaura Patel, Advocate
(DHCLSC).

versus

DEVENDER KUMAR

..... Respondent

Through: Ms. Parisha Vishnoi & Mr. Arjun,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

MAT.APP.(F.C.) 78/2019 & CM APPL. 12334/2019

1. **The appeal under Section 19 of the Family Courts Act, 1984** has been filed by the appellant/wife against the Judgment dated 16.11.2018 granting divorce to the respondent/husband on the grounds of 'cruelty' and 'desertion' under Sections 13(1) (ia) & (ib) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'the Act, 1955'*).
2. The parties got married according to Hindu rites and customs on 09.12.2001 and one son, Aaryan Kumar, was born from their wedlock on 02.10.2005. It was asserted that he was a caring husband and helped the



appellant in taking her education in I.T. and had supported her to continue her higher education, trained her in niche skills, helped her to get good job and also incurred her expenses. It was asserted that the appellant/wife was doing a job and getting Rs.2000/- per month at the time of marriage.

3. It is claimed that since beginning of the marriage, there was unwarranted interference by the family members of the appellant/wife which created the differences between the spouses which kept on increasing with the passage of time. The respondent/husband asserted that within three months of marriage, he was forced by the appellant/wife to reside separately from his parents. He asserted that the appellant/wife being a working lady, never participated in the household chores because of which, he had to incur additional expenditures for keeping the Housemaid. It was asserted that most of the times, the food was not cooked by the appellant/wife compelling him either to go without food or to purchase it from some *Dhaba*.
4. The respondent/husband further asserted that his father gave him money from the sale of the ancestral property to purchase a flat at Dwarka, which he did in his own name. Due to interferences of the family members of the appellant/wife, he was compelled to take his transfer to Pune which caused him Rs.3 lakhs which he had to pay to his Company as bond money. He gave this flat on rent as he changed his job to Pune. He in August, 2004 shifted to Mumbai where he purchased a flat in joint name with the appellant from his own earnings.
5. The respondent/husband claimed that in the month of January 2007, appellant/wife went to U.S. for her job where she stayed till April, 2007.



In June, 2007, the respondent/husband was transferred to U.S. and despite his several requests, the appellant/wife failed to join him along with the son. He made frequent phone calls to her and also made a request to be able to get to his son but he was never allowed to take his son. He further asserted that he used to send money as per the demands of the appellant/wife for household expenses and also for payment of loan instalments of the property in Mumbai. He had transferred \$10,000/- (Rs.4 lakhs) in the Account of the appellant/wife on 27.08.2007 which she gave to her mother. She also threatened that in case the respondent asked for return of money, she would return to her mother's house.

6. The respondent/husband further asserted that the keys of the flat at Dwarka and Mumbai were in possession of the appellant/wife who removed all the documents of the properties as well as financial documents pertaining to LIC policies, NSC etc. from the almirah. She despite his request, failed to return the said documents. Since all the documents were with the possession of the appellant which she denied and he needed the documents, he lodged a FIR on 21.09.2009 at P.S.Tis Hazari stating that his papers have been lost only with an intention to preserve their relationship. He then applied for duplicate copies and suffered because of the conduct of the appellant.
7. In December, 2007, the respondent/husband returned to India from U.S. but he claimed that the appellant/wife refused to join his company at Mumbai. He was forced to be transferred to Delhi and was compelled to take accommodation on rent at Kalkaji, New Delhi near the house of the appellant's parents. It was asserted that interference of the family



members of the appellant/wife was increased day by day which resulted in frequent quarrels and therefore the respondent/husband was forced to shift to rental accommodation at Kailash Hills in July, 2009 on rent of Rs.20,000/- per month. While shifting to Kailash Hills, the appellant/wife took away her as well as the son's belongings including jewellery, *stridhan* without the knowledge of the respondent/husband and kept the same to her parental house. She refused to have any sexual relationship with him. The attitude of the appellant/wife was changed and after her office, she frequently went directly to her parental home and on days, when she returned, it was late in the night. She went to the parental home on several occasions without informing the respondent/husband. The respondent/husband tried to contact her but her mobile phone found switched off or she refused to respond. In September, 2009, the appellant/wife along with the son and belongings shifted out of the home and went to live in the parental home at Greater Kailash, Delhi and refused to return back making it evident that she had no intention to shift back with the respondent/husband.

8. It was further claimed by the respondent that he many a times, went to the parental home of the appellant for reconciliation and tried to bring her back but she threatened the respondent with the dire consequences. In these circumstances, he gave a complaint on 23.04.2012 to the Commissioner of Police at New Delhi and a complaint dated 27.04.2011 to the SHO, P.S. Amar Colony. In April, 2012, the appellant/wife had made a complaint in the name of fictitious person Pushpa Devi which caused hurdle in the sale of Dwarka flat by him which caused great harassment and torture. The respondent/husband thus, sought divorce on



the grounds of cruelty and desertion.

9. **The appellant/wife contested the divorce petition and in her written statement** denied all the allegations made by the respondent/husband. It was asserted that at the time of marriage, the respondent/husband and his family members had demanded cash to buy the house in Dwarka aside from gold jewellery and other gifts. The respondent/husband maltreated, abused, physically assaulted and threatened the appellant/wife with the divorce for not having brought articles according to his expectations. It was asserted that her articles and the jewellery were all retained by the respondent/husband. She denied that she ever demanded a separate residence. She further explained that in the year 2003, the respondent/husband got another job in Pune at three times the salary because of which, he had to pay the Bond amount of Rs. 3 lakhs to the previous owner/Company. It was denied that she was the reason for the transfer. She further explained that he again changed his job and shifted to Mumbai in August, 2004.
10. She asserted that the respondent/husband in a most indifferent way compelled her to leave her job and take another job at his place of posting. He had scant regard for her job. It was asserted that after Mumbai, the respondent/husband took a transfer to Delhi on the false pretext of taking care of mother and the appellant/wife was also compelled to take a job at Noida in order to support the respondent/husband.
11. The appellant/wife asserted that she not only financially supported the respondent/husband but also discharged all her obligations towards husband as a wife. She did all the household chores and no maid was



kept on extra expenses.

12. She further explained that she had gone to USA in January 2007 for short duration of two months and she was compelled to leave her job in USA. She came back but thereafter, the respondent/husband left for USA on the pretext of his transfer. It was denied that the appellant/wife refused to accompany the respondent to USA along with minor son but it was asserted that it was the respondent who refused to take the appellant to avoid additional expenditure in USA. Despite earning USD 90,000/- p.a., he failed to provide any maintenance either to the appellant/wife or their minor son. He in fact on return to India demanded Rs.4 lakhs from the parents of the appellant/wife.
13. She denied that the keys of the house or the almirah were with her or that she had taken away all the documents. She asserted that a false story has been concocted by the respondent/husband only to harass and humiliate her which is also evident from the FIR registered by him wherein he himself reported the documents to have been lost. She further asserted that because of the temperamental issues, the respondent/husband frequently switched his job and he forced the appellant/wife to change her job correspondingly.
14. She denied that she frequently went to her parental home leaving the respondent/husband. It was asserted that the respondent used to lock the house and go to his parents or friends without informing or giving duplicate keys to the appellant due to which, she was forced to spend long hours outside the house. In fact, it was this reason because of which she was compelled to go to the parental home. It was asserted that the mother and sister of the respondent/husband also used to misguide him



thereby creating conflicts between her and the husband. The mother and sister of the respondent even went to the extent to assert that minor son Aaryan was not his son in blood. It was thus, asserted that the averments made in the petition were all false and he was not entitled to divorce.

15. The issues were framed on 17.11.2015 as under:

- (1) Whether the respondent, after solemnization of marriage, has treated the petitioner with cruelty? OPP.*
- (2) Whether the respondent has deserted the petitioner for continuous period of not less than two years immediately preceding the presentation of petition? OPP*
- (3) Whether the petitioner is entitled to a decree of divorce as prayed for? OPP*
- (4) Relief.*

16. The respondent appeared as **PW-1** in support of his case and was duly cross-examined. He also examined his sister and brother-in-law as **PW-2** and **PW-3** but they were not cross-examined by the appellant/wife despite opportunities. Thereafter, the appellant/wife failed to adduce her evidence and the same was closed vide Order dated 14.09.2018.

17. The **learned Judge, Family Courts** recorded the acts of cruelty as were deposed by the respondent/husband and held that the conduct of the appellant/wife to support her allegations of abuse and beatings were not supported by any medical record and she failed to rebut the testimony of the respondent/husband in respect of refusal for cohabitation and for joining the matrimonial home which proved cruelty on the part of the appellant/wife, thereby entitling him to divorce on the ground of cruelty. It was also observed that the appellant/wife had not joined the company



of the respondent after 2007/2009 and there was no evidence to show that she had any intention of resuming the matrimonial relationship. Hence, the respondent/husband was held to be entitled to divorce on the ground of desertion as well.

18. *The divorce petition was accordingly allowed and the divorce was granted under Sections 13(1)(ia) & (ib) of the Act, 1955 on the grounds of cruelty and desertion.*

19. **Being aggrieved**, the present appeal has been filed by the appellant/wife.

20. **Submissions heard and the record perused.**

21. Admittedly, the parties got married on 09.12.2001 and resided together till 2007. The respondent/husband for his career progression admittedly took transfers and or switched his jobs to Pune and Mumbai but such acts cannot be faulted as it was intended for the betterment of the financial status of the parties. The appellant/wife has contended that she was also compelled to switch her job but essentially that was to ensure that the parties are able to live together as husband and wife. No act of cruelty can be imputed on the respondent/husband on account of frequent switching of jobs or adjustments made in order to live together.

22. The respondent/husband had deposed that he had helped the appellant/wife to improve her educational qualification and had funded her education in IT and supported her in improvement of niche skills and also to get better jobs. These aspects had not been refuted or denied by the appellant/wife. It is also brought on record that in January, 2007 on account of respective efforts of both the parties, the appellant/wife was able to get the two months transfer to US which she completed. The respondent/husband thereafter, was able to get the transfer from his job to



US for about 6 months. The appellant may not have joined the respondent when he was in US but neither party can be blamed for that. Even if the respondent/husband had reluctance to the appellant/wife joining in US as it may have meant additional expenses but as an act of cruelty, it cannot be considered because it was a short tenure posting and it may have costed much higher expenditure, as stated by the appellant/wife.

23. The appellant/wife has claimed financial exploitation by asserting that the respondent had taken all her salary to fund the flat at Dwarka. She had further claimed that though the flat in Mumbai was purchased in joint name, the respondent/husband failed to pay instalments, compelling her to pay the bank loan instalments, with the help of her mother and brother, for the period of 2010 to 2014.
24. The respondent/husband on the other hand asserted that it was from his own fund and that of the father from which he purchased a flat in Dwarka and the flat in Mumbai had been purchased jointly. The appellant/wife, however, led no cogent evidence either by way of cross-examination of the respondent/husband or by stepping into the witness box to support her claim. There is no cogent evidence to prove that she was financially abused by the respondent/husband.
25. The appellant had asserted that she was abused, maltreated and physically assaulted by the respondent for not having brought articles according to the expectations of the respondent. However, it was for the aggrieved/appellant to establish that she was subjected to cruelty by placing forth cogent evidence in support of the allegations. However, the appellant has neither substantiated her allegations by any specific details



nor has she led any evidence in corroboration thereof.

26. The appellant/wife had further asserted that she was often beaten and harassed even during her pregnancy but neither did she appear in the witness box nor filed a single document to corroborate her assertion of beatings. The learned Judge, Family Courts has rightly observed that there was no single medical document to prove that she was ever subjected to physical abuse.
27. The appellant's conduct of making of such bald averments and wild allegations in her Written Statement and then leading no evidence to substantiate the same despite several opportunities, clearly establishes the vindictive nature of the appellant which amounts to extreme cruelty towards the respondent/ husband.
28. Admittedly, the parties separated in 2007/2009 and since then the appellant has been residing separately. Significantly, the respondent/husband had asserted that he had made various reconciliatory efforts despite which the appellant/wife failed to join his company. These assertions have not been refuted by the appellant/wife. The respondent had also claimed that the appellant had withdrawn from his company and there was no cohabitation since 2007 which again had not been refuted by the appellant/wife. It is pertinent to observe that the appellant has shifted to US since long because of which there was no effective representation on her behalf during the entire trial, so much so ,that she did not even produce her evidence.
29. All these circumstances when taken cumulatively proved that she had no intention to resume the matrimonial relationship from which she had withdrawn in 2007 and physically in 2009. The withdrawal from the



matrimonial obligations on the part of the appellant/wife, clearly amounts to the cruelty. It is also evident from the evidence that she had no intention to maintain and sustain her matrimonial relationship with the respondent/husband and there was total abandonment.

30. In the present factual situation her intention to abandon the respondent/husband and her obligations as a wife are glaring on the face of their situation proving that she was deserted the respondent and has no animus to continue the matrimonial relationship. We concur with the observations of the learned Judge, Family Court that the respondent/husband was subjected to cruelty and that he had been deserted by the appellant/wife. The divorce has been rightly granted under Sections 13(1)(ia) & (ib) of the Act, 1955 on the grounds of cruelty and desertion.
31. We find no merit in the appeal, which is hereby dismissed with the pending applications, if any.

CM APPL.9471/2020 (filed by the respondent for child visitation rights as well as shared custody of the minor child)

1. The application has been filed by the respondent before this Court under Section 26 of the Act, 1955 seeking visitation rights in respect of minor son. However, this application has not been pursued. Moreover, since the divorce has already been granted, the respondent is at liberty to file the appropriate application before the learned concerned Court/appropriate forum.



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2. The application is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 26, 2023
akb/jn

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 04.12.2023
13:24:20

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