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

% *Date of decision: 14th September, 2023*

+ **MAT.APP.(F.C.) 207/2023**

ANJULI

..... Appellant

Through: Mr. Francis Paul, Advocate with
appellant in person.

versus

VINOD KUMAR HANDA

..... Respondent

Through: Ms. Vandana Khurana, Advocate
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)

1. The present Appeal under Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) read with Order XLI Rule 1 and Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the appellant against the Judgment and Decree of Divorce dated 29.07.2006 passed by the learned Additional District Judge, Delhi thereby granting divorce to the respondent/husband under Sections 13(1)(ia) and 13(1)(ib) of the HMA, 1955.
2. The parties got married on 06.12.1985 according to the Hindu customs and rites and one son, Master Rupank Handa was born from their wedlock on 08.09.1986.
3. It was claimed by the respondent/husband that since the day of marriage, the appellant/wife had the habit of visiting her parents every now



and then and many a times, she went to parental home straight from the school where she was teaching, without even informing the respondent/husband and his family members. The appellant/wife also remained engaged on telephone with her parents for a long time. Her mother and sisters used to regularly interfere into the day-to-day life of the parties and advice was thrust upon the respondent/husband even upon the minutest day-to-day affairs.

4. It is submitted that the appellant/wife had opened a Bank Locker and despite repeated asking, she did not disclose the details of her Bank Locker. The appellant/wife made issues on the family functions like first *Lohri* on 13.01.1996 and later on *Namkaran* Ceremony of their son as she wanted a video film of the same to be prepared, even though these were regular small family functions. The child was also not looked after properly by the appellant/wife. It was claimed that the mother of the respondent/husband thus, took voluntary retirement from employment with the Indian Express around the month of October, 1987 for taking care of the minor child.

5. It is submitted that the appellant/wife herself refused to do household chores. She also refused to support their family financially in times of need and even after the great persuasion, she contributed a small amount of money with reluctance. It is also asserted that the appellant/wife behaved as if she was doing a great charity towards the family. She insisted with the respondent/husband that they should start living separately from the parents, to which the parents of the respondent/husband eventually relented and the parties started residing separately on the first floor of their house since the year 1990.

6. However, the attitude of the appellant/wife did not change and she



continued to behave with indifference towards the respondent/husband and the family members. She displayed no response towards the family members and used to insult them even on petty matters.

7. So much so, sometime in March, 1989, the appellant/wife started creating nuisance in the mohalla on which her mother along with brothers and sisters and their husbands came to the respondent/husband and manhandled, abused and insulted him.

8. The respondent/husband booked a scooter in the name of the appellant/wife, but when the respondent/husband asked the appellant/wife to sign the papers for transfer of the said scooter, she refused to do the same and quarrelled with the respondent/husband on 30.10.1991.

9. On 01.11.1991, the appellant/wife lodged a report with the police and the respondent/husband was summoned in the police station. The respondent/husband was compelled to move an anticipatory bail before the learned Additional Sessions Judge. Subsequently, the respondent/husband received the summons from CAW Cell, West District, Police Station Rajouri Garden to appear before it on 25.11.1991, wherein the appellant/wife made false allegations of dowry demands and claimed that *Stridhan* had been misappropriated which resulted in severe mental tension and trauma to the respondent/husband. The appellant/wife also filed the Petition under Section 125 of the Code of Criminal Procedure, 1973 claiming maintenance.

10. The respondent/husband, therefore, filed a Petition under Section 13(1)(ia) and 13(1)(ib) of the HMA, 1955 seeking divorce on the grounds of cruelty and desertion before the learned Family Court.

11. Subsequently, the respondent/husband moved an amendment application to insert additional grounds which was allowed by the learned



Additional District Judge *vide* Order dated 10.01.1995 and against the said Order, the appellant/wife filed an Appeal before this Court *vide* Civil Revision No. 198/1995 which was allowed and the proposed amendments were not allowed. Consequently, the Petition bearing HMA No. 137/1992 was dismissed in default on 24.03.2000.

12. Thereafter, the respondent/husband filed the present fresh Divorce Petition bearing HMA No. 277/2002, whereby the respondent/husband took new grounds alleging that in the Complaint dated 18.11.1991, the appellant/wife made false and frivolous allegations of dowry demands and harassment which amounted to mental trauma not only for the respondent/husband but for the family members of the respondent/husband. It was further alleged in the new Petition bearing HMA No. 277/2002 that on the first marriage anniversary on 06.12.1986, the respondent/husband had arranged the celebration at *Baithak* Restaurant in East Patel Nagar, New Delhi and the friends and family members were called for the dinner at 08:00 P.M. The appellant/wife left the house by claiming that she would come along with her family members, but she did not attend the celebration causing tremendous embarrassment to the respondent/husband.

13. It was further claimed on the occasion of *Shivratri* in March, 1992, the respondent's sister, Ms. Neelam and her husband had arranged the ceremony for their new house at Shalimar Bagh, where the respondent and his family members were also invited. Since, the appellant/wife had snapped her relationship with the respondent/husband and was residing separately on the first floor of their house, she on seeing the respondent/husband and his family members leaving with gifts etc. in the car for the function, came and created a ruckus and threw out all the gifts etc. on the road and also grappled



with the respondent/husband who tried to resist her from throwing away the gift packets. The incident resulted in much embarrassment for the respondent/husband and his family members.

14. On 24.04.1992, the respondent/husband heard the son crying because of severe stomach pain. He took the son to Jaipur Golden Hospital, where the appellant/wife arrived in the morning of 25.04.1992 and wanted to get the son discharged. When the respondent/husband and his mother tried to dissuade the appellant/wife and requested her to let the child recover first, she created an ugly scene in the Hospital and hurled abuses against both of them.

15. On 20.11.1993, the respondent/husband went to Ramjas Day Boarding School, Anand Parbat, New Delhi to deposit the fees of his son and wanted to take his son to the doctor for treatment, but he was not permitted by the school Authority since the appellant/wife, who was the teacher in the same school, had given the instructions not to let the father meet the child.

16. Not only this, the appellant/wife met the respondent/husband's colleagues in his Office at National Insurance Company and poisoned their ears against him. The appellant/wife started making false complaints to them by alleging that the respondent/husband was a man of bad character, drunkard, womaniser and a dishonest person and was unfit to be retained in the employment. On 13.12.1993, the respondent/husband was informed by the Branch Manager that the appellant/wife had called him and asserted that the respondent being a man of bad character must not be retained in service. On 13.05.1994, Mr. J.S. Bajaj, Development Officer in the respondent's office was received a call from a lady claiming herself to be the appellant



and again levelled the allegations of respondent being a womaniser and having illicit relationship with several women. The appellant/wife also demanded that Mr. J.S. Bajaj, Development Officer should disclose the new address to which the respondent/husband and his family members had shifted and when he declined to disclose the same, the appellant/wife threatened him with dire consequences.

17. In addition, it was asserted that the appellant/wife had filed a Petition bearing No. 33/1998 under Section 20 of the Hindu Adoptions and Maintenance Act, 1956 (*hereinafter referred to as "HAMA, 1956"*) claiming maintenance for the child. The appellant/wife also levelled the defamatory allegations against the character of the respondent/husband with an intention to cause injury to his reputation. The appellant/wife made an averment in Paragraph 11 of the Petition under Section 20 of HAMA, 1956 that "*the respondent is spending a large sum of his income on women, wine and other vices*".

18. It was further asserted that even though the respondent/husband and his parents shifted from the ground floor of the property in April, 1994, the appellant/wife continued to stay there and she subsequently vacated the first floor of their house after receiving huge sum of money which she used to purchase another property for herself in 1997.

19. The respondent/husband thus, asserted that he was subjected to cruelty and also the appellant/wife had deserted him for over ten years and had snapped the matrimonial relations permanently. Thus, by way of new Divorce Petition bearing HMA No. 277/2002, the respondent/husband sought the divorce on the ground of cruelty and desertion, same was allowed by the impugned judgment dated 29.07.2006.

20. **The appellant/wife contested the said Divorce Petition** by taking



her preliminary objection that since the first Divorce Petition had been dismissed in default *vide* Order dated 24.03.2000, therefore, he cannot seek divorce on the same grounds by filing the present second Divorce Petition.

21. The appellant/wife denied that she had adopted an uncompromising and problematic attitude as was claimed by the respondent/husband; rather she asserted that she had been harassed by the respondent/husband and his family members on account of dowry demands, but she tried to compromise and continued to live in the joint family as a dutiful Hindu wife.

22. The appellant/wife also denied having demanded a separate residence. The appellant asserted that, in fact, the respondent/husband had no inclination to cohabit with her as he had illicit relationship with other women and he ever had a son from this illicit relationship.

23. The appellant/wife denied that she did not permit the respondent/husband to cohabit with her on the first floor, but in fact, he himself deliberately avoided to live with her because of his interest in other women whose company he was not ready and willing to leave.

24. The appellant/wife also explained that the scooter had been purchased by her which the respondent/husband wanted to sell illegally to which she did not agree. The appellant/wife also asserted that her complaint resulting in FIR under Section 498A and 406 of the Code of Criminal Procedure, 1973 was correct and all the averments made in the complaint were true and correct.

25. The appellant/wife also explained that she filed the Petition under Section 20 of HAMA, 1956 for maintenance of her son which was a right under the law and the respondent/husband had neglected to maintain the son.

26. The appellant/wife asserted that it is she who is subjected to



harassment and torture by the respondent/husband and his family members. She denied that she had levelled false allegations of illicit relationship and, therefore, she asserted that the Petition was without merit and was liable to be dismissed.

27. The issues on the basis pleadings were framed on 24.02.2003 which read as under: -

“1. Whether the petitioner was treated with cruelty by the respondent after the solemnization of the marriage? OPP.

2. Whether the petitioner was deserted by the respondent for a period of more than two years, prior to the filing of the present petition without sufficient cause? OPP.

3. Whether the present petition is barred by Principles of res judicata? OPP.

4. Whether the petitioner has no cause of action to file the present petition u/o 7 Rule 41. CPC? OPD.

5. Whether the present petition is not maintainable, if so, its effect? OPD.

6. Relief.”

28. In support of averments made in the Petition, **the respondent/husband appeared as PW1** and also produced his mother as a witness in support of his assertions, as PW 2.

29. **The appellant/wife appeared as RW1** and filed her affidavit of evidence in support of her assertions.

30. **The learned Additional District Judge** considered the plea of *res judicata* as taken by the appellant/wife and observed that indisputably, the first Petition for Divorce bearing HMA No. 137/1992 was dismissed in default *vide* Order dated 24.03.2000 and the Application for Restoration was also dismissed, but the respondent/husband had agitated new grounds of



divorce after 1992 which constituted a fresh cause of action on which the Divorce Petition was maintainable. Even in respect of the incidents which happened prior to 1992, there were no findings on merits and the dismissal of the earlier Petition did not operate as a *res judicata* in the second Divorce Petition.

31. We find that the new Petition bearing HMA No. 137/1992 filed by the respondent/husband in the year 2002 states various new grounds for seeking divorce. The right to seek a divorce is continuing cause of action till the marriage subsists and even if the earlier Divorce Petition HMA No. 137/1992 was dismissed in default *vide* Order dated 24.03.2000 and the same grounds could not be agitated but as rightly observed by the learned Additional District Judge, there were new grounds pleaded in the second Divorce Petition bearing HMA No. 277/2002 which deserve to be considered on merit. The preliminary objection of the appellant/wife of there being a bar of *res judicata* to the subsequent Divorce Petition bearing HMA No. 277/2002 was, therefore, without merit.

32. The parties got married on 06.12.1985 and their marriage lasted till about November, 1991 when the parties separated. In these six years of marriage, various allegations and counter-allegations have been made, the first being the insistence of the appellant/wife for separate residence. Though she denied it but there is no specific denial; rather it is admitted by the appellant/wife herself was living separately on the first floor of their matrimonial home bearing No. 26/104, West Patel Nagar, New Delhi, where she had shifted in the year 1990. The respondent/husband has not been able to give any cogent explanation for having set up a separate residence on the first floor of the same house. This separate residence in the year 1990 clearly



spells out the adjustment issues of the appellant/wife with the family of the respondent/husband.

33. Various instances have been narrated by the respondent/husband in his testimony to corroborate his claim of appellant/wife not being able to adjust and having an individualistic attitude. The respondent/husband has deposed that on their first marriage anniversary, he had arranged a party at the *Baithak* Restaurant, but the appellant/wife for the reasons best known to her failed to join the celebrations along with her family members.

34. The other incident narrated by the respondent/husband is of March, 1992, when he and his parents were getting into the car along with gifts to attend the ceremony for new house at Shalimar Bagh of his sister, Ms. Neelam and her husband. The appellant/wife on seeing them getting in to the car, came down from the first floor and created a ruckus. She threw away the gifts and also grappled with the respondent/husband. Again, no cogent explanation has been given by the appellant/wife to controvert this incident.

35. The respondent/husband had also deposed that he had taken the child who was unwell to Jaipur Golden Hospital on 24.04.1992, but the appellant/wife insisted on getting him discharged from the Hospital, even though he had not recovered.

36. The aforesaid incidents may seem trivial when considered individually, but when considered collectively, they establish that there were compatibility and adjustment issues between the parties and the appellant/wife had not adjusted herself well in the family. She admittedly left the matrimonial home and separated on 01.11.1991.

37. The appellant/wife has claimed that she never stopped or prevented the respondent/husband to live with her on the first floor, but it is the



respondent himself who was not willing to cohabit with her. However, the respondent/husband has not only explained the incidents as narrated above, which created an apprehension in his mind, but the reason can be clearly discerned from the fact that eventually the appellant/wife had filed a complaint in CAW Cell, Rajouri Garden on 18.11.1991 and the respondent/husband had even been summoned before the CAW Cell.

38. The FIR No. 212/1992 was eventually registered against the respondent/husband, his parents and his sisters, Ms. Neelam and her husband. Though the appellant/wife had leveled various allegations of dowry demands, but in the present Appeal, she has not been able to substantiate any allegation of being harassed or tortured on account of dowry.

39. When the appellant/wife was questioned about the allegations of dowry harassment, she stated that in her cross-examination that initially she had made the complaint Ex. PW1/1 to DCP, CAW Cell, Rajouri Garden, Delhi had stated that she was subjected to veiled demands of dowry and had not given any details of express dowry demands because she intended to reconcile with the respondent/husband. Subsequently, she claimed that there were demands of money and also taunts for fridge, scooter and other articles not being given.

40. It may be observed that the appellant/wife not only made a complaint of dowry harassment against the husband and his parent, but she did not spare the sister of the respondent and her husband. There cannot be any act more cruel than not only roping in the respondent/husband but also the family members in a dowry harassment case and then not being able to prove any incident of dowry harassment, by any cogent evidence.



41. Not only had the appellant/wife got a criminal case under Section 498A/406 of the Indian Penal Code, 1860 registered against the respondent/husband and his family members, but it has been deposed by the respondent/husband that the appellant/wife consistently made allegations against his character and maligned his reputation. Even in her Petition under Section 20 of HAMA, 1956 where she claimed maintenance for the son, she did not spare the respondent/husband and made allegations of him having an illicit relationship. She went to the extent of asserting that the respondent/husband even has a son from this illicit relationship. The appellant/wife did not stop there, she even called the Senior Officers at the respondent/husband's workplace on 13.12.1993 and again on 13.05.1994, making allegations of him being a drunkard, womaniser and having illicit relationships with different women. Such acts of the appellant/wife maligned his reputation which amounted to his character assassination impacting his reputation in place of work.

42. Such assertions of illicit relationship made by a spouse have been held to be acts of cruelty by the Supreme Court in the case of Vijay Kumar Ramchandra Bhate vs Neela Vijaykumar Bhate (2003) 6 SCC 334. While deliberating on the accusations of unchastity and extra-marital relationships leveled by the husband, the Court observed that such allegations constitute grave assault on the character, honour and reputation and health of the accused and amount to the worst form of cruelty. Such assertions made in the Written Statement or suggested in the course of cross-examination, being of a quality which cause mental pain, agony and suffering are sufficient by itself to amount to the reformulated concept of cruelty in matrimonial law.

43. In the recent case of Joydeep Majumdar vs. Bharti Jaiswal Majumdar,



2021 SCC OnLine SC 146, defamatory complaints were made to the Superiors of the husband in the Army for which a Court of Inquiry was held and it had an impact on his career progression. It was observed that the allegations leveled by a highly educated spouse which have a propensity to irreparably damage the character and reputation of the appellant and sully his reputation amongst his colleagues, superiors and society at large constituted cruelty.

44. In the cross-examination of the respondent/husband a specific suggestion had been given that he had married one woman named Meenakshi and that he has a child from her which was denied by the respondent/husband as being totally false. The respondent also denied the suggestion that he had filed the Divorce Petition because he intended to marry with another woman.

45. Interestingly, the appellant/wife in her affidavit Ex. PW1/9 stated that she was still willing to live with the respondent/husband as his legally wedded wife, though the respondent/husband was not willing to keep her because of his illicit relationship. She pertinently admitted in her cross-examination that she was having no relationship with the respondent/husband of any kind since 01.11.1991 and also stated that she was not aware that with how many women, the respondent having the relationship. She also admitted in her cross-examination that she was not aware about how much money was being spent by the respondent/husband on other women as had been claimed by her in her Petition under Section 20 of HAMA, 1956 for maintenance of the minor child.

46. The appellant/wife further admitted that she had not disclosed the name of Meenakshi in the Written Statement in the hope that the differences



may get reconciled *inter se* the parties. When nothing materialised, she made explicit allegations that the name of the woman is Meenakshi and name of her son is Nitesh Sharma@Vaibhav in her Petition under Section 20 of HAMA, 1956. Though she made such allegations, but she admitted that she had neither seen Meenakshi nor Nitesh Sharma @Vaibhav. She never met and had no personal knowledge about the marriage of the respondent/husband with Meenakshi.

47. The appellant/wife also admitted in her cross-examination that she had claimed that the respondent/husband was a gambler, but she admitted that she had not seen him gambling with any outsider, but she had seen him playing with his mother, Mausi and Chacha. The appellant/wife has not been able to corroborate her vague allegations of the respondent/husband being a drunkard, gambler or womaniser.

48. It is also pertinent to note that the appellant/wife shifted to the first floor of the house because of the circumstances so created, the parents of the respondent along with respondent shifted out of this home in the year 1994 and the appellant/wife agreed to vacate the house only after accepting a huge amount of money in 1997.

49. The learned Additional District Judge also referred to the testimony of the respondent/husband wherein he deposed that the appellant/wife did not permit him to enter the first floor where the appellant/wife was residing independently and when he went to collect personal belongings, she showered him with the abuses and threatened him and his family members on every alternate day that she would get them arrested. The mother of the respondent thus, sold the house on 09.04.1994 and the respondent accompanied his parents to new house. The appellant/wife was also



requested to accompany them to the new house, but she refused to shift and vacated the house in 1997 only after getting a huge amount of money. Her explanation was that she had been thrown out from the house by some bad elements, but there was no cogent evidence to this effect.

50. The voluminous evidence and the admissions of the appellant/wife prove that the respondent/wife was subjected to cruelty entitling him to divorce.

51. We, therefore, find that the learned Additional District Judge after discussing the evidence in detail, has rightly concluded that the respondent/was subjected to cruelty entitling him to divorce under Section 13(1)(ia) of HMA, 1955 on the ground of cruelty.

DESERTION

52. It is admitted by the appellant/wife in her cross-examination that she has been living separately from the respondent/wife since 01.11.1991 and has no contact whatsoever with the respondent/husband. She had claimed that through her complaint in CAW Cell, Rajouri Garden and other litigations, she was trying to make an endeavour to reconcile with the respondent/husband. She has not been able to explain any reason for her withdrawal from the company of the respondent/husband since 01.11.1991. She has also not been able to prove any conciliatory efforts to join the company of the respondent/husband.

53. It is proved that there was no intention of the appellant/wife of resuming matrimonial relationship with the respondent/husband in the twelve years when the second Divorce Petition bearing No. 277/2002 was filed on 11.04.2002. Even thereafter, there is no stance from where it can be inferred that the appellant/wife had any interest in resuming the conjugal



relationship with the respondent/husband.

54. The learned Additional District Judge thus, concluded that the parties have been living separately since 01.11.1991 and there is no evidence to show that the appellant/wife had any apparent intention to resume the marital obligations.

55. It was thus, concluded that the appellant had deserted the respondent/husband for more than two years prior to filing the Divorce Petition.

56. For the foregoing discussion, we find that cogent reasons have been given by the learned Additional District Judge while concluding that the appellant/wife had deserted the respondent/husband and has rightly granted the divorce under Sections 13(1)(ia) and 13(1)(ib) of HMA, 1955.

57. Accordingly, 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 14, 2023
S.Sharma