



2023-10019509-00



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

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Date of decision: 12th October, 2023+ **MAT. APP.(F.C.) 148/2022 & CM APPLs. 41538/2022 (Stay), 41539/2022**

SHILPA ABROL

..... Appellant

Through: Mr. Naresh Kumar Beniwal & Mr. Nikhil Beniwal, Advocates.

versus

RAHUL ABROL

..... Respondent

Through: Mr. Vineet Mehta, Advocate with respondent in person.

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MAT. APP.(F.C.) 149/2022 & CM APPL. 41542/2022

SHILPA ABROL

..... Appellant

Through: Mr. Naresh Kumar Beniwal & Mr. Nikhil Beniwal, Advocates.

versus

RAHUL ABROL

..... Respondent

Through: Mr. Vineet Mehta, 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)****CM APPL. 52919/2022 (Condonation of delay) in MAT.APP.(F.C.) 148/2022**

1. The present Application under Section 5 of the Limitation Act, 1963



has been filed on behalf of the applicant/appellant seeking condonation of 75 days' delay in filing the present appeal.

2. **Submissions heard.**

3. For the reasons and grounds stated in the present application, the application is allowed, the delay of 75 days in filing the present appeal is hereby condoned.

4. Accordingly, the present application is disposed of.

CM APPL. 52922/2022 (Condonation of delay) in MAT.APP.(F.C.) 149/2022 & CM APPL. 41540/2022 (Condonation of delay) in MAT.APP.(F.C.) 149/2022

5. The present Application CM APPL.52922/2022 under Section 5 of the Limitation Act, 1963 has been filed on behalf of the applicant/appellant seeking condonation of 15 days' delay in filing the present appeal.

6. Thereafter, another application CM APPL.41540/2022 under Section 5 of the Limitation Act, 1963 has also been filed on behalf of the applicant/appellant seeking condonation of 58 days' delay in filing the present appeal.

7. **Submissions heard.**

8. For the reasons and grounds stated in both the applications, the applications are allowed, the delay of 58 days in filing the present appeal is hereby condoned.

9. Accordingly, both the applications stand disposed of.

MAT. APP.(F.C.) 148/2022 & MAT. APP.(F.C.) 149/2022

10. The captioned Appeals under Section 28 of the Hindu Marriage Act,



1955 (*hereinafter referred to as “HMA, 1955”*) read with Section 19 of the Family Courts Act, 1984 have been filed on behalf of the appellant/wife (*who was the petitioner in the Petition under Section 9 of HMA, 1955 for Restitution of Conjugal Rights*) and the respondent (*who was the petitioner in the Petition under Section 13(1)(ia) of HMA, 1955 for divorce on the ground of cruelty*) against the Judgment and Decree dated 09.05.2022 passed by the Family Judge, Delhi granting divorce on the ground of cruelty to the respondent/husband under Section 13 (1)(ia) of HMA, 1955 and also dismissing the Petition filed by the appellant/wife for Restitution of Conjugal Rights, under Section 9 of HMA, 1955.

11. Admittedly, the parties got married on 22.11.2004 according to the Hindu rites and ceremonies in Delhi. A daughter was born on 07.03.2006 from the said wedlock. But eventually, on account of matrimonial discord, the parties separated after about five and a half year of marriage , on 20.05.2010.

12. **The respondent herein /husband essentially had claimed** divorce on the allegations that the appellant/wife had mood swings and she was fussy, rigid, self-centred and stubborn who largely preferred to be quiet and on her own. She was aggressive and had a violent behaviour with little respect for the respondent/husband and his family members which she displayed many a times in her interactions at the matrimonial home and also in public.

13. It was alleged that the appellant/wife refused to discharge her matrimonial obligations in taking care of the household work and also of the daughter. It was also alleged that there was regular intervention of the parents of the appellant/wife in the matrimonial life of the parties.



14. The respondent further claimed that appellant/wife never allowed the mother of the respondent/husband, who along with the father of the respondent/husband, was residing at Bangalore to come to reside with them. If the mother of the respondent visited, appellant/wife would create scenes and insist on her to leave the house soon. Furthermore, the appellant/wife did not participate in the last rites of the grandmother of the respondent/husband who expired on 27.08.2009. The appellant/wife also refused to accompany the respondent/husband to Kolkata for the last rites of the grandmother. She did not allow the respondent/husband to take care of his ailing uncle.

15. It was further alleged that she was totally cold and indifferent to the sexual advances made by the respondent/husband and occasionally even got violent. Also, she withdrew herself completely and the parties used to sleep separately in independent rooms. The respondent/husband also asserted that he eventually came to know that the appellant/wife had psychic issues and she remained under treatment by a Psychiatrist in the OPD of Sir Ganga Ram Hospital, New Delhi.

16. The parties, on account of the psychic issues of the appellant/wife, had consulted a Marriage Counsellor to whom they both visited, but the appellant/wife refused to follow the advice of the Marriage Counsellor.

17. Also, the appellant/wife visited the office of the respondent/husband in his absence on 12.05.2010 and 13.05.2010 and took away his certain documents. She even called the employees of the respondent/husband regularly and disrupted his office functioning.

18. The respondent also alleged that the appellant/wife would frequently threaten to implicate the respondent/husband in false cases. She even used



their daughter as a tool for selfish ends and openly declared that she would never allow Kirti, daughter, to meet the respondent/husband as well as his parents.

19. Further, the appellant/wife eventually took the child and left the matrimonial home on 26.05.2010. While leaving the matrimonial home, she took the entire jewellery and cash of Rs. 2,00,000/-, all her/daughter's clothes, DVD player, video and digital cameras, certain important documents, ALTO car, laptop and various bank FDRs.

20. Thereafter, the respondent/husband sent the Legal Notice dated 08.06.2010, to which, the appellant/wife gave a frivolous Reply dated 16.07.2010.

21. *The respondent/husband thus, sought the divorce on the ground of cruelty under Section 13(1)(ia) of HMA, 1955.*

22. **The appellant/wife countered all the allegations** that were made by the respondent/husband and made a counter allegation that the respondent/husband and his family members were cruel and had a harsh behaviour towards her. The respondent/husband tortured, ignored and humiliated her.

23. The appellant/wife further asserted that the respondent/husband was unable to maintain sexual relationships because of his own inability which frustrated him and out of his frustration, he not only assaulted her but also became alcoholic. It was also asserted that they were able to have sexual relationship only once when the appellant/wife miraculously conceived and their daughter was born.

24. Essentially, the basis for discord as has been consistently insisted by the appellant/wife in her entire pleadings was the sexual inadequacy of the



respondent/husband. The appellant claimed that this incapacity of the respondent to have sexual relationship, had been concealed from her before their marriage.

25. The appellant/wife also claimed that the respondent/husband was not mentally mature to make satisfactory adjustments in the matrimonial home and he did not understand that individual personality plays an important role to establish a stable and happy relationship. The respondent/husband also remained under the constant influence of his parents and could never relieve himself from the shadow of his father.

26. She also claimed that the respondent was involved in an affair with one of his staff members and had an intension to marry her.

27. The appellant/wife even claimed that her mother-in-law was unhappy on the birth of their daughter. She was mercilessly beaten up during her pregnancy and was even admitted in the hospital.

28. The appellant/wife denied that she had any psychic problem or that she had ever remained under treatment of the Psychiatrist.

29. In the end, the appellant/wife admitted that she had gone to her parental home on 17.05.2010 for preparation of her examination for astrology, but the respondent/ husband and his parents did not let her to return to the matrimonial home. Therefore, from 26.05.2010, the appellant was constrained to stay at her parental home.

30. The appellant/wife also filed her Petition under Section 9 of HMA, 1955 seeking Restitution of Conjugal Rights by asserting that she was still willing to reside with the respondent/husband.

31. The issues were framed on 28.05.2011 which are as under: -

(i) Whether the respondent has, after the solemnization of the



marriage, treated the petitioner with cruelty? (OPP).

(ii) To what relief(s) the petitioner is entitled to?”

32. The respondent/husband appeared as PW1, while the appellant/wife appeared as RW1 in support of their respective cases. RW1 was partly cross examined after which she failed to appear before the court and her evidence was closed vide Order dated 28.02.2022.

33. ***Learned Judge, Family Court*** on the appreciation of evidence, concluded that the respondent/husband was able to prove that the appellant/wife had mood swings and was rigid on various issues. It was concluded that there was no evidence to prove the impotency of the respondent/husband in the light of clear admission that the daughter was born from their relationship. Moreover, there were admissions of the appellant/wife that the respondent/husband was a good human being as the same was reflected in the E-mail dated 27.06.2011 written in response to the Legal Notice of the respondent/husband. The allegations of harassment, beating and demands by the respondent/husband and his family were held to be not proved.

34. It was thus, concluded that the respondent/husband had proved that he was subjected to the cruelty by the appellant/wife. Hence, the Petition under Section 13(1)(ia) of HMA, 1955 of the respondent/husband seeking divorce on the ground of cruelty was allowed. For the same reason, it was held that there was no merit in the Petition under Section 9 of HMA, 1955 seeking Restitution of Conjugal Rights, which was dismissed.

35. Aggrieved by the aforesaid impugned judgments, the present Appeals have been preferred by the appellant/wife.

36. **Submissions heard from the counsels for the parties and the**



documents as well as the evidence perused.

37. It is not in dispute that the matrimonial life of the parties survived only for about five and a half years i.e., from 22.11.2004 till 26.05.2010, when admittedly the appellant/wife left the matrimonial home.

38. The entire Written Statement of the appellant/wife essentially asserts that the respondent/husband was sexually incapacitated and was unable to maintain sexual relationship with her. Eventually, they started living separately. However, it is not a disputed fact that the daughter was born from the relationship while asserting impotency of the respondent/husband.

39. Significantly, despite making such serious allegations in her Petition under Section 9 of HMA, 1955 for Restitution of Conjugal Rights and in her Written Statement to the Divorce Petition, the appellant has failed to provide any cogent evidence whatsoever to prove or substantiate these allegations in any manner. Such bald assertions of impotency certainly amounts to inflicting mental pain and agony to the respondent.

40. This Court in Kirti Nagpal v. Rohit Girdhar, 2020 SCC OnLine Del 1466, false allegations in the Written Statement with respect to the impotency clearly falls within the concept of cruelty as defined under law.

41. The appellant has also alleged that she was subjected to beatings and cruel treatment by the respondent and his parents and was even admitted in the hospital during her pregnancy. However, the appellant/wife has not able to prove any abuse, beatings or harassment by the respondent/husband.

42. The appellant further asserted that the respondent was not mentally mature and lived his life under the shadow of his parents. No evidence has been led to substantiate these assertions. On the other hand, respondent has deposed that the appellant had no respect for his family obligations. He has



illustrated by deposing that the appellant did not accompany him to Kolkata to attend the final rituals of his grand mother or to take care of his ailing uncle. The respondent has not seriously contested these incidents though has given a vague explanation for not accompanying the respondent in discharge of his family obligations.

43. The appellant/wife's disenchantment with her matrimonial life is further corroborated by her admission that she had gone to her parental home on 17.05.2010 for the purpose of preparing for her examination of Astrology, but she did not return thereafter to her matrimonial home. The appellant herself has stated that she was not permitted to return to the matrimonial home by her parents. This clearly reflects that she herself had voluntarily left the matrimonial home and had not returned thereafter. She failed to prove any attempt was ever made by her to return to the matrimonial home after she left. Her own conduct establishes that she abandoned her matrimonial home with an intention of never to return.

44. The comprehensive appreciation of the evidence of the parties proves that the appellant had no matrimonial satisfaction as she was completely disillusioned with her sexual life to the extent of irresponsibly accusing the respondent of being practically impotent, without any proof. It has also emerged from the evidence that there were adjustment issues which compelled the parties to even consult a marriage counsellor, though to no avail. Such was the dissatisfaction of the appellant that she left the matrimonial home and then failed to return. No cogent explanation has been given by the appellant for separation, thereby leading to denial of matrimonial bliss and conjugal relationship to the respondent. The conduct of the appellant has been rightly concluded by Learned Judge, Family Court



as cruelty towards the respondent/husband. On the other hand, the appellant/wife has neither led any evidence as she failed to appear for her cross examination and has not been able to prove any act of cruelty towards her by the respondent/husband or his family members.

45. Learned Judge, Family Court has rightly allowed the Petition under Section 13(1)(ia) of HMA, 1955 thereby granting divorce to the respondent/husband on the ground of cruelty.

46. Also, from the aforesaid discussion, it is established that the appellant has withdrawn from the respondent without any reasonable cause and the Petition for Restitution of Conjugal Rights under Section 9 of HMA, 1955 filed by the appellant/wife, has also been rightly dismissed.

47. From the aforesaid discussions and for the reasons, we therefore, find no ground to interfere with the impugned judgment and conclude that there is no merit in the present Appeals, which are hereby dismissed along with pending applications, if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 12, 2023
S.Sharma