

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.1161 of 2015 (O&M)
Date of decision: 11.02.2015**

Pooja Mehndiratta

.....Appellant

Vs.

Hemant Kumar Mehndiratta

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Inder Pal Singh Doabia, Advocate for the appellant-wife.

Ajay Kumar Mittal,J.

1. This order shall dispose of FAO Nos.455 and 1161 of 2015 as both the appeals have been filed by the appellant wife against common judgment and decree dated 29.9.2014 passed by the trial court whereby the petition filed under section 10 of the Hindu Marriage Act, 1955 (in short, "the Act") by the wife has been dismissed and the petition filed under Section 13 of the Act by the husband has been allowed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 11.2.1997 according to Hindu rites and ceremonies. After the marriage, the parties, lived together at Delhi. A

daughter namely Khyati was born on 4.9.1998 at Faridabad. The parties got engaged on 22.8.1996. The appellant wife was working as a teacher in Ryan International School, Faridabad and the respondent was working at Escorts Yamha Limited, Surajpur, Greater Noida. During that period, the appellant mentioned to the respondent that after marriage, he would like to give up her job and would prefer to be a house wife for which the respondent outrightly refused. Before the marriage, the respondent and his parents approached the father of the appellant and told him that they did not want to invite many of their relatives for the wedding and would prefer simple marriage ceremony. They put up a condition that the father of the appellant should present more gold in the marriage. The marriage was performed in a simple manner but 35 tolas of gold and other customary gifts were presented in the marriage. After the marriage, the appellant got herself transferred to Delhi. The couple went to Goa for honeymoon. When they returned back, there was change in the behaviour and attitude of the respondent and his family members. They started harassing and humiliating the appellant. They taunted her for bringing insufficient dowry. When the appellant conceived, her mother in law started insisting that she should produce a son. They started demanding for ultra sound in order to determine the sex of the fetus. The appellant refused for sex determination of the child. When the date of delivery came close, the respondent and his parents insisted that she should go to her parental house as per tradition for the delivery of the child. She came back to her house on 16.5.1998. She gave birth to a daughter on 4.9.1998 at Fardiabad but nobody from the family of the respondent came to see her. After one month of the delivery, the respondent came to the

appellant and told her that since she had given birth to a girl, she would not be taken back in the matrimonial home. Panchayat was held at the instance of the appellant but the respondent and his family members refused to take her back. She quit her job at Delhi and joined as such again in Faridabad in April 2001. Thereafter the respondent asked for the photograph of the daughter. The appellant came to know that he wanted the same to claim benefit from his company. In November 2009, the respondent again contacted the appellant and told her that he wanted to meet her in order to discuss their future. The appellant got a call from an advocate at Delhi that the respondent was desirous of seeking annulment of marriage and she should give consent for the same. On 23.5.2010, the respondent came to the house of the appellant at Faridabad and told her that he had found a life partner and she should agree for divorce by mutual consent. Ultimately, the wife filed petition under section 10 of the Act for judicial separation and the husband filed petition under Section 13 of the Act for dissolution of marriage on the ground of cruelty and desertion. Upon notice, the respondent appeared and filed written statement controverting the averments made in the petition. The trial court after examining the entire evidence on record allowed the petition filed by respondent husband under section 13 of the Act and dismissed the petition under section 10 of the Act by the wife vide common judgment and decree dated 29.9.2014.

3. We have heard learned counsel for the appellant-wife and perused the record.

4. The trial court on the pleadings of the parties framed the following issues:-

- i) “Whether petitioner is entitled for judicial separation? OPP
- ii) Whether the petitioner wife is guilty by her own misconduct on the grounds mentioned in the divorce petition? OPR
- iii) Whether the respondent-husband is entitled for dissolution of marriage? OPR
- iv) Relief.”

In support of her case, the appellant appeared as PW1 and tendered her affidavit Ex.PW1/A. On the other hand, the respondent appeared as RW1 and tendered his affidavit Ex.RW1/A. The appellant in her statement reiterated the averments made in the petition under Section 10 of the Act whereas the respondent in his statement reiterated the averments made in his petition under section 13 of the Act. The trial court after examining the entire evidence allowed the petition under section 13 of the Act by the respondent-husband and dismissed the petition filed by the wife under section 10 of the Act vide judgment and decree dated 29.9.2014.

5. Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been defined in the Act but various pronouncements of the Apex Court and other High Courts have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

6. The Apex Court in **Parveen Mehta v. Inderjit Mehta 2002 (3) RCR (Civil) 529** had very elaborately analyzed the expression 'cruelty' as a ground of divorce under the Act. The relevant portion thereof reads thus:-

“Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.

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21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct

approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

7. Further, setting out illustrative cases of mental cruelty, the Supreme Court in **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511** had held as under:-

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused

by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or

without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

8. In the present case, the parties lived together only for one and half years. None of them filed petition for restitution of conjugal rights. The wife prayed for decree of judicial separation whereas the husband sought decree of divorce. The relations between them had become so strained that they were not interested in living together. No sincere efforts had been made by either party to resolve the matter amicably. The relevant finding recorded by the trial court reads thus:-

“50. According to the wife, the main cause for the break up of the relationship was that she was harassed to undergo sex determination test and that she was finally deserted when she gave birth to a girl child. This is a very serious allegation but there is no corroboration of the testimony of the wife. The wife could have examined somebody from her family in support of the allegation. It has come in evidence that the wife was taking treatment from Dr. Vandana Babbar

adjacent to her parental house. The wife left the matrimonial home in May 1998 and delivered a girl child in September 1998 i.e. she left the house when she had pregnancy of five months. From the evidence of the wife, it is to clear as to where she was going for regular check ups, who in the family of the respondent was forcing her for sex determination test. Whether anybody from the family of the respondent pressurized her to go to a particular doctor for sex determination test. The wife has failed to prove cruelty and desertion on the part of the husband.

51. The parties lived together only for one and half years. During this period, the wife was working as a teacher in a school in Delhi. After 1998, parties had never lived together. In the cross examination, the wife stated that she was thrown out of the house whereas in her chief examination, she stated that the family of the respondent asked her to go to her parents house as it was customary for them to have a delivery at her parents house. This contradiction in the statement of the petitioner shows that she was not forcibly turned out of the house as alleged by her. It has also come in the evidence of the wife that after birth of the daughter, many panchayats were convened but again there is no evidence to substantiate the same. There is nothing on record to suggest as to who were members of the panchayat and in which month/date the panachyat had gone to the house of the respondent to resolve the matter. Not even a single allegation of the wife is precise and clear. The wife also alleged that after school time, many times she attempted to go to the house of the respondent but she was not allowed to enter into the house. She should have specifically deposed as to at what time and on which date/month, she tried to go into the house, who was there in the house and which person from the family of the respondent stopped her entering the house. As against this,

the testimony of the husband is detailed. He has explained how the wife used to spend summer vacations and other holidays at her parents house. She did not actively participate in the marriage of her sister in law. She was not interested in going for customary get together after her marriage and before marriage of her sister in law. Immediately after her sister in law's wedding, she wanted to go to her parents house. The testimony of the husband is un rebutted. The abovesaid acts and other incidents as narrated by the husband are sufficient to cause mental cruelty to him. The wife left the matrimonial home without any reasonable cause. Therefore, she is also guilty of desertion.

52. None of the parties ever filed a petition for restitution of conjugal rights. The wife has prayed for a decree of judicial separation whereas the husband has sought a decree of divorce. It is clear that the marriage between the parties is dead. The decree for judicial separation does not sever or dissolve the marriage tie which continues to subsist. The purpose of passing decree for judicial separation is that it affords an opportunity to the spouses for reconciliation or readjustment. In the present case, no sincere efforts have been made by any of the parties for cohabitation since 1998. It has come in the testimony of the wife that she left her job in Delhi and joined Apee Jay Public School in Faridabad in the year 2001. This fact points towards animus desrendi on the part of the wife to snap ties with the husband. When the defacto separation in 1998 commenced, there was no animus desrendi which appeared later on. The parties had been maintaining separate residences since 1998. Desertion alongwith separate residence means that there was determination to end the relationship”

9. The trial court has examined the entire evidence on record and

returned the findings which have not been shown to be illegal or perverse in any manner which may warrant interference by this Court. Consequently, finding no merit in the appeals, the same are hereby dismissed. In view of the dismissal of appeal on merits, no order is required to be passed on the application under Section 5 of the Limitation Act, 1963 for condonation of delay in FAO No.1161 of 2015, which is being left open.

(Ajay Kumar Mittal)
Judge

February 11, 2015
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(Sneh Prashar)
Judge