

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

+ Judgment delivered on: May 27, 2015

% **MAT.APP.(F.C.) 45/2014**

SHRI RAVINDER PRATAP SINGH

..... Appellant

Through: Mr. Murari Tiwari, Mr. B. R. Sharma,
Mr. Rakesh Kumar, Mr. Rahul Kumar,
Advs.

versus

HEMA

.....Respondent

Through: Mr A. K. Mishra, Mr. Ajay Tiwari, Ms.
Rita Vashisht, Advs.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The appellant has preferred the present appeal under Section 19(1) of The Family Courts Act, 1984 against the order/judgment/decreed dated 31.01.2014 passed by Sh. Kamlesh Kumar, Addl. Principal Judge, Rohini, Delhi in HMA No. 1320/2012.
2. The brief facts are that the marriage between the parties was solemnized on 11.05.2011 in accordance with the Hindu rites and

ceremonies at Keshav Puram, A-1, Community Centre, New Delhi. The marriage was consummated; however, no issue was born out of the wedlock. The parties to marriage stayed together till August, 2011. Soon after the marriage, non-satisfaction of the dowry demand by the respondent-wife led to marital discord between the parties. As per the allegations, the appellant raised the demand of Rs. 2-3 lakh to buy a new car. When the said demand was not fulfilled, the appellant-husband started commenting that the respondent's parents have not spent any amount in their daughter's wedding. As per the respondent, the expenses of marriage were made from the respondent-wife's savings.

3. It is further alleged by the respondent that after the marriage, the behaviour and the conduct of the maternal uncle, unmarried sister, and unmarried brother of the appellant-husband towards the respondent-wife became uncouth and they too started making adverse comments on the respondent-wife. It was to her utter surprise that the appellant turned out to be an alcoholic. It is also alleged that he used to return late at night around 1 A.M. to 2 A.M. under the influence of alcohol. He even beat the respondent on several occasions and when she requested the appellant not to consume alcohol and refrain from returning late at night, the appellant started threatening and abusing her, the phrases as were used by the appellant are:

“main tera aur tere baap ka jalus Jahangirpuri aakar nikalunga, kal tujhe tere notice dunga parso milega”

The respondent-wife thereafter, on 25.09.2011, requested the appellant to take her back to the matrimonial house but the appellant-husband told her that he will not take her back until the dowry matter is not resolved by her parents. The respondent's jewellery and other costly articles were left with the appellant. Consequently, a complaint was lodged by the respondent-wife with a CAW Cell as well as with the local police and a case was registered against the appellant-husband. These adverse circumstances created by the appellant-husband by beating, and torturing, mentally as well as physically, left the respondent-wife with no choice but to file the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

4. The plea in the defence taken by the appellant was that the respondent-wife never discharged her marital obligations. Before marriage, the appellant husband had lost both his parents. The appellant is looking after his unmarried sister and younger brother. It is alleged by the appellant that the present respondent-wife herself has ruined her matrimonial life who remained under the influence of her parents. It is alleged that the respondent neither discharged her marital obligations, nor respected him or his family members. She always tried to dominate him in every manner. It is further alleged that the respondent-wife, just after

2-3 months of her marriage, got an official accommodation allotted for herself and started residing therein, and finally, one day kicked out the appellant-husband from the official accommodation. The appellant tried his best to join the matrimonial home but the same proved to be futile as she used to pick up quarrels and ill-treated him and his family members and also threatened to implicate him in a false case of dowry. The appellant also approached his in-laws with a request to make the respondent-wife understand her matrimonial obligations and to mend her ways but they ill-advised her and threatened him of dire consequences, including implication in false criminal case.

5. It is alleged that the respondent rather was interested in living a luxurious and lavish life after marriage and when the appellant inquired about the personal loan raised by the respondent, she refused to disclose the same and asked the appellant not to interfere in her personal life. Respondent's parents' also threatened him and this personal loan turned out to be a major problem between the parties. The respondent misbehaved with the clients of the appellant who visited his residence. The appellant-husband further denied receiving the amount of 1,51,000/- in cash at the time of marriage. He denied all allegations levelled against him, his maternal uncle, sister and brother. He also denied that he is an alcoholic or that he used to return home late at night under the influence of liquor or that he threatened her on 21.08.2011 or at any point of time,

thereafter. He has also denied that he gave beating to the respondent-wife at any point of time. The respondent-wife in its replication, reaffirms the averments made in the petition in HMA No. 1320/2012 and denied the allegations made in the written statements.

6. On the basis of the pleadings made in the petition i.e. H.M.A. No. 1320/2012, the following issues were framed on 25.07.2013:

1. Whether after solemnization of marriage, the Respondent has treated the Petitioner with cruelty?
2. Whether the Petitioner is entitled to the decree of divorce as prayed?
3. Relief

7. After closing of evidence by the respective parties, and after hearing the arguments, the impugned judgment was passed on 31.01.2014.

Aggrieved from the impugned judgment, the appellant-husband has preferred the present appeal on the ground that the learned Family Court below failed to appreciate that the allegations are general in nature and not sufficient to implicate the husband in the case of cruelty when the wife herself could not give any specific date for cruelty in her cross examination.

8. It is further contended that the learned Family Court further failed to appreciate that mere oral deposition of an interested witness making

general allegations on oath does not prove the factum of cruelty. The learned Family Court further erred in concluding that cruel treatment was given to the respondent-wife at matrimonial home particularly when there is only an unmarried younger brother and an unmarried sister, no prudent person can think, that such cruel treatment could be caused to the respondent-wife. The learned Family Court further failed to appreciate that in the entire petition under Section 13(1)(ia) and in the evidence of respondent wife before the learned Family Court, there is no single instance of any cruelty caused by the appellant. In absence of any specific allegation of cruelty and narration of any specific instance of cruelty, granting the decree of divorce in favour of the respondent-wife by the learned Family Court was a perverse order.

9. The learned counsel for the appellant, Mr. Murari Tiwari, has drawn our attention to the fact that the respondent-wife has neither made any specific allegation of cruelty in her petition under Section 13(1)(ia) nor any evidence to this effect has been adduced by her to prove cruelty. The allegation of the respondent-wife, Hema is based on non-fulfilment of dowry which is a false allegation and nothing has been proved by the respondent-wife against the appellant and therefore, the impugned decree dated 31.01.2014 bears no merit and the same deserves to be set aside.

10. On the other hand, the learned counsel, Mr. A.K. Mishra, for the respondent-wife has drawn out attention to the fact that appellant-husband, after finding out that his dowry demands are not fulfilled, started beating and torturing the respondent-wife thereby making it impossible for the respondent-wife to co-habit with the appellant-husband in the same matrimonial home.

The whole dispute hinges around whether the appellant soon after the marriage treated the respondent-wife with cruelty?

The answer is yes.

11. The expression “cruelty” has not been defined by the Hindu Marriage Act, 1955. To determine specifically, what exactly “cruelty” means for the purposes of Section 13 (1)(ia) of the Hindu Marriage Act, its meaning in common parlance should first be ascertained. In legal parlance for the purposes of divorce, ‘cruelty’ may be taken as – ‘an intentional or unintentional act resulting into causing pain and suffering to others.’

12. The instant case relates to breakdown of matrimonial relations between the husband and the wife. Therefore, the word ‘cruelty’ used in Hindu Marriage Act, 1955 under Section 13(1)(ia) is an act of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations which gives rise to the matrimonial discord. After entering into the marriage alliance, both the parties i.e. the husband and the wife

are under the legal obligations to perform their respective matrimonial obligations and legal duties towards each other as well as towards the society to which they belong.

13. Cruelty may be of two kinds: a) Physical Cruelty, and b) Mental Cruelty. If cruelty is mental, the nature of the ill-treatment meted out to either of the spouse and its adverse effect may not be seen by bare naked eye and if it is physical, the degree of such act and its effect would be seen. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

14. To constitute cruelty, the complaint so made has to be so serious and grave as to reasonably come to the conclusion that the petitioner-spouse cannot be expected to live with the other spouse. In **A. Jayachandra v. Aneel Kaur, AIR 2005 SC 534**, the Hon'ble Supreme Court made the following observations:

"To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse

that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

Likewise, in the case of ***Rajani vs. Subramonian, AIR 1990 Ker 1***, the Division Bench of the Kerala High Court made the following observations:

“the cruelty alleged may largely depend upon the type of life the parties, are accustomed to or their economic and social conditions, their culture and human values to which they attach importance.”

15. In the instant case, the petitioner is seeking divorce under section 13(1)(ia) of Hindu Marriage Act, 1955 on grounds of cruelty on account of cruel treatment given to the respondent soon after the marriage. There are allegations against the appellant-husband that soon after the marriage, when the dowry demands were not met with, the appellant-husband started consuming alcohol and started beating and torturing the respondent-wife. Further, there is an allegation that soon after the marriage, behaviour of the appellant and his relatives immediately changed on finding insufficient dowry brought by the respondent wife at the matrimonial home and they started taunting and showing indifferent attitudes towards her. Consequentially, the act of the appellant-husband

turned respondent's life so miserable which compelled her to seek the remedy under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

16. The allegations so made by the respondent-wife are being rebutted in the pleadings that it was the respondent-wife who herself made her life miserable and it was further stated in the written statement that allegations levelled against the appellant-husband are false. It was pointed out that factually, the respondent soon after the marriage got an official accommodation allotted and it was the appellant-husband who was thrown out of the government allotted accommodation. It was further pointed out that it was the respondent-wife who did not behave well with the appellant, his unmarried brother and unmarried sister who were residing at the matrimonial home. Moreover, the unmarried brother and unmarried sister of the appellant-husband did not have any adverse interest against the respondent, so the question of giving bad treatment by the aforementioned relatives to the respondent-wife does not arise.

17. The parties in support of their respective allegations and counter-allegations have filed their respective affidavits. The respondent-wife has examined herself as PW-1 and the appellant-husband has examined himself as RW-1 in the present case to support their respective versions.

18. The respondent-wife, PW-1, has tendered her examination-in-chief by way of affidavit Ex-PW-1/1 and re-iterated the averments made in the petition under section 13(1)(ia) and further specifically stated in the

aforementioned affidavit in Para-9 that when the respondent-wife requested the appellant not to take drinks and come late at night, she was being beaten by the respondent on several occasions. The said averments made in Para-9 of the aforesaid affidavit is reproduced as under:

“That the respondent is addicted of liquor and also habitual to come at house in the night at about 1-2 a.m. after taking the liquor. The respondent has also beaten the deponent on several occasions when the deponent requested the respondent not to take drink and come on late night.”

19. The appellant-husband has admitted in his cross-examination that he occasionally used to drink, the relevant portion of which is reproduced as under:

“Occasionally, I used to have drink.”

Moreover, the appellant did not put any suggestion, to the present respondent (PW-1), that she was not given beating after the appellant consumed alcohol on any occasion.

20. The whole dispute hinges around whether the conduct of the appellant-husband in the instant case is sufficient to constitute cruelty within the meaning of Section 13(1)(ia). The allegations against the husband is that the respondent-wife soon after the marriage was not properly welcomed by the relatives of the appellant-husband and started harassing the respondent-wife for bringing less-dowry and the appellant-husband soon after the marriage, started beating and torturing the person of the respondent wife. The factum of allegation is specifically stated in

the petition as well as the affidavit, Ex-PW-1/1, wherein the respondent-wife has specifically stated that the appellant-husband soon after the marriage, after consuming alcohol started beating and torturing the respondent-wife.

21. The appellant-husband did not cross-examine the respondent-wife on this point and the same remained un-rebutted as well as uncontroverted. Here, cross-examination factually means further examination by the opponent to bring out a fact which could suggest that factually what is stated in the paragraph No. 9 of the affidavit Ex-PW 1/1 is not true and correct. Consequently, the statement given in the affidavit Ex. PW 1/1 pertaining to consumption of alcohol and thereafter beating and torturing the respondent-wife stands admitted. Therefore, in absence of proper rebuttal on this point, the same is accepted to be unchallenged. Reliance in this regard may be placed on the judgment of the Division Bench of the Bombay High Court in ***Vinit H. Joglekar Vs. Vaishali Vinit Joglekar AIR 1998 BOMBAY 73***, wherein, the Division Bench of the Bombay High Court has also observed that once the allegation made by the respondent (wife) against the appellant (husband) remains uncontroverted the same stands proved and the same is reproduced as under:

“We find that the allegation made by the wife against appellant for having resorted to unnatural carnal relationship has not been countered in the examination. In fact, the lower

Court has rightly noted that cross-examination is centred around financial aspects of the parties. No attempts were made to controvert the statements made by the wife in her cross-examination.

In the circumstances, according to us, the Court has correctly found that the cruelty is established by the wife.”

Reliance may also be placed on the judgment of the Apex Court in ***Shoba Rani Vs. Madhukar Reddi (1988) 1 SCC 105***, wherein, the Apex Court has observed that the word ‘cruelty’ should be understood in the ordinary sense in terms of the matrimonial affairs and the relief to the party cannot be denied on the ground that there is no deliberate and wilful ill-treatment to the opposite party and the same is reproduced as under:

“We do not think that that was the intention with which the Parliament enacted Section 13(1)(i-a) of the Hindu Marriage Act. The context and the set up in which the word 'cruelty' has been used in the section seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment”

22. The plea of the learned counsel of the appellant-husband that there is no specific allegation of cruelty loses its significance in the light of the non cross-examination of PW-1, Smt. Hema on this material point (*Supra*). In the instant case, it was:

- a) Respondent-wife;
- b) Appellant-husband;

c) Brother and sister of the appellant; and

d) maternal uncle of the appellant, who were material witnesses to incidents and marital affairs which took place between the parties to marriage. The brother, sister and maternal uncle are relatives of the appellant-husband and therefore no adverse inference can be drawn against the respondent-wife. Rather the aforesaid witnesses could have been examined by the appellant for its better appreciation in evidence.

23. The foundation of a sound marriage is laid on the pillars of tolerance, adjustment and respect for each-other. The tolerance to each other's fault is acceptable only to a certain extent and at the same time when it goes out of the tolerable limits beyond the matrimonial alliance, marital discord takes place. In such circumstances, the germs of cruelty are born out and when it crosses the limit, it infects the matrimonial alliance, and in such an environment, both the spouses find it difficult to live under one roof of matrimonial house.

24. As discussed above, we find no infirmity in the order/judgment/decreed dated 31.01.2014 passed by Addl. Principal Judge,

Rohini, Delhi in HMA No. 1320/2012 and the same is upheld.

Consequently, the appeal is dismissed.

25. There shall be no order as to costs.

**I.S.MEHTA,
(JUDGE)**

**KAILASH GAMBHIR,
(JUDGE)**

MAY 27, 2015

aj