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

+ **Date of Decision: 10.09.2015**

% **MAT.APP. 42/2011**

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..... Appellant
Through: Ms. Monica Kapoor, Advocate a/w
appellant

versus

NSB

..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeal has been preferred by the appellant/wife under section 28 of the Hindu Marriage Act (the Act) to assail the ex-parte judgment and decree dated 15.03.2011 passed by the ADJ (South), Delhi in HMA No.801/2009 preferred by the appellant/petitioner against the respondent/husband to seek a decree of dissolution of marriage under section 13(1)(ia) of the Act on the ground of cruelty.

2. The learned ADJ by the impugned judgment and decree dismissed the said divorce petition by an ex-parte judgment. The respondent, despite service, did not appear before the Trial Court to contest the said petition.

Even before this Court, despite service, the respondent has not appeared to contest the present appeal.

3. The case of the petitioner/appellant as set out in the petition was that the parties got married on 27.11.2001 according to hindu rites and ceremonies. The petitioner claimed that the respondent and his family members demanded dowry and frequently tortured the petitioner physically and mentally for not bringing car and cash of Rs.1 lakh. The petitioner also claimed that the mother of the respondent started taunting her for bringing insufficient dowry and not fulfilling their expectations of a grand marriage. The petitioner also claimed that the respondent used to regularly beat her up. From the wedlock, two daughters were born in the year 2002 and 2003, but despite the birth of the said children, the behaviour of the respondent and his parents towards the petitioner did not change. It only worsened for not giving birth to a male child.

4. The petitioner also claimed that in May 2004, the respondent shifted his place of residence from Pushp Vihar, Saket to Mahipalpur in a rented accommodation and demanded a sum of Rs.50,000/- from the petitioner. The father of the petitioner somehow arranged an amount of Rs.8,000/-, which was deposited in the account of the petitioner and withdrawn by the respondent on the very next day. On 01.07.2004, the respondent sent the petitioner to her home along with the children. While the petitioner was at her parents home, the respondent came there and demanded Rs.1 lakh. The same was refused and the respondent gave beating to the petitioner in front of her parents mercilessly. The petitioner states that one neighbour, namely, Smt. Anjali intervened to save the petitioner. The petitioner states that

whenever she visited her parents home, they gave her some money to save the marriage. The father of the petitioner also gave Rs.3,000-4,000/- every month to the respondent. The respondent did not take up any regular job and the household expenses were run by the petitioner out of the contribution made by her father.

5. In July 2005, the petitioner left the matrimonial home being fed up by the cruel conduct of the respondent. She made a complaint to Women Cell, Nanakpura on 29.08.2005, which culminated in the registration of FIR No.210/2006 under section 498A/34 IPC. The petitioner states that she made efforts to reside with the respondent to save her married life, but to no avail. The petitioner states that the respondent had thrown her out of her matrimonial home along with the children. She states that on 15.03.2009, while the petitioner was living with her parents, the respondent came to her house and started ringing the door bell using filthy language before other people of the locality. He also threatened that if his demands are not met, he would tarnish the petitioner's reputation. The aforesaid conduct of the respondent had led to the petitioner being subjected to immense cruelty – both physical and mental, at the hands of the respondent.

6. Upon issuance of notice, the respondent appeared before the learned ADJ on 14.09.2009. However, thereafter he did not appear and he was proceeded ex-parte on 04.11.2009. The petitioner led ex-parte evidence on 08.11.2010. She filed her affidavit by way of evidence and exhibited the complaint filed by her before the Women Cell as Ex. PW-1/A and the FIR registered on the said complaint as Ex. PW-1/B.

7. The learned ADJ, however, dismissed the said petition on the

reasoning that the allegations made in the petition are vague and general in nature and no specific incident of alleged cruelty, with date and place, have been mentioned. The learned ADJ observed that the allegation range from beating and torture for dowry demands. Allegations of not bringing the car and dowry have not been established. It was also observed that the petitioner had failed to establish the allegation made-that in May 2004 a sum of Rs.50,000/- was demanded by the respondent. The petitioner had not stated that the said amount had been paid. The learned ADJ also did not believe the petitioners case that an amount of Rs.8,000/- had been deposited by her father in her account, which was withdrawn on the very next day by the respondent. The averment with regard to payment in cash made by the petitioner's father to the respondent is also held to be vague, as there were no specific details provided or proved. Similarly, no details were given with regard to the alleged demand of Rs.1 lakh. Even in relation to the beatings, the learned ADJ held that there were no specific instances, supported by any evidence, brought on record. The learned ADJ held that though it was claimed that one Smt. Anjali had intervened while the petitioner was being beaten by the respondent in her parental home, the said Smt. Anjali was not produced as a witness. Consequently, by observing that there is lack of evidence, the learned ADJ dismissed the petition.

8. Before this Court, upon issuance of notice, the respondent was served as recorded in the order dated 16.05.2012. Despite service, the respondent has not appeared. From the aforesaid conduct of the respondent, it appears that he could care less whether the petitioner/appellant was granted divorce by the Trial Court, or by this Court. He has not shown any interest in saving

the marriage.

9. The appellant moved an application under Order 41 Rule 27 being C.M. No.11182/2001 before this court, which was allowed by this court on 09.09.2014. Thereafter, the appellant led the evidence of HC Krishan Kumar from P.S. Sarojini Nagar, New Delhi as AW-1, and SI Sridhar Prasad as AW-2. The appellant also produced the carbon copy of her complaint dated 19.12.2005 given at PS Sarojini Nagar, which bore the endorsement of the said police station, as well as the handwritten statement of the respondent, which also contain the statement of the appellant that she does not wish to pursue her complaint in view of the apology tendered by the respondent.

10. AW-1 in his deposition stated that he was working as a head constable at PS Sarojini Nagar. He could not bring the record pertaining to the complaint dated 19.12.2005 made by the appellant, as the record pertaining to the year prior to 2008 had been weeded out as per orders of DCP South District. He produced the order passed by the DCP regarding the weeding out of the record as mark-X. AW-2 deposed that he was posted at PS Sarojini Nagar from April 2005 to June 2007. He recognised the complainant/appellant in court. He was shown the carbon copy of the complaint dated 19.12.2005 made by the appellant, which also had the stamp of the PS Sarojini Nagar. He stated that the said complaint was made by the appellant at PS Sarojini Nagar and he exhibited the same as AW-2/1. He stated that after the complaint was lodged, the husband of the complainant, namely, NSB/respondent was called to the police station and the matter was settled. Sh NSB, the

husband of the complainant/respondent apologised for his conduct and gave an undertaking that he will not beat and misbehave with the complainant in future. This witness was shown the undertaking in court, and he affirmed that the same was signed by the parties in his presence. Thus, the same was marked as Ex AW-2/2. He further deposed that, however, the disputes between the parties continued and thereafter FIR No.210/2006 under section 498A/34 was registered against the respondent on the complaint of the appellant. He stated that he was entrusted with the investigation of the said case as the I.O.

11. The submission of Counsel for the appellant is that a perusal of AW-2/1 and AW-2/2 shows that specific allegations with regard to the physical violence and mental cruelty perpetrated by the respondent were disclosed by the appellant. In AW-2/1, the appellant had stated that she was living in her parental home since June 2005. The respondent used to come to her parental house and beat her up. He would also not let the appellant carry on with her job. She also stated that he did not take up any job. The respondent used to make filthy allegations against the petitioner, and told the petitioner to bring money from her parents. She also stated that on 27.10.2005, the respondent came to her parental house and beat her up. She called the number-100 on phone. However, the respondent ran away. She also made a complaint to the Women Cell. However, the respondent continued to harass the petitioner. She also disclosed that she went back to her matrimonial home. However, the respondent used to beat her up. Consequently, she came back to her parental home on 18.11.2005. She also stated that on the date of the complaint i.e. 19.12.2005, the respondent had

threatened the petitioner that he would harass her parents.

12. AW-2/2 is the hand of the respondent. The same is a letter of apology, wherein the respondent admitted to beating up the petitioner and her children. He also admitted that he had been harassing the petitioner in her parental house, and abusing her in-laws. He also assured that he would take up a job and would give his salary to the petitioner. On this undertaking of the respondent, the petitioner had endorsed that since the respondent had apologised for his conduct and also assured that he shall not come to her parental home and fight with her father, she does not want any legal action against the respondent.

13. Counsel for the appellant, therefore, submits that the respondent admitted to having treated the petitioner/appellant with cruelty – both physically and mentally.

14. No doubt, that it was for the petitioner to establish the allegations of cruelty to be able to succeed under Section 13(1)(ia) of the Act. It is also not sufficient that the respondent does not appear to contest the said petition, as it is for the petitioner to stand on his/her own legs to establish the perpetration of cruelty by the respondent/spouse on the petitioner. A perusal of the petition as well as the impugned judgment shows that the petitioner had made specific allegations by giving dates when she had returned to her parental home on account of the cruel treatment meted out to her by the respondent/husband. No doubt, the petitioner could have led better evidence to substantiate her allegations, which she failed to do before the Trial Court. At the same time, the respondent did not appear to contest the petition either before the Trial Court, or before this Court. Before this Court, the appellant

has led in evidence the testimonies of AW1 and AW-2 who have also proved Ex. AW-2/1 and AW-2/2, which sufficiently probablise the case of the appellant that she was subjected to physical and mental cruelty at the hands of the respondent, as discussed above. AW-2, particularly, had personal interaction with the complainant/appellant during the discharge of his duties, in connection with her complaint Ex.AW-2/1 and was a witness to the respondent/husband writing the apology letter Ex.AW-2/2.

15. Ex. AW-2/2 constitutes an admission which binds the respondent. AW-2/2 was written by the respondent in the presence of AW-2 as a consequence of the complaint lodged by the petitioner on 19.12.2005-AW2/1. The complaint was made to the CW Cell in August 2005 vide Ex.PW1/A, i.e. in close proximity of the complaint dated 19.12.2005 (AW-2/2). The FIR was registered on 19.04.2006 vide Ex.PW-1/B, which too was in close proximity of the said complaint dated 19.12.2005 (Ex. AW-2/1). Thus, there appears to be ring of truth in the case of the appellant with regard to her being subject to both physical and mental cruelty by the respondent.

16. For all the aforesaid reasons, the impugned judgment and decree is set aside, and a decree is passed under Section 13(1)(ia) dissolving the marriage between the parties on the ground of cruelty.

17. The appeal stands allowed and is disposed of.

VIPIN SANGHI, J

SEPTEMBER 10, 2015

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