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

+ **MAT.APP.(F.C.) 106/2014 & CM No.15113/2014**

SMT. ABHILASHA Appellant
Through **Mr. Sri Bhagwan Sharma & Mr.**
Anshuman Pandey, Advocates
alongwith appellant in person
versus

SH. DEVENDER KUMAR Respondent
Through **Mr. Rajeev Kumar, Advocate for**
the respondent alongwith the
respondent in person

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **17.08.2015**

KAILASH GAMBHIR, J. (ORAL)

1. By way of the present appeal, the appellant questions the tenability of the order dated 16.05.2014 passed by the learned Judge, Family Court, Dwarka, New Delhi (*hereinafter referred to as the 'learned Family Court'*) whereby the learned Family Court has passed a judgment and decree in favour of the respondent and against the appellant under Section 9 of the Hindu Marriage Act, 1955 (*in short 'HMA'*).

2. In the ancient times, the basal thought was that marriage was a prime necessity for that alone could enable a person to discharge properly his religious and secular obligations. The earliest records show that rules

of inheritance depended on the rules of marriage and it was obligatory on the father to give the daughter in marriage as gift is given. Marriage a Sacrament: Marriage is necessarily the basis of social organization and foundation of some important legal rights and obligations. The importance and imperative character of the institution of marriage needs no comment. In Hindu Law marriage is treated as a samskara or a sacrament. It is the last of ten sacraments, enjoyed by the Hindu religion for regeneration of men and obligatory in case of every Hindu who does not desire to adopt the life of sanyaasi. From the very commencement of Rig-Vedic age, marriage was a well established institution, and the Aryan ideal of marriage was very high. The high value placed on marriage is shown by the long and striking hymn of Rig-Veda, X, 85; "Be, thou, mother of heroic children, devoted to the Gods, Be, thou, Queen in thy father -in -law's household. May all the Gods unite the hearts of us two into one".

As the old writers put it," a woman is half her husband and completes him". Gone are the days when marriage was considered to be a sacrilege. With the advent of time, these verses have lost its quintessence, rather in the present times, it is debasing to hear of every second marriage being a failure. In our considered view, the patience and sincerity that is required

to build and nourish a bond has reached its zenith. In times like these not even two to three marriages sustain, let alone one. Similar are the facts of the case at hand wherein it was a second marriage for both the spouses and due to their ego tussles, they are hell bent on destroying the sacramental union i.e. Marriage.

2. The brief facts of the case at hand are as follows:

That the petitioner got married to the respondent on 17.02.2002 according to the Hindu customs and rights. This was the second marriage of both the parties as the wife of the respondent herein had expired while the petitioner was a divorcee. Both of them had a daughter each from their previous marriage. It is alleged that after marriage, the respondent herein took complete care of the daughter of the petitioner as her own daughter and even got her admitted to SRS Mission School, Janakpuri alongwith her own daughter. That he never made any distinction between the two children and provided them with all the love and facilities of life. It is alleged that the appellant had purchased a plot of land in Sita Puri bearing No.A-120, Gali No.21, Dabri Sita Puri, New Delhi from the funds generated by her and the respondent herein wanted it to be transferred to his name. Thus, the relation between the petitioner and the respondent turned sour and the respondent left the appellant herein with

all his belongings and also left his daughter, Asha Rani, with the appellant. A case was filed by the appellant herein against her husband under section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'DV Act') along with the application of Interim maintenance. Subsequently, Mahila Court granted her Rs. 3000/- as monthly interim maintenance, the same was set aside by the Ld. ASJ Dwarka Court on 29.08.2011. The respondent herein filed a petition under section 9 of the HMA to avoid the interim maintenance awarded by the Ld. Judge, family Court. Ld. ASJ set aside the interim order of maintenance and allowed the petition of the respondent filed under section 9 of HMA. Hence the present petition.

3. Assailing the legality and correctness of the impugned order passed by the learned Family Court, Mr. Sri Bhagwan Sharma, the learned counsel for the appellant, contends that the appellant made all possible efforts to save her marriage but the respondent tortured and harassed her for not transferring the plot in his name. The contention raised by the learned counsel for the appellant is that after marriage, the appellant had purchased a plot of land in Sita Puri bearing No.A-120, Gali No.21, Dabri Sita Puri, New Delhi from the funds generated by her, taking no financial help from the respondent but the respondent had

always been insisting the appellant to transfer the said plot in his name and when the appellant refused to do so, the respondent left the company of the appellant on 26th May, 2008. The learned counsel further submits that the learned Family Court failed to appreciate the fact that the respondent has been earning more than Rs.50,000/- per month and was duty bound to maintain the appellant and her daughter Bhawna but chose to walk out of the house so as to save himself from the said financial burden. The learned counsel also argued that the learned Family Court also failed to appreciate the fact that it is the appellant who had first approached the learned Trial Court for grant of maintenance had also separately filed a Petition under Section 12 of the Domestic Violence Act, 2005 and it is thereafter, that the respondent had filed a Petition under Section 9 of the HMA to seek restitution of the conjugal rights. Based on the above submissions, the learned counsel for the appellant urges for setting aside the impugned judgment and decree.

5. On the other hand, the present appeal is strongly opposed by Mr. Rajeev Kumar, the learned counsel for the respondent. The learned counsel submits that the appellant has failed to point out any kind of illegality or perversity in the reasoning given by the learned Trial Court in passing the judgment and decree. The learned counsel for the respondent

prays for outright dismissal of the present appeal.

6. We have heard the learned counsel for both the parties and have perused the material on record including the order dated 16.05.2014 which is under challenge.

7. In the instant case, we find that the appellant got married to the respondent on 17.02.2002 according to the Hindu Rights and Customs. Undoubtedly, it was a second marriage for both the parties and each of them had a daughter from their previous marriage. After they started residing together, both the daughters were admitted to the same school, SRS Mission School and their fee was borne by the respondent herein without any delay. It may further be noted that in the petition under Section 9 of HMA was filed before the Family Court, the respondent had alleged that because of the pressure of the appellant herein, he purchased a plot bearing no. A- 120, Sita Puri in the appellant's name, near her parental house on 29.06.2003, however on the contrary, the appellant denying the allegation has stated that the said plot of land was not purchased by the respondent but the appellant herein, with the help of her parents. As per the documents proved on record, the respondent has clearly shown the bifurcation of the amount so collected for purchasing the aforesaid property and that too in the name of his wife, to which the

appellant herein has stayed silent in her testimony. Even the father of the appellant did not step into the witness box to support this averment. Thus the allegation that the appellant herein had spent the entire money to buy the aforesaid plot with the help of his family is devoid of any substance. Even when a suggestion was put to her, she became mum and chose not to respond.

8. The Ld. Judge Family Court widely discussed the issue that whether the respondent without any reasonable excuse has withdrawn from the society of the appellant. The fact that the respondent has been helpful in each and every way possible to sustain his relation with his wife can in no way be doubted from the evidence on record. The petition in fact is bereft of any act proving cruelty by the husband of the appellant in specific so far as the allegation of harassment is levelled against the respondent. It is an admitted case that the husband of the appellant on 27.05.2008 left the society of his wife alongwith all his belongings. Nevertheless, until 2009, he even took care of the expenses of the daughters in terms of their fee etc. Nowhere has the appellant been able to prove that the husband/ respondent herein was rude or cruel in his conduct towards his wife or daughters in any manner possible. Rather he was ready to bear their school expenses, until the appellant herself

intimated the school authorities to not to charge the same from her husband. But particularly for her daughter , Asha Rani, he took care of the fee amount and later he even took the custody of his child from the court.

9. Indisputably, a fight had taken place between the appellant and her husband on 26.05.2008 but the appellant has nowhere denied that the husband of the appellant still visited their house and was available as and when required. On the other hand it appears that the appellant had kept him at her beck and call and never tried to completely reconcile. Therefore, the contention raised by the Id. Counsel for the appellant with regard to the intention of the respondent to get rid of the financial burden does not prove to be true . The Id. Judge, Family Court has rightly held on the basis of the record available that the petitioner was prevented from entering the house of the appellant since 02.10.2008. Therefore to say that the respondent tried to get rid of the financial burden would not suffice in the entire set of circumstances.

10. The dictum of law as laid down by this court in the case of **Krishan Kumar Vs. Shankari II (2007) DMC 367** and **Harish Chander Drall vs. Suresh Wati II (2007) DMC 450** is that the mere fact that the criminal proceedings have been instituted by one spouse against the other, the

same would not constitute cruelty by itself, even if such criminal proceedings end up in acquittal.

11. It would also be pertinent to refer to the judgment of the Madras High Court in the case of ***Jayakumari vs. Balachander*** 2010(TLS) **1243604** where it has been held that:

"30. The term 'cruelty' consists of unwarranted and unjustifiable conduct on the part of defendant causing other spouse to endure suffering and distress thereby destroying peace of mind and making living with such spouse unbearable, completely destroying real purpose and object of matrimony. It would of course be difficult to define the expression 'cruelty'. There cannot be any hard and fast rule in interpreting the same. As pointed out, the word 'cruelty' cannot be put in a strait-jacket of judicial definition. It must be judged on the facts of each case having regard to the surrounding circumstances. Whether one spouse is guilty of cruelty is essentially a question of fact and previously decided cases have little, if any, value. The term 'cruelty' is not defined in the Act. It is to be judged by taking into consideration the status of life, the standard of living, the family background and the society in which the parties are accustomed to move because particular behaviour may amount to cruelty in one set of circumstances and may not be so in other set of circumstances.

Observing that merely because criminal proceedings under Sec.498A IPC initiated by wife against her husband and his parents ended in acquittal and it cannot be treated as an instance which goes infavour of the husband to substantiate the plea of cruelty, in AIR 2006 AP 269 [Chiranjeevi v. Lavanya], the Division Bench of Andhra Pradesh High Court held as follows:-

"22. Much arguments have been advanced by the learned counsel appearing for the appellant-husband and his parents that a criminal case on a full fledged trial is an incident which constitutes cruelty on the part of the respondent-wife who initiated criminal proceedings. We have gone through the judgment, which has been marked as Ex.B-6. The criminal case ended in acquittal on the ground that the prosecution failed to prove the case against the accused beyond all reasonable doubt. The acquittal of the case is not on the ground of no evidence. It is settled law that nature of evidence required in a criminal case is of different standards and the same standards and proof is not required in civil proceedings. Therefore, mere acquittal of the appellant-husband and his parents in criminal case cannot be treated as instance which goes in favour of the appellant-accused to substantiate the plea of cruelty, on which a decree of divorce has been sought for."

33. Similar view was taken in AIR 2007 (NOC) 2205 (Del.) [Vishnu Dutt Sharma v. Manju Sharma].

12. Apprehension with regard to harm or injury should also be of such nature which may cause the other side irreparable loss or injury. Meaning thereby, the reasonable apprehension with regard to harm or injury should be such which may not be bearable to lead a normal life. As per the records and the testimony of the respondent, there appears to be no material which may create a reasonable apprehension in the mind of the appellant resulting into harm or injury in incident which may not be bearable or irreparable because of which the appellant cannot lead a matrimonial life along with the respondent. The petition in fact is devoid

of any such act by way of which the husband of the appellant has harmed her in any way rather from the entire case as set up by the respondent before the Ld.Trial Judge it appears that the appellant's desires have always been fulfilled but the same has not been appreciated by her in good spirit.

13. Section 9 of the HMA talks about restitution of conjugal rights. If any of the spouses has left the company of the other without giving any reasonable ground, the HMA gives such spouse a remedy in the form of restitution of conjugal rights under Section 9 to re-establish those ties. Even if the contention of the appellant of any sort of harassment is accepted to be correct, neither does it reveal that the respondent harmed her in an unreasonable manner, nor any such behaviour of the respondent shows that he wants to put an end to the marital relationship and had left the matrimonial house to break the ties. On the contrary, the respondent has stated that he was always ready and willing to reside with the appellant. Wife is under an obligation to live with her husband in his home and under the same roof except in a case of distinct and specific misconduct on the part of the husband. The marital obligation has been buttressed by clear statutory recognition under Section 9 of the HMA (*Ref: Kailash Wati v. Ayondhya Prakash, 1977 (79) PLR 175*).

14. It is also to be noted that the appellant-wife and the respondent-husband are staying apart from 02.10.2008, but during this time, the husband made all possible efforts to reconcile and fulfilled all his responsibilities towards his children or his wife. Thus in this background, now the claim of the wife seem untenable. Marriage involves human sentiments and emotions and if there is still any ray of hope regards reconciliation then in such a scenario the court may not take a contrary view.

15. Thus, taking a panoramic view of the case at hand, this court feels that the learned trial court has rightly dealt with the entire set of circumstances and the evidence adduced by them in support thereof including the applicable law in the right perspective. While adjudicating matrimonial cases, the courts have to be cautious and conscious of the fact that the holy bond of matrimony involves delicate human emotions and complex situations and often there gets created a chasm which if not fortified by the court can lead to irredeemable destruction.

16. Thus, this Court does not find any kind of illegality or perversity in the findings given by the learned Trial Court in the impugned judgment dated 16.05.2014. The Appellant has failed to establish any cogent ground on which the respondent is proved guilty for his conduct towards

his family or the family members of the appellant. In the light of the aforesaid discussion, the present appeal is dismissed and the impugned judgment and decree dated 16.05.2014 passed by the learned trial court is hereby upheld.

17. It is ordered accordingly.

KAILASH GAMBHIR, J.

P.S.TEJI, J.

AUGUST 17, 2015

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