

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

Judgment Reserved on: August 09, 2016

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Judgment Delivered on: August 19, 2016

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MAT.APP. 08/2012

NEERAJ KUMAR

..... Appellant

Represented by: Mr.Vikas Anand, Advocate

versus

POOJA VERMA

..... Respondent

Represented by: Mr.Rajendra Vats, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. In the instant appeal the appellant/husband has impugned the judgment dated December 01, 2011 passed by the learned Judge, Family Court, Rohini, Delhi whereby the petition filed by him for dissolution of marriage on account of cruelty being committed by the respondent/wife was dismissed.

2. The appellant/husband got married to the respondent/wife on November 22, 2004 according to Hindu rites and ceremonies. The marriage was consummated and a son was born on January 01, 2006.

3. In the petition filed under Section 13(1)(ia) of Hindu Marriage Act, 1955 the instances of cruelty stated to have been committed by the respondent/wife cited by the appellant/husband are numerous starting right from the second day of the marriage. As per the appellant/husband, on the very next day of the marriage the respondent/wife started treating his mother, sister and sister-in-law in an insulting manner complaining that the language used by them was not to her liking and that her sister-in-law did not know how to speak. The respondent/wife considered herself to be

modern and well-educated and she ill-treated the family members of the appellant/husband who are having rural background. She also called the mother of the appellant as uneducated '*Ganwar*'. The respondent/wife was studying at National Museum Institute, New Delhi. To avoid doing of household work she used to leave house even on Saturday and Sunday on the pretext of going to Institute whereas in fact she used to visit her parental home or roam around with her friends. The respondent/wife did not want to live in joint family and had been threatening the appellant to have a separate house in Rohini. One of the most serious allegation made by the respondent/wife against the appellant was that of having illicit relations with his sister-in-law (bhabhi). The respondent/wife created a scene when his sister visited them and his two years old niece wanted to sleep with him. The respondent/wife started shouting that the appellant/husband was in his Bhabhi's room. She also even complained against her father-in-law saying that he had bad eyes on her. The respondent/wife had also insulted his mother and sister who had visited her parental home to enquire about her wellbeing. She also quarrelled on the issue that why she was sent to the parental home for delivery whereas her Jethani when became pregnant was not sent to her parents house.

4. In the written statement the respondent claimed her also to be from the rural background so there was no occasion to insult her in-laws on that count. She had given the instances of she being treated with cruelty at her in-law's place and being compelled to do household work even when she was unwell. The respondent had alleged that she was not properly looked after when she was in family-way. The appellant/husband was well aware of the fact that the delivery was going to be caesarean. Despite being intimated about her admission in the nursing home, neither her husband nor

her in-laws were present. They came to see her and the child only on the next day. She has denied having ever misbehaved with her sister-in-law or other family members or levelling any allegations about the illicit relations between her husband and her sister-in-law. She also denied having ever asked the husband to shift to Rohini in a rented accommodation or threatening to implicate him in any false case. The respondent/wife had stated that till date she has not lodged any complaint against her husband or in-laws. She tried to save the marriage for the sake of their only child. She also claimed that the appellant/husband had never visited her or their son after she left home. The respondent/wife had alleged that false stories have been concocted to make out a case of cruelty to seek divorce.

5. After considering the evidence adduced by the parties, learned Judge, Family Court dismissed the divorce petition mainly on the following grounds:

- i. The appellant/husband has examined only himself as PW-1.
- ii. Affidavit filed by his father could not be read in evidence as he did not enter into the witness box.

6. The learned Judge, Family Court had noted the instances of cruelty as under:

- i. Respondent used to find fault with his mother and sister.
- ii. Respondent was disrespectful to the family of the petitioner.
- iii. Respondent used to go to her paternal home or remain with her friends on the pretext of going to college.
- iv. She insisted for living separately in Rohini.
- v. He had illicit relations with his Bhabhi. The respondent/wife created a scene when his sister visited them and his two years old niece wanted to sleep with him. The respondent/wife started shouting alleging that the

appellant/husband was in his Bhabhi's room.

7. Learned Judge, Family Court while observing that there is no allegation of physical cruelty being committed by the wife and divorce is being sought on the allegations of mental cruelty, held that the appellant/husband failed to prove that he was treated with cruelty.

8. Family Court had assigned the following reasons for arriving at the above conclusion:

i. The husband has not examined his mother, sister or sister-in-law or any family member to prove the behaviour of wife right from the second day of her marriage.

ii. The husband failed to prove that such behaviour of the wife was continuing and caused grave mental cruelty to him. He also failed to put these allegations to the wife when she appeared for cross-examination.

iii. Regarding the third instance of mental cruelty i.e. with a view to avoid the household work, she used to visit NMI on Saturday and Sunday though it used to be closed and that she used to roam either with friends or visit her parents house was held to be not proved as no such suggestion was given to the wife during her cross-examination.

iv. The fourth allegation that the wife used to compel the appellant/husband to live separately in Rohini was also held to be not proved as no such suggestion was put to her by the appellant/husband.

v. The most serious allegation against the appellant/husband was that his wife used to suspect her husband of having illicit relations with his Bhabhi. Even this was not put to the respondent/wife during her cross-examination. Even no suggestion was given to her that she suspected his character. The only suggestion given to the respondent/wife by the appellant/husband was that when his parents were discussing about his character assassination,

respondent/wife overheard the same and started giving her husband with fist blows complaining as to why he had disclosed this fact to his parents.

9. Learned Family Court has observed that the respondent/wife had no intention to malign the image of her husband and was not interested in bringing this fact to the notice of his in-laws. Even in the written statement the respondent/wife did not make any averment accusing her husband having illicit relations with his Bhabhi or any other lady.

10. Other instances of mental cruelty i.e. creating a scene when his sister visited them or shouting at the appellant/husband or his family when they went to see the new born on the next day of birth, were considered by the Court not to be so grave and hazardous which would make the appellant/husband think that it was difficult to live with the respondent/wife.

11. Other incidents of similar nature were termed as daily wear and tear of the matrimonial life not amounting to mental cruelty.

12. Learned counsel for the appellant has assailed the verdict of the Family Court submitting that it was a case of mental cruelty being committed on the husband despite all his efforts to save the marriage. He was accused of having illicit relationship with his Bhabhi. False allegations of demanding ₹2,00,000/- was made against the appellant/husband and the in-laws which caused grave and mental/physical cruelty on the appellant/husband. Learned counsel for the appellant has further submitted that the respondent has no intention to return to the matrimonial home and the marriage has reached point of irretrievable breakdown.

13. Learned counsel for the appellant has relied upon 2014 (8) LRC 203 (Del.) Anil Singh (Mrs.) vs. Dr.Narender Singh, 2014(9) LRC 289 (Del.) Mahendra Kumar Sharma vs. Sunita Sharma, 2009 (2) HLR 43 Vimla Mehra vs. K.S.Mehra, 2001 (2) Orissa LR 600 Durga Prasanna Tripathy vs.

Arundhati Tripathy, AIR 2007 Gauhati 122 (DB) Smt.Rita Das Biswas vs. Trilokesh Das Biswas, AIR 2007 (NOC) 168 (Cal.) Swapan Kumar Parui vs. State of West Bengal & Ors., AIR 2007 NOC) 88 (Chh.) Bharat Ram Sahu vs. Salik & Ors., 1996 AIR (AP) 19 Jayakrishna Panigrahi vs. Surekha Panigrahi, AIR 1998 Andhra Pradesh 296 Smt.S.Vijayalaxmi vs. S.Bheemreddy, AIR 1999 Rajasthan 181 Smt.Shimla Devi vs. Kuldeep Sharma, and AIR 2003 Allahabad 51 Poonam Gupta vs. Ghanshyam Gupta, in support of his contentions.

14. It has been submitted by the learned counsel for the appellant that in the instant case it has been more than eight years that the respondent/wife had left matrimonial home i.e. on April 06, 2008. She did not return thereafter and if divorce is not granted even after eight years of the respondent/wife leaving the home after causing mental cruelty to the appellant/husband, it would amount to further cruelty on him. Hence marriage may be dissolved by a decree of divorce.

15. At the outset, we would like to observe that the respondent did not seek dissolution of marriage on account of desertion under Section 13(1)(ib) of the Hindu Marriage Act. He sought divorce on account of the mental cruelty being committed by the respondent/wife. The instances of cruelty have already been enumerated by us above and we agree with the findings of the learned Judge Family Court that none of the aforesaid incident except the accusation of illicit relationship with his bhabhi or creating a scene when he was alleged to be in his bhabhi's room, amounts to mental cruelty of a level envisaged under Section 13(1)(ia) of the Hindu Marriage Act. Learned Judge has rightly considered these instances to be normal wear and tear of the matrimonial life which did not necessitate dissolution of marriage on account of the allegations made against the respondent/wife. Reliance placed

by learned counsel for the appellant on the various reports referred to above to seek dissolution of marriage which he claimed to have reached the point of irretrievable breakdown requiring to be dissolved by Court of law, needs to be rejected at the very outset.

16. The aspect needs to be examined by us is whether on appreciation of testimony of the parties, learned Judge Family Court has rightly concluded that no case of cruelty being committed by the respondent/wife is proved.

17. At the cost of repetition we note down some dates. Date of marriage is November 22, 2004. Date of birth of male child is January 01, 2006. Date of leaving the matrimonial home by the wife is April 06, 2008. From the testimony of the appellant/husband, we do not find any evidence to the effect that till the respondent/wife left the matrimonial home, they were not leading a normal matrimonial life or that they were not cohabitating.

18. We need not enter into the detail of all the dates when the respondent/wife had been temporarily leaving the matrimonial home to visit her parents either to meet them or on account of the delivery of the child or otherwise necessitated by some customs rituals. The fact remains that when nephew of the appellant was born on July 13, 2007, he brought his wife back on July 15, 2007 and left her at the matrimonial home. Thereafter we do not find any evidence that after she was brought back to the matrimonial home on the occasion of the birth of son of his elder brother, they did not resume cohabitation.

19. The law pertaining to cruelty is if by resuming cohabitation the spouse claiming victim of cruelty forgives the other spouse who commits the cruelty, the alleged act of past cruelty cannot be relied upon to seek divorce on account of the cruelty unless they are revived by subsequent acts of cruelty.

20. On perusal of the Trial Court's record, we notice that the appellant/husband is a teacher in M.C.Primary School whereas the respondent is a Trained Graduate Teacher. While the appellant is claiming himself from rural background, the respondent/wife though living in Rohini also claimed to be from the rural background thus having no issue on the dialect of her mother-in-law or other family members.

21. The appellant/husband has admitted that his wife was sent to her parent's home for delivery purpose as she was registered with Gupta Nursing Home in Rohini. It is also admitted by him that he was not there by the side of his wife on the date or at the time of delivery despite being informed by her parents about her admission in nursery. It is his own case that when informed about her admission in nursing home, he asked them to contact his parents to do the paper work. It is also admitted case of the appellant/husband that he along with his family members visited the nursing home only on the next date of birth of the child.

22. The son was born to parties on January 01, 2006 making the new year really happy for them. The appellant/husband herein was not on any official duty or discharging any social obligations which could have compelled him to be away from his wife when she was to be operated upon for the delivery. We feel that this act of the appellant/husband would have created some kind of bitterness in the mind of respondent/wife about the manner in which her husband was conducting himself when she was under the knife of a Surgeon to bring their child in this world. Positive attitude of the appellant/husband at that time would have given a soothing touch to the hurt emotions of the wife at that stage. Visit by the appellant/husband to the nursing home next day like a visitor or guest must have widened the gap in their relationship. Even if it is assumed for the sake of arguments that for the reasons beyond

his control, the appellant/husband could not visit the nursing home on the day of delivery, at least he could have brought on record the reason for not being with her in the nursing home to welcome the new year and their bundle of joy arriving on the new year.

23. The fact that on the birth of his nephew the respondent/wife accompany him to the matrimonial home and after just dropping her there, he again left the matrimonial home, shows his abnormal conduct towards his wife and son. Thus, we gather from the averments made in para 18 of the affidavit deposing that after bringing back the respondent/wife to the matrimonial home, the appellant/husband went out for some urgent work. In his absence, the respondent/wife asked and compelled his brother to vacate the room on first floor. His brother called 3-4 boys and shifted the entire luggage from that room. We may note here that brother of the appellant/husband was not examined to prove any such instance. Rather as per the written statement, shifting was necessitated as her 'jeth' wanted to be on the ground floor close to his wife who delivered a son on July 13, 2007.

24. As per para 22 of the affidavit, on the death of mother of his bhabhi on March 19, 2008, the respondent/wife purchased a box of sweets and distributed to the family members. No family member has been examine to establish the above fact.

25. Another instance of cruelty as mentioned in para 16 of the affidavit is extracted as under:

'16. That the deponent state that in Feb/March 2007, the sister of the petitioner came to the house of the petitioner alongwith her two small kids. The two year old niece of the petitioner insisted to sleep with the petitioner and accordingly, the petitioner allowed her to sleep alongwith him but the respondent created hawked in the family during night she started abusing the petitioner in an unparliamentarily language and stated that she will not allow any person to enter her room because she wants complete privacy. The petitioner then took

the baby girl and left her with his sister and he went upstairs feeling insulting and depressed. While he was sitting on the terrace, there was a hue and cry downstairs and the sister of the petitioner went upstairs and she asked as to why she was sitting there. The petitioner disclosed the entire episode and told his sister that the respondent abuses him and insulted him. When he came down stairs, the respondent started shouting saying that the petitioner was in the room of his bhabhi. Everybody tried to explain and make her understand. Ultimately, when the atmosphere was normal, the petitioner requested the respondent, his sister, elder brother and his wife not to say anything about the said incident to the parents of the petitioner who were sleeping in the 'Gher'.....'

26. The above deposition of the appellant/husband shows that the incident was in the presence of all the family members but neither the sister has been examined nor brother or bhabhi have been examined to prove any such incident.

27. It is admitted case of the appellant/husband that after his wife left on April 06, 2008 he had not met them. He did not even know in which standard his son was studying. This shows his indifferent attitude towards his wife and child. The admitted fact that the respondent/wife till date had been taking care of her son single handedly without even asking for maintenance shows that she never had any intention to break the matrimonial ties.

28. It is a matter of common knowledge that after leaving the matrimonial home all kinds of civil and criminal proceedings are initiated against the husband and in laws but in this case we find that after leaving the matrimonial home the wife did not take recourse to any legal remedy. In the given circumstances there was hardly any material available to the appellant/husband to claim dissolution of marriage on account of the mental cruelty.

29. In view of the above we are of the considered view that learned Judge

Family Court correctly appreciated the evidence or arrive at the conclusion that it was not a case of dissolution of marriage on the ground of cruelty being caused to the appellant/husband. Even if there was any act of mental cruelty, the same was condoned by the appellant/husband by cohabiting till she left on April 06, 2008. There is no instance of cruelty being committed by the respondent/wife thereafter.

30. Lastly it has been urged before us that the marriage has been broken down irretrievably as more than eight years have passed since the date the respondent/wife left the matrimonial life, hence marriage may be dissolved by a decree of divorce.

31. The case law cited by learned counsel for the appellant/husband referred to above is of no help to the appellant in view of the decision of the Supreme Court in (2009) 6 SCC 379 Vishnu Dutt Sharma Vs. Manju Sharma. The Supreme Court while dealing with a similar contention, held as under:

“10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

11. Learned Counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.

12. If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for the

Parliament to enact or amend the law and not for the Courts. Hence, we do not find force in the submission of the learned Counsel for the appellant.

13. Had both parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13B of the Act, but in this case the respondent is not willing to agree to a divorce.”

32. In the instant case the respondent/wife has nowhere expressed her desire to seek a divorce. We do not find any sincere effort made by the appellant/husband to save the marriage by remaining in touch with his wife and son or to provide some amount for better upbringing of their son. This has been a case to seek dissolution of marriage on account of cruelty and not on desertion, the appellant is not entitled to seek a decree of divorce claiming that the marriage has been broken down irretrievably.

33. After re-appreciating the evidence we reached the same conclusion as arrived by the learned Judge, Family Court declining to grant divorce on the ground of cruelty.

34. Finding no merit the appeal is dismissed.

35. No costs.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

AUGUST 19, 2016
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