

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

% *Judgement Reserved on : October 27, 2016*
Judgment Delivered on : November 03, 2016

+ **MAT.APP.(F.C.) 65/2016**

SUMIT Appellant

Represented by: Mr.Arvind Kumar, Advocate

versus

PREETI @ PRIYA Respondent

Represented by: Mr.S.K. Rai, Advocate with
Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Sumit and Preeti solemnized their marriage on February 25, 2012 as per Hindu Rites and Ceremonies. They were blessed with a girl child on February 23, 2013 who, is currently with Preeti.
2. Sumit filed a petition seeking dissolution of the marriage by grant of a decree of divorce pleading cruelty before the Principal Judge, Family Court at Rohini on January 04, 2014. Counsel for Preeti was negligent. She did not file a written statement. Sans her defence she had to rely upon the pleadings, the evidence led by Sumit and his cross-examination by her counsel.
3. Notwithstanding Preeti's handicap, Sumit has suffered a setback. His claim has been denied. HMA No.6/14 filed by him has been dismissed.
4. Learned Judge Family Court has opined that the pleadings and the evidence is sans any particulars. Everything is vague. Thus no case is made out to annul the marriage by granting a decree for divorce on ground of cruelty.

5. At the outset we must note that Sumit's examination-in-chief is by way of an affidavit and in the same the petition seeking annulment of the marriage has been parroted word by word. Thus, the pleadings and Sumit's evidence is verbatim.

6. In para 3 of the petition, Sumit claims that the child born to the couple was not from him and his wife told him that one Vimal was the father of the child. Link averment is to be found in paragraph 22 to 24 of the petition wherein it is stated that Preeti had an affair with Vimal before marriage and she used to regularly visit Agra to maintain illicit relations with him. He pleads that initially Preeti denied her past but later on admitted said fact.

7. When, where and under what circumstances Preeti said that Vimal had fathered the child has not been pleaded nor disclosed in the affidavit. No dates of Preeti visiting Agra have been disclosed. Obviously Preeti could meet Vimal in Agra if she went to Agra. In this connection it needs to be highlighted that the couple were blessed with a girl child on February 23, 2013 and thus conception would be around May, 2012. There are no averments that around said period i.e. May, 2012, Preeti was in Agra. We note that in paragraph 19 of the petition Sumit pleads that since August, 2012 he had no conjugal relations with his wife. There is thus a deemed admission that till July, 2012 the two had a conjugal relationship. A reading of his petition shows an admission that he had access to his wife during the subsistence of the marriage and thus Preeti would be entitled to the benefit of presumption in her favour as per Section 112 of the Indian Evidence Act, 1872. We shall be dealing with the aspect of cruelty pertaining to Preeti denying conjugal relationship to Sumit after August, 2012 as we deal with other grounds of cruelty alleged.

8. Therefore, qua the allegation of cruelty, in the form of adultery, we

agree with the view taken by the learned Trial Judge that on account of vagueness in the pleading and insufficiency of the evidence in the form of when, where and under what circumstances Preeti said so, Sumit would not be entitled to a decree for divorce on said ground of cruelty.

9. Other averments in the pleadings attracting ground of cruelty are that Preeti told Sumit that she was compelled by her parents into the marriage with him. The next allegation is that Preeti refused to live in the joint family.

10. It is the further case of Sumit that (Quote) : *‘The respondent immediately after the marriage started creating problems and disturbances in the matrimonial house and used to pick up quarrels, vitiated the peaceful atmosphere and without any rhyme and reasons used to humiliate, harass and insult the old aged parents of the petitioner and she became more aggressive and violent day by day’.*

11. Further, in paras 8 to 11 of the petition, it is pleaded that from the beginning of the marriage, Preeti was harsh, cruel, abusive and using coarsest and insulting language. She used to humiliate Sumit in front of relatives, neighbours and friends. She would fight on trivial issues and threaten to implicate him in false cases.

12. It is then pleaded that Preeti used to leave the matrimonial home very frequently and her family members used to visit her to instigate and incite her.

13. It is then pleaded by Sumit that Preeti was in the habit of getting up late and wanted tea and meals to be served to her and her family members supported said behaviour.

14. Next ground of cruelty urged is that Preeti severed cohabitation and thwarted all advances made by Sumit for conjugal relations since August,

2012. It is further pleaded in para 20 that Preeti manhandled the petitioner, an allegation which is repeated in paragraph 21 with assertion that the manhandling was in the presence of friends and colleagues.

15. Further averments till paragraph 54 of the petition are that in spite of efforts made Preeti did not reform herself and on October, 2012 she left the matrimonial home. There is then a repetition, albeit in different language of Preeti's humiliating conduct towards the petitioner.

16. We note that where, when and under what circumstances Preeti acted in a manner cruel or said words which were cruel have neither been pleaded nor stated during evidence. What were the utterances of Preeti have not been even roughly or remotely stated. Who were the friends or relatives in whose presence Sumit was abused, assaulted or humiliated? None have been named. Sumit's testimony is a reproduction of his pleadings and suffers from the same defect as the previous pleading i.e. when, where and under what circumstances Preeti said so.

17. The allegation that Preeti refused to live in the joint family is falsified by the further allegation that there was no one in Sumit's house and therefore on this account Preeti should not worry was the assurance by him. Suffice it to state, if Sumit was not in commensality with his parents nor any other relative as pleaded by him and as deposed to by him, where was the question of Preeti raising an issue of having a problem in living in a joint family. Qua this pleading we only have to say that it is a case of Sumit blabbering all and sundry without any thought into his utterances.

18. Now, if it is Sumit's case as pleaded in paragraph 5 of the petition that he was not living in a joint family, where would be the occasion for Preeti to humiliate, harass and insult his aged parents in the matrimonial house. If Preeti did so, it had to be somewhere else or possibly when her in-laws came

to meet her husband. No date or time or place has been mentioned. What were the acts done which constitute aggression, quarrels or violence have not been stated. What were the utterances of Preeti have not been stated.

19. We agree with the view taken by the learned Judge Family Court that qua these pleadings there is vagueness and there is equal vagueness in the evidence. Sumit's testimony mirrors said pleadings and we find not a single relative, friend or neighbour named as the one in whose presence Preeti humiliated Sumit. What were her utterances? Nothing has been stated. What words were used constituting harshness and insulting language have not seen the light of day. When and where Preeti did so, has not seen the light of the day. No dates have been mentioned. Learned counsel for Sumit did not dispute that Preeti's parents reside in District Agra. Surely, visit by Preeti to her parents' house could not be casual as would be the ones where parents of a bride reside in the same city. We find that in paragraph 14 of the petition the petitioner has admitted that Preeti's parents were in Agra, because he pleads that they were pressurising him to shift to Agra

20. The assertion that Preeti would get up late and would want tea to be served to her would at best show that Preeti was lazy, and laziness is not cruelty. The fact that within a year of the marriage the couple were blessed with a child shows that they shared the bed. Keeping in view the previous pleadings there is serious doubt on Sumit's claim on said account.

21. The plea that Preeti denied consortium to Sumit after August, 2012, even if true has to be understood in light of the fact that by the third week of May, 2012 Preeti was in the family way. The girl child being born to the couple on January 23, 2013. Carrying a foetus in the womb Preeti would obviously be inconvenienced by sex and assuming she totally shunned sex with the petitioner as her pregnancy grew would not constitute cruelty.

22. Sumit has led no evidence of Preeti having embroiled him in a criminal case. His allegations therefore that by threatening to implicate him in criminal cases Preeti caused mental cruelty to him have rightly been held to be not established by the learned Judge Family Court.

23. In this connection it would be important to note that Sumit has tried to prove a reply to a legal notice sent under his instructions by his lawyer on July 30, 2013. It is a marked document : 'Mark B'. Sumit has not filed the legal notice received by him and sent by the lawyer engaged by Preeti. In his reply while refuting what was alleged against him by Preeti he has given his version and we find that save and except he referring to Preeti having illicit relations with one Vimal he has not pleaded even the vague acts of cruelty pleaded in the petition seeking divorce. The reply simply alleges that Preeti never paid respect to him and refused to perform household works. There are no allegations that Preeti humiliated Sumit's parents or his friends or that in front of his friends Preeti humiliated or assaulted him.

24. In para 19, 20 and 28 to 30 of the impugned decision the learned Judge Family Court has extracted correct principles of law concerning what constitutes cruelty and proof thereof.

25. Having re-appreciated the evidence we reach the same conclusion as has been arrived by the learned Judge Family Court.

26. The appeal is dismissed.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

NOVEMBER 03, 2016/mamta