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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 21, 2016

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MAT.APP.(F.C.) 89/2016

RAJENDER KUMAR

..... Appellant

Represented by: Mr.Balkishan, Advocate.

versus

NANDINI & ANR.

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. Notice sent to the respondent/wife by registered A.D. post has been received back with the postal endorsement '*Refused by Addressee*'. We find that even before the learned Trial Court the respondent/wife shows not to appear inspite of being served and thus, she was proceeded against ex-parte. We proceed ex-parte against the respondent/wife.

2. TCR has already been requisitioned. We have heard learned counsel for the appellant/husband.

3. The appellant/husband is aggrieved by the judgment dated April 23, 2016 whereby the petition filed by him for seeking dissolution of his marriage with the respondent/wife has been dismissed by the learned Judge, Family Court.

4. HMA Petition No.12/2014 was filed by the appellant/husband seeking dissolution of marriage on the ground of cruelty and desertion. The ground of desertion was given up by the appellant/husband on April 02, 2016 for the

reason that statutory period of two years had not lapsed by the time the divorce petition was filed.

5. In brief, the facts are that the marriage between the parties was solemnised on March 06, 2006 at Kanpur, Uttar Pradesh according to Hindu rites and customs. After the marriage, the parties resided at the matrimonial home at Jahangir Puri, Delhi. The marriage was consummated and the couple was blessed with a female child on August 18, 2007. The appellant/husband came to know that his wife was having illicit relations with his cousin Sagar, S/o Sh.Raj Kumar, resident of Jahangir Puri. The appellant/husband and his family objected to the relationship of the respondent/wife with Sagar. On being exposed, the respondent/wife threatened to commit suicide and implicate her husband and his entire family. She also consumed phenyl. Father of the respondent/wife was informed who took her alongwith him on October 11, 2012 leaving the female child with the appellant/husband. The appellant/husband has pleaded that as per his knowledge the respondent/wife has given birth to another female child born out of her relationship with Sagar. The appellant/husband tried to even seek divorce by mutual consent by sending a legal notice to respondent/wife which remained unresponded. However, he received a telephonic call from the respondent/wife on December 10, 2013 conveying her determination to continue living with Sagar.

6. Notice of the divorce petition was sent to the respondent/wife by the learned Judge, Family Court but she failed to appear despite service. The steps taken by the learned Judge, Family Court to get her served are noted in para 7 of the impugned judgment as under:

‘7. The notice of the petition was issue to the respondent at the given address of Kanpur, through the District Judge concerned, which was received back with the report of refusal

to accept the same, the report having been received in the Court on 07.04.2014. In the interest of justice an additional notice was also issued to the respondent, which was received back on 03.12.2015, again with the report of refusal. The respondent was also served by way of publication in the newspaper 'Rashtriya Sahara' dated 23.07.2014. The conduct of the respondent, in refusing of the notices, not once but twice would be deemed to be an effective service. The respondent was also served through publication, but despite substituted service, she did not enter an appearance and ultimately vide order dated 03.12.2015, she was proceeded ex-parte.'

7. The appellant/husband was required to prove that he was subjected to mental cruelty by the respondent/wife by indulging in illicit relationship with his cousin (son of his maternal uncle) and on being objected by him, she threatened to commit suicide and consumed phenyl. He filed his own affidavit Ex. PW-1/A testifying that:

- (i) Marriage between the parties was solemnized on March 06, 2006 as per Hindu Rites.
- (ii) Marriage was consummated and a female child was born on August 18, 2007.
- (iii) He came to know about the relationship between his wife and his cousin Sagar, son of Raj Kumar, resident of B-Block, Near Kali Mata Mandir, Jahangir Puri.
- (iv) Two photographs showing proximity of his cousin with his wife were also placed on record by him as Ex. PW-1/5 & PW-1/6 (but de-exhibited and were marked A & B).
- (v) The incident dated October 05, 2012 when the respondent/wife was confronted with her illicit relationship with Sagar, this led the respondent/wife to consume phenyl pursuant to her threat to commit suicide and implicate the appellant/husband as well his family members.

(vi) Father of the respondent/wife was informed who took the respondent along with him leaving the infant daughter of the parties with the appellant/husband.

(vii) The appellant/husband has placed on record copy of the notice dated February 19, 2011 Ex.PW-1/7 which was sent by speed posts acknowledgment due vide speed posts receipt Ex.PW-1/8 and personally received by the respondent/wife Nandini by signing the acknowledgment card.

(viii) PW-2 Sh.Ramesh Chand and PW-3 Smt. Radha Devi are parents of the appellant who have also corroborated the testimony of the PW-1, the appellant in respect of respondent/wife being in relationship with Sagar and on being confronted with her affair and illicit relationship she threatened to commit suicide and also consumed phenyl.

8. Learned Judge Family Court disbelieved the testimony of the appellant and his parents observing that divorce cannot be granted on mere asking and the appellant/husband has to substantiate his case and prove the grounds on which he is seeking divorce as per the standard of proof required. Learned Judge Family Court was of the view that the allegations made are very vague and cannot be believed just because the respondent/wife failed to enter appearance.

9. In the legal notice Ex.PW-1/7 the alleged relationship between the respondent/wife with Sagar (Cousin of the appellant/husband) has been duly mentioned in para 2. In para 3 the appellant has proposed to his wife that he was ready to give her divorce by mutual consent to save her from being defamed for which he requested for a meeting to settle the terms and conditions. The address of the respondent/wife on acknowledgement card is mentioned as under:-

*“Smt.Nandini
D/o Sh.Narender @ Nanda,
W/o Sh.Rajender Kumar
R/o H.No.49, Air Force Area,
Near Phoolmati Mata Mandir,
Devi Ganj, Kanpur”*

10. Despite personally receiving the notice, she preferred not to send any response. Thereafter the divorce petition has been filed on January 08, 2014. The two photographs placed on record by the appellant/husband were found by him wrapped in her clothes. The pose of the respondent/wife with cousin of her husband is sufficient to lend credence to the version of the appellant/husband about their relations.

11. During the course of hearing the appellant/husband who was present in person has submitted that after leaving the matrimonial home on October 05, 2012, his wife has neither made any effort to visit the daughter or filed any case seeking her custody. He further informed that after leaving the matrimonial home his wife has not filed any civil or criminal case against him or his family. He submitted that his information is limited to the extent that she is living with Sagar in Kanpur and has a daughter from this relationship.

12. After considering the testimony of the appellant/husband and his parents and the photograph ID card of the daughter of the parties, it can be inferred that the daughter is being brought up only by her father and grandmother for the last four years. Despite legal notice being sent by the appellant/husband suggesting divorce by mutual consent in the backdrop of her illicit relationship with Sagar, she preferred not to even respond to that suggestion. The version of the appellant/husband is that telephonically she communicated her intention to live with Sagar only. The learned Judge Family Court failed to analyze the testimony of the appellant/husband and

his parents in proper perspective and committed an error while observing that the allegations made by him of being subjected to mental cruelty by his wife are vague. The accusations against the wife were specific giving all the details about the person with whom she was involved as well the efforts made by him to find a peaceful solution to the problem. He could not succeed because of non-responding attitude of the respondent/wife.

13. The appellant/husband and his family have proved that on being confronted the respondent/wife threatened to commit suicide and also tried to execute it by consuming phenyl. When her family was apprised of the events, she left the matrimonial home alongwith her father on October 11, 2012. At the time of leaving the matrimonial home she did not spare a thought even about her daughter who was about four years old at that time and required motherly care and the attention. The daughter is being brought up by the appellant/husband with the assistance of his mother.

14. Cruelty has not been defined in the Act. In the case reported as AIR 2006 SC 1662 Vinita Saxena Vs. Pankaj Pandit, the Supreme Court observed as under:-

'As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.'

15. In the case reported as AIR 1975 SC 1534 (1535) N.G.Dastane vs. S.Dastane the Supreme Court has held that harm or injury to health, reputation, the working career or the life would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. It is also held by the Supreme Court that the degree of proof

required for cruelty under the Hindu Marriage Act is not a proof beyond reasonable doubt which generally governs criminal trials. A threat by the wife to her husband that she will put an end to her own life and implicate him and his entire family tantamount to causing mental cruelty.

16. The husband knows that if the wife attempts to commit suicide or commit suicide he and his entire family would be entangled in a criminal case. Legal consequences that may ensue on threat being extended by the wife to commit suicide or attempted suicide, impact on his life is to the extent that his entire family starts living under the shadow of fear of being implicated in a case under Section 498-A/306/304-B IPC. It is well settled that threat to commit suicide constitutes cruelty for purpose of Section 13(1)(ia) of Hindu Marriage Act, 1955.

17. Viewed from this angle, the appeal deserves to be allowed and is accordingly allowed. We grant a decree of divorce in favour of the appellant/husband by dissolving his marriage with the respondent/wife that had been solemnised on March 06, 2006.

18. LCR be sent back alongwith copy of this order.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

OCTOBER 21, 2016
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