

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

% *Judgment Reserved on: August 29, 2016*
Judgment Delivered on: September 06, 2016

+ MAT.APP.(F.C.) 15/2015

GEETA PANDEY Appellant

Represented by: Mr.C.S.Rathore and
Mr.Pramod K. Singh, Adv.

versus

SHEKHAR PANDEY Respondent

Represented by: Mr.Amardeep Singh &
Mr.Dinesh Kr. Masant, Advs.

AND

+ MAT.APP.(F.C.) 60/2015

SHEKHAR PANDEY Appellant

Represented by: Mr.Amardeep Singh &
Mr.Dinesh Kr. Masant, Advs.

versus

GEETA PANDEY Respondent

Represented by: Mr.C.S.Rathore and
Mr.Pramod K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. Both the parties to HMA Petition No.618/2014 (Old No.595/2005) take exception to the judgment and decree dated August 06, 2014 whereby their marriage has been dissolved.

2. The husband (appellant in MAT.APP.(F.C.) No.60/2015) filed a petition seeking dissolution of marriage on the grounds of cruelty and desertion as enumerated under Section 13(1)(ia) and (ib) of Hindu Marriage

Act, 1955. Vide impugned judgement and decree, the marriage of the parties was dissolved only on the ground of cruelty as envisaged under Section 13(1)(ia) of Hindu Marriage Act, 1955.

3. Since both the matrimonial appeals arise out of the same judgement as the wife is aggrieved by the impugned judgment dissolving her marriage with the respondent, the grievance of the husband is that his petition should have also been allowed on the ground of desertion.

4. For the sake of convenience we shall be referring the parties as ‘the wife’ and ‘the husband’.

5. Facts of the case are not in dispute to the extent that the parties got married on February 07, 1999 according to Hindu rites and ceremonies. The parties were blessed with their first child on November 15, 1999 and with the second child on September 30, 2002. The wife has been residing separately at her parental home since May 17, 2002, i.e., when she was in family way second time. The second son was born during the period when the parties were living separately.

6. Divorce petition seeking dissolution of marriage under section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 was filed by the husband on June 04, 2005, inter alia, on the following grounds:

(i) The parties belong to lower middle class and father of the wife was employed as Car Driver with Ministry of Railways and the marriage was simple.

(ii) The wife soon after the marriage insisted for living separately from her in-laws and after the birth of their first child persisted this demand to the extent that in September, 2001 they started living in a separate portion in the same house but with common kitchen.

(iii) The husband, being the only son of his parents having four sisters one

married and three unmarried, was not willing to live separately from his family.

(iv) In March, 2002 the wife insisted that the property in the name of her father-in-law be transferred in her name or she would commit suicide and implicate the husband and his entire family in criminal cases.

(v) The wife was in the habit of picking up quarrel with the mother-in-law and sisters-in-law and create scene which made the life of the husband difficult and he was living in constant fear.

(vi) The husband also lodged a report with the police about the incident dated April 29, 2002 when she threatened to consume acid meant for cleaning toilets. She was pregnant at that time and with timely intervention of the husband, she could be saved.

(vii) During inquiry on his complaint, on May 16, 2002 she made a statement to the police that whatever she did was in a fit of anger and she would not do so in future.

(viii) On the very next date, i.e., May 17, 2002, the wife left the matrimonial home along with elder child and her belongings. She did not return thereafter despite she being persuaded to come back.

(ix) She lodged various false complaints against the husband and his family. The second son was born on September 30, 2002 but neither he nor his family was informed about the good news. **The husband received the news from a stranger.**

(x) The husband wanted to live with his wife and children but his request to his wife and her parents for reunion did not yield any result.

(xi) The husband has not condoned the acts of cruelty.

(xii) The efforts for reconciliation before the Delhi State Legal Services Authority and CAW Cell to reunite them also failed as the wife refused to

come back and she was hell-bent upon breaking the matrimonial ties.

7. The wife contested the divorce petition refuting all the allegations made by the husband. She pleaded her harassment on account of dowry demand which included a car and cash of Rs.10,000,00/- (Rupees Ten Lac). She also alleged that she was not only abused, ill treated and beaten but also made to sign blank documents/papers. She denied having left the matrimonial home of her own on May 17, 2002. At that time she was second time pregnant with expected date of delivery in October, 2002. She was thrown out of the matrimonial home. She denied having ever refused to join the matrimonial home. Rather she expressed her willingness to join her husband but it was he who refused to take her back.

8. She felt aggrieved when her elder son who was suffering from Asthma was not getting proper treatment. This compelled her to visit her parental house to get him treated at Sir Ganga Ram Hospital. Regarding separate accommodation being provided, she claimed that she was forcibly shifted to a room which was adjacent to the servant room and she was being denied even the proper food as fridge used to be kept locked and even electricity supply to the back portion used to be cut off and restored only on return of her husband thereby making them to live in inhuman conditions. She denied having made any statement voluntarily before police on May 16, 2002 and claimed the same to have been recorded by police official of his own and obtained her signature. Thereafter she was thrown out of the matrimonial home. She was compelled to lodge a complaint before the CAW Cell in the above situation. She also pleaded that despite being informed about the birth of the second child, neither the husband nor his family members visited her parental house to see the new born baby. Her husband does not have any love or affection for her or the children.

9. After considering the evidence adduced by the parties while observing that the statement of the wife cannot be read in evidence as her cross-examination was not complete, learned Judge, Family Court granted a decree of dissolution of marriage on the ground of mental cruelty being proved by the husband. It was further held that so far as ground of desertion by the wife is concerned, the testimony of the husband that he tried to bring back the wife and the children, was disbelieved. Learned Judge, Family Court also commented that the husband had failed to explain as to through whom he came to know about the birth of the second child. His version that he went to the wife's parental house but his wife and her family have shifted their residence was found to be not trustworthy.

10. Learned Family Court Judge specifically noted that there are vague and unspecific statements made by the husband on this count which cannot be believed. The conclusion arrived at is that the husband did not make any effort for the reunion rather he has taken a false plea in this regard. Thus, his prayer to seek divorce under section 13(1)(ib) of Hindu Marriage Act, 1955 was declined.

11. On behalf of the wife it has been submitted that it is a case where mental cruelty has been caused to her by the conduct of her husband for the reason that on May 16, 2002, even as per her statement recorded by Head Constable Rati Ram (PW-4) she did not have any grievance against him. If it was so where was the occasion for the wife to leave the matrimonial home with one child aged about two-and-a-half years and with pregnancy of four months.

12. Learned counsel for the husband while supporting the impugned judgment on the ground of cruelty has submitted that it was a clear cut case of desertion as after leaving the matrimonial home on May 17, 2002 the wife

never returned for a single day despite being repeatedly persuaded to join the matrimonial home.

13. We have perused the LCR and considered the rival contentions.

14. In a matrimonial dispute, testimony of the contesting spouse to refute the accusations made in the pleadings in divorce petition plays a major role. In the instant case, unfortunately the wife (RW-1) failed to appear at the relevant stage to conclude her cross-examination. Learned Judge, Family Court has noted, and rightly so, that her incomplete statement cannot be read in evidence. Now we are left with remaining seven witnesses examined by her. They are not going to have any significant effect on the defence of the wife.

15. RW-2 - Jagdish Kumar, Medical Record Officer, St. Stephen Hospital, Delhi; RW-3 Head Constable Suresh Kumar, CWC, Nanakpura, Delhi; and RW-4 S. Mehto – Medical Record Officer, RML Hospital, who have been summoned to prove the concerned official record have stated that the summoned record has been destroyed.

16. RW-5 B.S. Yadav – Commercial Officer, Yamuna Vihar, MTNL, Delhi to prove that the telephone communication No.22943662 was installed on March 30, 1986 in the name of the husband and closed on May 16, 2005.

17. RW-6 Ashok Kumar, LDC (Record Room), High Court of Delhi. Produced the original record pertaining to W.P.(Crl.) 1194/2002 titled as Shekhar Pandey and Ors. Vs. State & Ors. and proved the certified copies of the record as RW-6/A collectively. This record contained the statement made by the wife on May 16, 2005 before Head Constable Rati Ram (PW-4) during inquiry and that complaint made by the husband against his wife.

18. RW-8 Tara Datt Bhatt is husband of Deepa Bhatt sister of wife, examined to prove that he is living happily in joint family with his wife. He

has been examined to rebut the averments made in para 10 of the affidavit that his sister also compelled her husband to live separately from her in-laws.

MAT.APP.(F.C.) 15/2015

19. First we will deal with the appeal filed by the wife. Although in his affidavit Ex.PW-1/A the husband has given various instances to prove the acts of causing mental cruelty to the husband and his family. Taking note of the fact that wife was pregnant with expected date of delivery in October, 2005 and actual date of delivery is September 30, 2002, it can safely be inferred that she got pregnant somewhere in January, 2002 leading to the inference that the parties were cohabiting till January, 2002. Even otherwise the instances of cruelty cited till that time are ordinary wear-tear of matrimonial life.

20. Now we are left with the two major instances which have been attributed to her, not condoned and considered sufficient by the learned Judge, Family Court to grant a decree of divorce on account of cruelty. In his affidavit Ex.PW-1/A in paras 12 & 13 the husband had been able to prove that first incident pertains to March, 2002 when as per the husband she wanted the property of his father to be transferred in her name failing which she threatened to commit suicide and involve all the family members in criminal case so as to teach a lesson to them.

21. The second incident pertains to April 29, 2002 when his wife tried to consume acid kept at home to clean the toilets, he could prevent the said incident by snatching the bottle from her. Thereafter he made complaints to various authorities including police, copy of which has been proved as Ex.PW-1/A with postal receipts Ex.PW-1/B (collectively).

22. Statement of Head Constable Rati Ram (PW-4) proves that in

connection with inquiry on the complaint (Ex.PW-1/A) made by the husband about the incident dated April 29, 2002, he visited the spot. There he recorded the statement of Geeta/wife exhibited as Ex.PW-4/A (also subsequently exhibited as Ex.PW-6/B). This statement is relevant for the purpose of ascertaining whether any such incident had taken place or not and goes to the root of the matter. In that statement (Ex.PW-4/A) Geeta has stated that whatever she did was in fit of anger and henceforth she would not behave in that manner. She also stated that she had no complaint against her husband and was living peacefully with him.

23. Certified copy with English translation Ex.PW6/C of her statement Ex.PW4/A (subsequently also exhibited as Ex.RW-6/B) is to the following effect:

'Statement of Geeta wife of Shekhar resident of J-281/34-B, Gali No.9, Vijay Colony, Jagjit Nagar, Delhi, aged about 26 years.

It is stated that I reside at the abovesaid address alongwith my family and do the household chores. I had asked my mother-in-law to separate my kitchen and she refused to do so and an altercation took place between us on that account and under the influence of anger I threatened to commit suicide and to lodge a false complaint. Now I have no grievance of any kind whatsoever. Now we are residing in separate house. In future I will not give such threats nor will I try to do the same which might disturb the peace of the family. I never had any complaint of any kind whatsoever against my husband, Shekhar nor do I have now. Now I am running my family property. I may be pardoned for my abovesaid acts. My this statement is correct.'

24. The wife tried to wriggle out of the situation by raising the following contentions:-

(i) Statement before the police has no value.

- (ii) She was forced to sign certain blank papers.
- (iii) Head Constable Rati Ram (PW-4) had written her statement on dictation of husband.
- (iv) The wife has taken self destructive pleas in respect of the statement recorded by Head Constable Rati Ram (PW-4) on May 16, 2002. If she was made to sign blank papers or statement was recorded by Head Constable (PW-4) of his own, she could not have claimed that it was recorded on the dictation of her husband. All the three pleas cannot co-exist.
- (v) On leaving the matrimonial home on May 17, 2005 she did not lodge any complaint with the police or any other authority that she was coerced to make a statement favourable to her husband during enquiry in the compliant Ex.PW-1/A. She availed her legal remedy within a short duration of leaving the matrimonial home by filing complaint before CAW Cell as well approaching the Court with a petition seeking maintenance. At that stage she could have also made complaint against Head Constable Rati Ram (PW-4) of recording statement of his own or on the dictation of her husband and not as per the version given by her.

25. The statement of the wife recorded by Head Constable Rati Ram (PW-4) on May 16, 2002 is in respect of incident dated April 29, 2002 i.e. when she threatened to commit suicide by consuming acid in the bottle kept at home to clean the toilets. She admitted the incident but took the plea that it was done in a fit of anger. The wife was pregnant at that time but for the timely intervention by the husband, situation would have turned so grave that not only the wife and the child in womb would have suffered but the husband and his entire family would have been booked in a criminal case.

26. The question to be examined is whether the above acts of the wife causing mental cruelty to the husband meet the requirement of Section

13(1)(ia) of Hindu Marriage Act, 1955.

27. 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.’

28. In the case reported as (1988) 1 SCC 105 Shobha Rani Vs. Madhukar Reddi, the concept of cruelty has been stated as under:-

“The word ‘cruelty’ has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(ia) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.”

29. When the acts of cruelty attributed to the wife is examined in the light of above legal position, the irresistible conclusion is that by threatening to commit suicide and holding a bottle of acid to consume when she was pregnant, she must have created so much fear in the mind of husband and his family that the husband was compelled to report the matter to various authorities including police and NCW.

30. The Court can take judicial notice of the fact that if a wife dies an unnatural death within 7 years of her marriage, the presumption of it being a dowry death as per Section 113-B of Indian Evidence Act is there against the husband/in-laws. Fear in the mind of husband and in-laws in above situation cannot be called unfounded in view of admission by Geeta vide her statement Ex.PW-4/A (also exhibited as RW-6/B with English Translation RW-6/C quoted above).

31. Thus, on examining the evidence adduced in this case by the husband supported by the complaint exhibit PW-1/A filed by him and the statement exhibit PW-4/A made by the wife during inquiry of the said complaint proves the act of the wife to commit suicide by consuming acid amounts to causing mental cruelty to the husband of such magnitude that he may consider it to be injurious to live with her.

32. We do not find any ground to interfere with the impugned judgment granting decree of divorce in favour of the husband under Section 13(1)(ia) of the Hindu Marriage Act.

MAT.APP.(F.C.) 60/2015

33. Now coming to the appeal filed by the husband, Mr.Amardeep Singh, Advocate has submitted that the learned Judge Family Court should have allowed the divorce petition on the ground of desertion as well in view of the admitted facts that on May 17, 2002 the wife left the matrimonial home

and did not return thereafter. Thus, leaving the matrimonial home by the respondent/wife on that day was with animus deserendi which is affirmed with the fact that soon thereafter she indulged in litigation by filing various complaints.

34. Learned counsel for the appellant/husband has submitted that the respondent/wife left the matrimonial home on her own. Merely because the appellant/husband had not gone to take her back was no ground to dismiss the petition under Section 13(1)(ib) of Hindu Marriage Act, 1955. Learned counsel for the husband has relied upon III (2014) DMC 530 (DB) (Bom.), X. Vs. Y in support of his contentions. In the said case, the facts were that the wife left the matrimonial home of her own and continue to stay away though her husband did not give her any cause to stay away from the matrimonial home. Their marriage was solemnized on May 02, 1999. Since December 14, 1999 till the filing of the petition for divorce she had stayed away from the matrimonial home except for a few days in between August 18, 2005 to October 12, 2005. It was in the peculiar facts that Bombay High Court held that the conduct of the wife was nothing but animus deserendi.

35. We have already noted that the incomplete statement of the wife cannot be read in evidence. We are called upon to examine the testimony of the husband to ascertain as to whether he has been able to prove desertion.

36. In the case reported as AIR 1990 SC 594 Sanat Kumar Agarwal Vs. Nandini Agarwal the Apex Court while considering a case under Section 13(1)(ib) of the Act held that it was well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both anterior and subsequent to the actual act of separation.

37. The conflicting version of the husband at different stages about the circumstances in which the wife has left the matrimonial home, whether any effort was made by him to bring her back as well intimation about birth of second son, can be reflected through various stands taken at different stages.

(a) Certified copy of the final report No.2G(c) North CAW Cell, Nanak Pura as recorded hereunder by the IO notes that when the husband was asked about his willingness to take back his wife, he refused:-

'On June 25, 2002 when I reached CAW Cell Mr. Shekhar Pandey is waiting. When I asked him what did he wants. He verbally told me that he did not want to keep his wife. When I asked him to give me his statement in writing he refused to do so. He make a call to his advocate and then run away from CAW Cell.'

(b) W.P.(Crl.)1194/2002 was filed by the husband Shekhar Pandey for quashing of FIR and in para No.5 he pleaded:-

'.....It may be pointed out that on September 30, 2002 the petitioners received a phone call from a stranger presumably sent at the instance of respondent No.2 and her parents that she has given birth to another son.'

(c) In para 15 of his affidavit in HMA Petition No.618/2014 (Old No.595/2005):-

'I say that on 17.5.2002, the respondent left her matrimonial home after threatening me and my family members that if her demands are not fulfilled, then she will implicated every one in false cases. She, without disclosing to me also took all her jewellery, clothes and other valuables items with her. The respondent was frequently visiting her parents every now and then but on 17.5.2002, when she left the matrimonial house along with master Gautam, she did not return thereafter.'

(d) During his cross examination conducted on August 04, 2009, he has stated as under:

‘.....It is incorrect to suggest that during reconciliation proceedings before CAW Cell, I refused to resume cohabitation with respondent on 25.06.09. I do not know how many months pregnancy respondent was having when she was turned out of her matrimonial home on 17.05.02. Vol. She was not turned out of matrimonial home by me. I came to know about birth of my second son Aditya from some third person but I do not know how many days after his birth I came to know of the same. I was not told about the hospital etc. where he was born. I had not asked the person who had informed me about Aditya’s birth about the hospital in which he was born. I had tried to meet my son Aditya but respondent as well as her parents refused to allow me to do so. I had contacted them on mobile phone and did not go personally as respondent and her parents had shifted their residence. For the same reason, none of my family members could also meet child Aditya.’

38. A bare reading of the testimony of the husband is sufficient to infer that the wife left the matrimonial home with the consent and knowledge of the husband. The reason may vary i.e. as per the husband to see her ailing father and as per the wife for better treatment of the elder son who was suffering from Asthma. Though the husband claims that the elder son was not suffering from Asthma, the record speaks otherwise. He admits that the child was under treatment but from a local Doctor. The local Doctor cannot be compared with a well equipped hospital like Sir Ganga Ram Hospital where facilities are incomparable with that by a local medical practitioner. Since the illness of the child is not an issue, we need not dwell on the medical record, on the nature of the ailment or the kind of treatment provided to the child.

39. We cannot blame the wife for filing a petition seeking maintenance as what else she could have done to take care of herself and one child in lap and other in womb and no financial support coming from her husband. Her own parental family was not so well to do so as to take further burden of their daughter and her child/children as well cost of pre-natal and post-natal treatment and delivery expenses.

40. In view of the admission of the husband that earlier also she had been visiting her parents, he has failed to bring on record any material that on May 17, 2002 she left with the intention to bring cohabitation to an end. The conduct of the husband on or after May 17, 2002 as reflected from his own testimony and stand taken before the CAW Cell reveals otherwise. It was he who did not want her to be back.

41. Admittedly when she left the home on May 17, 2002 she was about 4-5 months pregnant and left with their son aged about 2 ½ years. She had no source of income. LCR reveals that both the deliveries had taken place in St. Stephen's Hospital and the registration for the second delivery also must have been when she was still at the matrimonial home. He was expected to know as a husband and father about the medical condition of his wife as well her expected date of delivery. He was also expected to ensure that at the advance stage of pregnancy he is there to render necessary emotional and financial support and take care of her during her hospitalisation or at least to take care of the elder child when his wife was in hospital for second delivery. Record shows that after getting clean chit from her on May 16, 2002 vide Ex.PW4/A he had never bothered to even contact to enquire about the elder child or complications if any during the second pregnancy.

42. We have already extracted his admission in the writ petition No.1194/2002 that he was informed about the birth of the second child on

the same day. Despite that he even did not bother to visit the St. Stephen's Hospital where she was registered.

43. Conflicting versions at every stage even on the issues of how and when he came to know about the birth of the second child and whether he and his family has not gone to see the child or they were prevented by the wife and his family to visit them leads to only one conclusion that the husband himself being defaulting party could not have taken advantage of his own wrong by seeking dissolution of marriage on account of desertion.

44. Finding no ground to interfere with the finding of learned Judge, Family Court on the plea of desertion this appeal also deserves dismissal.

45. Accordingly both the appeals are hereby dismissed.

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

47. No costs.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

SEPTEMBER 06, 2016
'st'