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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21.07.2016

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Decided on: 19.08.2016

+ MAT.APP.(F.C.) 136/2014 & C.M.No.18159/2014

RENU YADAV

..... Appellant

Through: Mr.L.D.Mual, Mr.Pranav Siroha and
Mr.Surender Mual, Advocates

versus

ARUN SINGH YADAV

..... Respondent

Through: Mr.Narinder Safaya, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. This is a respondent wife's appeal, under Section 19 of the Family Courts Act, questioning the decree and order for dissolution of marriage by a Family Court, on the grounds spelt out by Sections 13 (1) (i a) and (i b) of Hindu Marriage Act, 1955 ("the Act") on a petition preferred by the husband.

2. The facts necessary to decide the appeal are that the parties got married on 21.04.2002 at New Delhi and were blessed with a son- Aditya, on 16.07.2003. They resided together in premises belonging to the appellant's mother-in-law- who used to work as a government teacher in Haryana. The mother in law retired from service on 31.08.2006. The appellant's husband, his father and brothers lived in the matrimonial home, besides her. She was the eldest daughter in law in the house. The household

did not employ any maid-servant. The husband claimed divorce on the ground that the wife was claiming one fourth share in the residential house or ₹ 20 lakhs in lieu of that and used to pressurize him to live separately from his parents and other family members. It was alleged that she also refused to cook food and do the household chores and that she was in the habit of picking up quarrels. Furthermore, according to the husband, the appellant used to frequently use abusive and filthy language and quarrel with his mother whenever she used to come over to Delhi. It was alleged that she had no regard or respect for the husband and his family members and frequently used to say that he and other members of the family “ate like animals” (“jaanwar ki tarah khate hai”). On 01.08.2007 she refused to participate in the birthday celebration of their son and also refused to wear a Sari the husband had bought for her for the occasion. She reluctantly joined the cake-cutting ceremony in dirty clothes and also insulted the husband, and abused him and his friends. Upon intervention she slapped him in the presence of the assembled guests who thereafter left the party without eating food.

3. The husband alleged that on the occasion of *Karwa Chauth* on 29.10.2007, the appellant broke her *Mangal Sutra* (necklace) and removed her *sindoor* (vermillion mark) and insisted that to her, he was dead; she wished to be treated like a widow. Also in November, 2007 on the occasion of Diwali at the time of Lakshmi Puja she threw the Puja Thali. It was alleged that she also refused to serve tea to his friends on 31.12.2007 and said that their residence was not a *Dharamshala*. She also refused to cohabit with him after birth of their son on 16.07.2003 and started accusing him of having illicit relation with other girls and his colleagues. The wife had-

according to the husband maligned his reputation in society and caused him mental cruelty. Furthermore, alleged the husband, the appellant deserted him and the child who was barely five years of age on 07.07.2008 without any cause. After about two years on 06.07.2010 she along with her father, uncle, aunt, brother and two other male members came to the husband's residence and threatened him. The police was called in. Though she lodged a complaint at the Police Station Dabri, no action was initiated and the police advised her to approach CAW cell. Thereafter she filed a complaint in CAW Cell on 16.07.2010, which was dropped after investigation as no truth was found in that. The said complaint was however reopened after one and a half years with sole intention to harass the petitioner and his family members.

4. The appellant in the written statement controverted all contentions urged that she had been subjected to cruelty and was thrown out of the house on 06.07.2010 and she lodged a complaint vide DD No. 35-B at Police Station Dabri. She admits that she filed a complaint in CAW Cell on 16.07.2010. It was averred that the allegations of cruelty were baseless and unfounded; rather the husband had in reality deserted her. It was alleged that the husband and his family were falsely alleging that the appellant was guilty of acts of cruelty and desertion. It was alleged that the husband had forced the appellant/wife to undergo abortion twice, despite her unwillingness. These disentitled him to any relief.

5. The petitioner-husband examined three witnesses in support of his contentions; the appellant had examined herself. The Family court rejected the petitioner-husband's contention that the respondent-wife had abused and slapped him on the birthday of the son Aditya and she refused to feed the

child and to prepare tea for guests or to cohabit with the husband since 2003. The Family Court considered the wife's admission in her cross-examination that

“I used to get annoyed whenever the mother in law telephoned the petitioner husband and this used to lead to quarrel, and also that the quarrel also took place due to the affair of the petitioner with some other girls as I used to ask him about his relationship with them”,

The court also took note of a complaint Ex.PW1/R1 dated 06.07.2010 filed by the appellant at Police Station Dabri alleging that her husband had love affairs; was residing with other women and used to visit the houses of girls and bring them over home. The court found that these allegations were wild and unsubstantiated accusations. It was held that the wife leveled the allegations against the husband about his illicit relationship with girls and his colleagues in the presence of his relatives and friends, which maligned his reputation, resulting in mental pain and agony to him, which amounted to cruelty. His sister as well as another witness corroborated the husband's testimony. On the basis of these allegations as well as other circumstances, which appeared from the record, such as the wife's abandoning her small son, etc. the Family Court concluded that the husband's claim for dissolution of marriage on grounds of cruelty and desertion was proved.

6. It is urged by the learned counsel for the appellant that the Family judge attached great weight to the testimony of the petitioner-husband's witnesses rather than on her testimony. It was submitted that there was nothing adverse which could have led the court to conclude, reasonably that the wife had treated the husband with cruelty or had deserted him. Learned

counsel reiterated the grounds urged in support of the appeal and said that to conclude and infer cruelty the husband had to produce more material than relying on the deposition of self-serving witnesses, who were connected to him. His sister could hardly be expected to be objective. Yet, the Family court proceeded to accept her one-sided and partisan statement. Counsel for the husband urged that this court should not interfere with the impugned order, because it is founded on evidence. He pointed out to the cross examination of the witnesses, by the wife's counsel and stated that the answers elicited were in fact corroborative of the husband's allegations. It was argued that persistent abusive behavior against one spouse and in the presence of outsiders as well as refuse to share household burdens, would, under Indian conditions be sufficient proof of cruelty. He also urged that the appellant never showed any affection toward her husband, or even her son, whom she abandoned virtually when he was barely 5 years old. She did not even think it proper to visit the child or ask for his custody. These proved that she had every intention to abandon and desert the husband.

Findings

7. It is no doubt true that often cruel behavior is easy to allege and hard to prove. What is cruelty in one situation may well not be cruelty in another. Much depends on the age of the spouses, their relative temperaments, their station in life, their backgrounds, etc. It is noteworthy that apart from the testimony of the husband, his father, PW2 Mr. Tara Chand Yadav, too had deposed in the proceedings. His cross-examination reveals that the appellant had virtually admitted all the allegations of the petitioner-husband. Some

parts of the said deposition are reproduced as under-

“It is correct to suggest that so long respondent remained in the matrimonial house she left no stone unturned to harass and tortured the petitioner and other family members.

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It is correct to suggest that the respondent humiliated or insult the petitioner or his friends at any point of time. It is correct to suggest that the respondent being aggressive during the celebration of birthday of petitioner on 01-08-2007 and slapped the petitioner in the presence of all the invitees who left the party even without taking food on that day.

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*It is correct to suggest that after the marriage, the respondent started pressuring the petitioner for demanding share from his property from his parents and particularly the residential house owned by his mother. It is correct to suggest that the respondent from the very beginning of the marriage, remained non-cooperative and rude, ultimately it kept the petitioner and other family members disturbed mentally, especially, the petitioner. It is correct to suggest that the deponent and his son used to carry out the household work including mopping and dusting. It is correct to suggest that the respondent intentionally used to get up very late in the morning and she refused to cook food for the petitioner and other family members. It is correct to suggest that whenever the mother in law of the respondent arrived at the matrimonial house she was not welcomed by the respondent. It is correct to suggest that respondent was in habit of picking up quarrel with the mother in law with one pretext or other reasons without any reasons by using filthy and abusing language with her mother in law. It is correct to suggest that the respondent used to tell her as to **"how she came here when she was working in Haryana, why not to take all these people with her"**. It is correct to suggest that the respondent taunted that **"she was not in position to cook food for them as they were eating like animals or by***

making use of filthy work in local dialect". It is correct to suggest that the respondent used to misbehave with not only her mother but also with other family members too by using abusive language. It is correct to suggest that the respondent used to pressurize the petitioner and her mother in law by asking one fourth share of the house, alternately she demanded Rs. 20,0000/- for arranging separate house if share is not provided. It Is correct to suggest that when such unusual demands of the respondent was not materialized, she became more aggressive and that moment by using filthy abusive language and destroyed peaceful married life of the petitioner and made, life of deponent a miserable in their last stages." (page 97)

8. The testimony of the petitioner-husband- who had deposed extensively about the acts of cruelty perpetrated by the wife, gets corroborated. Besides, the allegations leveled by her in the complaint are a matter of record. The contemporaneous incidents clearly establish that the appellant's behaviour towards husband and his family members, was abusive, lacked respect, understanding, companionship and trust.

9. In this case, the Family court discussed and cited various decisions such as ***Pramod Kumar C Shah vs. Rajulaben Pramodkumar Shah*** II (2013) DMC 240 (DB) (Guj), ***Savitri Pandey vs. Prem Chandra Pandey***, (2002) SLT 103 DMC, 177 (SC), ***A. Jayachandra vs. Aneel Kumar*** VII (2004) SLT 581, ***Vijay Kumar Ramchandra Bhate vs. Neela Vijay Kumar Bhate***, III (2003) SLT 227 AIR 2003 SC 2462, ***Hemwanti Tripathi vs. Harish Narain Tripathi*** 181 (2011) DLT 237, ***Sardar Avtar Singh vs. Amarjeet Kaur*** I (2014) DMC 528 Delhi, ***Jay Dayal vs. Shakuntala Devi*** AIR 2004 Delhi 39. The Family court concluded that since the respondent

wife had failed to substantiate her contention that husband was living in adultery, the unsubstantiated allegations of adultery amounts to cruelty.

10. This court is of opinion that the appellant's counsel failed to refer to any evidence on record, which can suggest, by preponderance of probabilities that the husband was living in adultery. The Family judge held that the wife's abusive behaviour and conduct amounted to cruelty. This court sees no reason to differ from such assessment. The appellant had argued that she was forced to undergo two abortions. However, such plea was never urged before the Family Court. There is certainly no material to support such an allegation. The evidence on record clearly point to cruelty by the wife, of her spouse/husband.

11. The findings of the family court that the appellant was guilty of desertion as she had left him on 07.07.2008 i.e. more than two years before the presentation of the petition is challenged on the ground that the learned judge has erroneously believed the husband that she had left the matrimonial home on that date. It is also argued that the Family court erred in disbelieving the wife's contention that she was turned out from the matrimonial house on 06.07.2010.

12. The Family court, in this case, firstly discussed the law on the subject and took note of ***Bipin Chandra vs. Prabha Devi*** AIR 1957, SC 176 and ***Lachman Utamchand vs. Meena*** AIR 1964 SC 40 wherein the principles governing the expression 'desertion' were discussed. These authorities hold that the factors needed to prove desertion are the factum of separation, the intention to forsake i.e. *animus deserendi*, absence of consent and absence of conduct giving reasonable cause to the spouse leaving the matrimonial home. The necessary intention i.e. *animus deserendi*, can be inferred from

the conduct of the parties both anterior and subsequent to the actual act of separation. On these principles learned judge weighed the evidences on record and disbelieved the evidences of the respondent wife that she had in fact attended the marriage of her brother in law (husband's brother) in 2009 and for that purpose the court had discussed the evidences as under:

“50. She stated that she had attended the wedding of two brothers of the petitioner which had taken place in the year 2006 and 2009 respectively. However, it is admitted by her that she had gone in a separate car while the petitioner and his mother had gone for the wedding in a separate vehicle. If in fact, the respondent had been residing in the matrimonial home, reasonably it can be expected that they both would have travelled together. The very fact that as per the petitioner, she travelled separately from the petitioner clearly shows that she was not residing in the matrimonial home. Furthermore, it is her own admission in the cross-examination that no quarrel took place and everything remained peaceful for about one year. It is again not believable that when the reasons for the quarrels had not ceased, then how no quarrels took place for about one year. The reasons are quite evident which is that the respondent had left the matrimonial home on 07-07-08. It is also pertinent to refer to the complaint Ex. PW-1/R-1 wherein in the first sentence it had been written by her that she had been residing with her husband and in-law's in their matrimonial home, but the word "thee" has been deleted to make into "hoon". This again shows that the respondent had not been living in the matrimonial home as had been claimed by her.”

51. Further more, the petitioner has deposed that suddenly on 06-07-10 the respondent along-with her father, brother and other persons came to his house and picked up a quarrel. The respondent has also admitted of there being a fight on 06-07-10 but it is deposed by her that on the said

day a quarrel took place and she was thrown out of the matrimonial home. She had made a complaint dated 06-07-10 to the SHO, PS Dabri. Interestingly, the said complaint has not been proved by the respondent but she was confronted with the said complaint by the petitioner in his cross-examination and is Ex. PW-l/R-1. In the said complaint as well, there is no explicit explanation of what transpired on 06-07-10. The allegations made are of being harassed on account of less dowry and demand being made for a year, but it does not narrate about the incident that happened on 06-07-10. Even in her own testimony as RW-1, she has not explained as to what happened on 06-07-10 for her to have been thrown out of the matrimonial home. The vagueness in the testimony of the respondent lends support to the testimony of the petitioner that infact, she left the matrimonial home on 07-07-08 and had returned suddenly on 06-07-10 and created a scene. The complaint in CAW cell has been made by her only on 16-07-10. It is also pertinent to note that she has deposed in her cross-examination that she had taken up a job in DTC as petitioner failed to maintain her. The respondent as per her case was thrown out of the matrimonial home only on 06-07-10 and the petition for maintenance under Domestic Violence Act has been filed in July, 2010 itself. The question of petitioner not supporting her could not have arisen within 15 days. It is obvious that respondent would have applied for a job and got it within 15 days. It is therefore, evident that she had been living separately since 07-07-08 and not since 06-07-10 as claimed by her.

13. Here interestingly, the appellant, in her father in law's cross examination (PW-2)- recorded on 16.01.2014- had given the suggestion to him that she had deserted the matrimonial house on 07.07.2008. The relevant portion of the testimony is reproduced as under:

“It is correct to suggest that on 07-07-2008, the respondent deserted the matrimonial house without any sufficient reason and also abandoned the child.”

14. The appellant wife has been unable to rely on the evidence of anyone besides herself. Whether her family members were aware of the alleged cruelty heaped on her and what were the reasons that compelled her to leave the matrimonial home are matters which she was in the best position to establish. Her failure to do so, on the one hand, and her baseless allegations of the husband's allegedly deviant marital behavior, such as affairs at the workplace and affairs with other women, amount to cruelty. The materials on record also establish that the wife deserted the petitioner-husband on 07.07.2008 and there was *animus deserendi* on her part. She left him without his consent and without any reasons.

15. In view of the above discussion, we find no infirmity in the impugned order. The appeal therefore, has no merit and is dismissed along with the pending application but with no orders as to cost.

DEEPA SHARMA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

AUGUST 19, 2016

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