

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

Judgment Reserved on: October 18, 2016

%

Judgment Delivered on: October 24, 2016

+

MAT.APP.(F.C.) 52/2015

NEENA

..... Appellant

Represented by: Mr.S.K.Gupta, Advocate.

versus

YOGESH SHARMA

..... Respondent

Represented by: Mr.C.M.Mathur, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. This appeal has been filed by the appellant/wife questioning the legality of the judgment and decree dated February 28, 2015 passed by the Family Court in HMA Petition No. 246/2014 (Old No.527/11) dissolving her marriage with the respondent.
2. Alleging cruelty and desertion against the appellant/wife the respondent/husband filed a petition under Section 13(1)(ia) & (ib) praying for dissolution of his marriage by a decree of divorce. The Family Court allowed the petition on both the grounds.
3. The background of this failed marriage is the emotional setback suffered by the appellant, who was unmarried, but married to a divorcee. She was unable to reconcile to the hard reality that she was a 'second wife' and that her husband was 'second hand'.
4. The parties got married on December 12, 2005 according to Hindu rites and customs. At the time of marriage status of the parties was as

under:-

- (i) Husband - 41 years - Hindu divorcee
- (ii) Wife - 41 years - Hindu unmarried

5. The marriage between the parties was solemnized at the behest of brother of the appellant/wife who was interested in getting his sister married though she had already crossed the marriageable age. The brother of the appellant/wife found the respondent/husband to be a good match for his sister, may be for the reason there was no age difference between the two and the respondent was also issueless.

6. The ring ceremony was performed on December 11, 2005 and on the next date i.e. on December 12, 2005 marriage was solemnized in a simple ceremony without any dowry.

7. Instead of heading for honeymoon, the respondent/husband took his wife to Vrindavan, may be to seek divine blessings for the success of his second marriage and returned from there on the same night. The trouble started from the very next day i.e. December 14, 2005 as the appellant/wife noticed that the attaché-case containing her sarees was not traceable for which she blamed the sister of the appellant/husband. When the attaché-case was located, same day she was asked to keep the sarees in the almirah. But she refused to keep her sarees in a used almirah cribbing that everything is second hand in her life. The tension was further aggravated when the friend (PW-2) of the respondent/husband came to invite the couple on December 15, 2005 for lunch. The invitation was declined by her while insulting and humiliating the respondent/husband and his friend who was there to extend the invitation. The family of the appellant/wife was apprised of her conduct who tried to counsel her and assured of her good conduct in future. The respondent/husband was not even getting home cooked breakfast as she

insisted for having food from outside. This became a regular feature and was unaffordable.

8. On December 19, 2005 another friend of the respondent/husband called on phone to invite them for dinner. When he was trying to express his inability to accept the invitation, while he was still on line his wife started shouting and insulting him. The quarrelsome nature of the appellant/wife even caused annoyance to the landlord and on December 22, 2005 i.e. within 10 days of marriage, the landlord asked them to vacate the rented accommodation. When this conduct of the appellant/wife was brought to the notice of her brother she even did not spare him and asked him to get out of the house or she would throw him. She also warned the respondent/husband not to involve her family members in future. When the respondent/husband saw his wife visiting the bathroom wearing high heels, he asked her to wear the slippers to which she commented that everything was second hand there; second hand husband, second hand almirah and second hand slippers.

9. On January 07, 2006 Dr. Khatri, a family friend invited them for a 'Jagran'. The respondent/husband somehow persuaded his wife to attend the function but there also she created a scene. He was left with no option but to leave the function and return home with the appellant/wife. Next day in the morning during his sleep, he felt some uneasiness and on opening the eyes he noticed that his wife was pressing his neck. He could manage to free himself from her grip.

10. On January 08, 2006 the appellant/wife left the matrimonial home along with her belongings and failed to return thereafter despite various efforts being made by the respondent/husband to bring her back. On May 18, 2007 the appellant/wife went to the office of the respondent/husband and

insulted him and also threw slipper on him in the presence of PW-4 Sh.Ashok Bahl who was present there in connection with his postal life insurance policy. Thereafter, the respondent/husband filed a petition on November 18, 2011 seeking dissolution of marriage on the ground of cruelty and desertion.

11. The divorce petition was contested by the appellant/wife mainly on the ground that the factum of the husband being a divorcee was concealed from her. Further she was not allowed to visit her parental home on the next day of her marriage for '*pag phera*'. She denied having branded her husband as second hand and all the goods lying there to be second hand. She has further pleaded that on not finding her sarees she just asked her husband to call his sister to enquire about her sarees which were kept in attaché-case. When the attaché-case containing sarees could be located the husband directed her to keep the same in an old almirah for which she refused as her costly sarees could not be kept in a damaged almirah. She has denied having insulted any of his friend or creating a scene in public to the annoyance of the landlord. Though the date of leaving the matrimonial home on January 08, 2006 is not disputed by the appellant/wife, she pleaded that in fact she was turned out of the matrimonial home without any fault on her part.

12. The decree of dissolution of marriage has been challenged by the appellant/wife inter alia on the following grounds:-

(i) Initially the husband filed a petition under Section 12(1)(c) of the Hindu Marriage Act, 1956 which was withdrawn and thereafter he filed a petition seeking dissolution of marriage on the ground of cruelty and desertion. Learned Judge Family Court failed to appreciate that the incident dated January 08, 2006 as mentioned in the petition under Section 12 of the Hindu Marriage Act, 1956 is at variance with the narration given in the

petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1956.

(ii) No police complaint was filed in respect of the incident dated January 08, 2006 by her husband.

(iii) Complete details about the landlord insisting for vacating the rented accommodation due to alleged conduct of the appellant have not been given in the petition.

(iv) Since the marriage was performed at a banquet hall it cannot be a simple dowry less marriage.

(v) It being admitted case of the parties that they are residing separately since January 08, 2006, the appellant/wife could not have visited the office of the husband on May 08, 2007 or on August 01, 2001 and create scene there. No police complaint was also made by the respondent/husband in respect of any such incident.

(vi) The instances of the cruelty pleaded by the respondent/husband do not constitute cruelty for the purpose of dissolution of marriage especially when he did not file any petition seeking restitution of conjugal rights.

(vii) The petition under Section 12(1)(c) of the Hindu Marriage Act, 1955 contains a version different from what has been pleaded in this divorce petition being HMA No. 246/2014.

13. To prove the grounds of divorce i.e. cruelty and desertion, the respondent/husband examined himself as PW-1, his friend Ramesh Kumar Aggarwal & Vijay Kumar as PW-2 & PW-3. PW-4, Ashok Bahl has been examined in respect of the incident dated May 18, 2007 at the office of the respondent/husband on which date the wife visited the office of her husband and abused and threw chappals on him. The appellant/wife has examined herself as RW-1 and preferred not to examine even her brother through whom this marriage was arranged and solemnized.

14. After considering the testimony of the respondent/husband which was corroborated by PW-2 to 4 regarding various instances of cruelty stated to have been committed by the appellant/wife and observing that the appellant/wife had left the matrimonial home of her own without any justification with an intent to bring cohabitation to an end, the marriage was dissolved on both the grounds i.e. under Section 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act, 1956.

15. PW-1 Yogesh Sharma – the appellant in his deposition while narrating all the instances which had caused mental cruelty to him, the insulting and humiliating behaviour of his wife towards his friends and landlord, also deposed about his efforts to bring his wife back. He has stated that a meeting was held at the house of brother of the appellant/wife at Timar Pur on January 22, 2006 in the presence of family members of both the parties where the appellant/wife was also present. The efforts made by him to persuade his wife to return to the matrimonial home proved futile on her refusal to join him. Regarding the instances which started from December 15, 2005 i.e. immediately after the marriage, the respondent/husband examined PW-2 to PW-4 and their testimony can be noted as under:-

PW-2 Sh.Rakesh Kumar Aggarwal, who himself is resident of Shalimar Bagh, arranged a rented accommodation for his friend i.e. the respondent/husband at AG-349, Shalimar Bagh w.e.f. December 01, 2005 which was let out on his request by the landlord. He also attended the wedding of the parties. Since the rented accommodation was at his request, he was approached by the landlord to get the same vacated due to the quarrel not only between the husband-wife but also with the landlord. He asked the respondent/husband to vacate the rented premises as his wife was not

improving her conduct and was misbehaving with the landlord. His statement to above effect has remained unassailed.

PW-3 Sh.Vijay Kumar is also a friend of the respondent/husband who has deposed about the incident dated December 15, 2005 when he came to invite the newly wed couple for lunch but was insulted by the appellant/wife saying that he (PW-3) was looking like a '*Kanjar*' and that her husband was having friendship with '*Kanjar*' like persons. Feeling insulted and humiliated, he left their house.

The second incident dated January 07, 2006 took place at the house of Dr.Khatri who is the common friend of PW-3 as well respondent/husband. Dr. Khatri invited the appellant/wife, respondent/husband as well PW-3 to a '*Jagran*' at his house which was attended by them but on seeing *Mausaji* and *Mausiji* of the respondent/husband invited to that function and referring to the gathering present there of low standing, she refused to have dinner saying that the persons present there are of low level and she cannot take dinner with them. When the respondent/husband tried to pacify her she insulted him as well and the respondent/husband had to leave the function alongwith the appellant/wife. During cross examination only a suggestion has been given to PW-3 that no incident had taken place on December 15, 2005 and January 07, 2006 as stated by him, which he has denied.

PW-4 Sh.Ashok Bahl had narrated the incident dated May 18, 2007 when he was present in the office of the respondent/husband in connection with his postal life insurance policy as the respondent/husband was employed in the Office of Chief Post Master General, Meghdoot Bhawan, Jhandewalan, Delhi at that time. His version of the incident is as under:-

'1. That I am Govt. Employee in Income Tax Department. I am the policy holder of Postal Life Insurance. Sh.Yogesh Sharma is the employee of Postal Life Insurance posted at the office of the Chief

Post Master General, Meghdoot Bhawan, Link Road, Jhandewalan, New Delhi as Development Officer. On 18.05.2007 I went to make enquiry regarding the status of my policy in the office of petitioner in noon hour. I was talking with the petitioner who was on reception counter in the meantime respondent came there and started quarrelling and abusing the petitioner and did not stop even on the request of mine when I requested her that let him talk with the petitioner. Then I came to know that she is the wife of petitioner as she told that I should not stop her as she is the wife of petitioner. She took out her chappal and threw to hit the petitioner but petitioner saved himself. I tried to pacify the respondent and petitioner but the behaviour of respondent was not good as she was very aggressive and thereafter, the petitioner left the office and after that she also left the office after 2-3 minutes.'

16. The appellant/wife in her affidavit Ex.RW1/A in paras 5 and 6 has admitted that she was informed about the marital status of the proposed bridegroom by her brother. About her consent to the marriage, she stated as under:

'5. I say that at the time of marriage, no consent of the deponent was taken nor she was informed about the marital status of the petitioner by her brother, with whom the marriage talks were being going on by the petitioner between her and the petitioner.

6. I say that a minor indication regarding the marriage with the petitioner was given to the deponent and being a lady belonging to respectable family, she had no choice except to tie with the petitioner into a marriage knot.....'.

17. In view of her above admission especially taking into consideration that both the parties were 41 years old at the time of solemnisation of their marriage on December 12, 2005, she has wrongly pleaded that marital status of the respondent/husband being a divorcee was not disclosed to her. The other incidents of cruelty starting right from the second day of marriage are duly admitted by her in her affidavit Ex.RW1/A though with some justification, as under:-

She admits that she was taken to Vrindavan on the next date of the marriage and she accompanied with a heavy heart as she should have been taken to her parental home for 'pag phera'. She admits that she asked the husband to make call to his sister to inquire about the attaché-case containing her clothes. The attaché-case was left at home when they left for Vrindavan on December 14, 2015 and the attaché-case was found lying at home. She also admits that the respondent/husband asked her to keep the sarees in the almirah lying at home but she refused for the reason that almirah was not in a good condition. It is her version that her husband refused to arrange a new almirah for her. She also admits that she did not prepare breakfast and food for her husband. She justifies her conduct saying that she was unwell but without even mentioning the nature of ailment or the treatment taken by her for that ailment.

18. Para 12 of her affidavit Ex.RW1/A brings out the emotional stress she was facing in the matrimonial home in her own words as under:

'12. I say that the petitioner was always forcing the deponent to use the things of his first wife and whenever, she objected to the same, she was subjected to humiliation and harassment at his hands.'

19. Thus, what can be summed up from her own testimony is that she was not able to adjust in the matrimonial home with her husband – a divorcee where she was not having the luxuries of life. We have no hesitation to record that it was a simple marriage wherein the appellant/wife entered the matrimonial home just with one attaché-case containing her clothes. She was using the bathroom wearing high heels is indicative of the fact that she was not having even a pair of bathroom slippers. The respondent/husband though a Government Servant, was having his own limitations in providing the luxuries. He arranged a rented accommodation in Pitam Pura where only two of them were living with no interference from any other member

from the respondent/husband side. Due to her quarrelsome nature and insulting behaviour with the close friends of the husband as well with the landlord, even before expiry of one month the landlord was compelled to request PW-2 to get the rented accommodation vacated. The appellant/wife has not examined even her brother Rattan Dubey who was instrumental in getting her marriage with the respondent/husband. Appellant/wife being 41 years old at that time, possibility to get a bachelor husband was remote.

20. The learned Judge, Family Court has noted in paras 49 and 50 of the impugned judgment the frustration of the appellant/wife not only towards her husband but also towards her own family members as under:

'49. The respondent, apparently, was not happy with the financial condition of the petition. Admittedly, the petitioner could not provide new furniture or new articles of daily use to the respondent. That is why – she called him a 'kangla'. May be her hopes/expectations from marriage had been belied. Further, it has come over the record that the petitioner had called the mother and brother Shri Rattan Dubey (of the respondent) to the matrimonial house requesting them to make the respondent understand her matrimonial obligations. She did not like the presence of her mother and brother, due to her own frustration. She went to the extent of insulting her own brother Shri Rattan Dubey and threatening him – of throwing him out of the house, if he tried to interfere in her marital life. She could have so behaved with her brother only because she was annoyed/angry with him. She held her brother responsible for marriage with a divorcee. Obviously, she would have been shouting at the petitioner. It is apparent that there would have been disturbance in the matrimonial house. The landlord and other neighbours would have also got disturbed. The landlord, therefore, would have asked the petitioner to vacate his house.

50. The respondent, apparently, left the matrimonial house out of frustration. It is her admitted case that a meeting was convened at her brother's place on 21.01.2006 to sort out the issues between them. She, however, refused to join his company. She, rather, visited the

office of the petitioner on 18.05.2007 and 01.08.2011. She created scene there, threw chappal/sleeper at the petitioner. She insulted and humiliated him in the presence of his colleagues. Her intention was definitely to make his condition miserable as she would have thought of taking revenge from him. When considered on the test of preponderance of probability, the version of the petitioner appears much more probable and reasonable than that of the respondent.'

21. So far as contention of the respondent/wife that the petition under Section 12(1)(c) of the Hindu Marriage Act, 1955 contains a version different from what has been pleaded in this divorce petition is concerned, the certified copy of the order dated May 14, 2008 records that the petition under Section 12 of the Hindu Marriage Act, 1955 was withdrawn for the reason that it was filed under wrong provision. If there was some material itself in the narration of the incident so as to falsify the case of the respondent/husband, she could have confronted him with his earlier version.

22. We are convinced that right from the day of marriage the appellant/wife was not happy with her status as 'second wife' of the respondent/husband and was even allergic to use of belongings of his first wife whereas the respondent/husband was unable to afford new items to her within his limited means. The acts of cruelty proved by the respondent/husband especially the incidents with his friends, at his office in the presence of PW-4 wherein he was not only insulted but a slipper was thrown towards him by the appellant/wife, were sufficient to constitute mental cruelty for the purpose of dissolving their marriage under Section 13(1)(ia) of Hindu Marriage Act, 1955.

23. The fact that despite statutory period of two years to seek dissolution of marriage on the ground of desertion, though the appellant/wife left the matrimonial home on January 08, 2006 the respondent/husband waited for five years and filed a divorce petition only in the year 2011. In the meeting

at her brother's place on January 22, 2006 her refusal to join the respondent/husband proves that she left the matrimonial home with *animus deserendi*. Thus, the learned Trial Court has rightly considered it to be a fit case to dissolve the marriage on the ground of desertion as well.

24. The parties remained together for less than a month. They are residing separately for the last 10 years. The instances of cruelty proved by the respondent/husband established that the second marriage entered into with appellant/wife to heal the wounds of his first marriage, worsened his conditions mentally as well physically. The marriage was in turbulence right from the day when the appellant/wife entered the matrimonial home and taken to Vrindavan.

25. In our view the grounds of cruelty and desertion by the appellant/wife caused to the respondent/husband stands established. Accordingly, we find no reason to interfere with the decree of dissolution of marriage.

26. The appeal is dismissed.

27. No costs.

28. Trial Court Record be sent back alongwith copy of this order.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

OCTOBER 24, 2016
'pg'