

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

Judgment Reserved on: October 24, 2016

% *Judgment Delivered on: October 27, 2016*

+ **MAT.APP.(F.C.) 129/2016**

JAYANTI

..... Appellant

Represented by: Mr.Manjit Singh Chauhan,
Advocate.

versus

RAKESH MEDIRATTA

..... Respondent

Represented by: Mr.Sunil Mittal, Senior
Advocate instructed by
Mr.Dhruv Grover and
Mr.R.K.Bedi, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant-wife is aggrieved by the judgment and decree dated July 21, 2016 passed by learned Judge, Family Court in HMA Petition No.289/2014 (Old No.647/2012) whereby the marriage between the parties is dissolved by a decree of divorce.

2. The appellant-wife in this case is well qualified. She is M.Com, B.Ed. employed as Post Graduate Teacher in a reputed public school in Delhi. The respondent-husband is also well placed in a private company earning a decent salary. We shall hereinafter refer the parties as the 'wife' and the 'husband'.

3. It is admitted case of the parties that they got married on February 22, 2004 in accordance with Hindu rites and ceremonies. The couple was blessed with a female child on December 08, 2004. Matrimonial discord started in the year 2005. Since at the matrimonial home the parents-in-law

of the wife were also residing, the parties started living separately in a rented accommodation in close proximity to the matrimonial home. The wife left the rented accommodation in December, 2006. Litigations between the parties started in the year 2007 which was put to an end by them by entering into a Memorandum of Understanding on May 04, 2010. While condoning the acts attributed to each other, they decided to live together at Shakarpur in a premises owned by father of the wife. The parties lived together till October 01, 2012. Thereafter pursuant to the incident dated October 01, 2012, when police was also called by the wife, the husband left Shakarpur and returned to his parents' home in Shalimar Bagh. He also brought alongwith him the air conditioner, washing machine and other belongings which were purchased by him when the parties decided to live in Shakarpur in a separate accommodation in terms of settlement. Since the efforts by the parties to give another trial to their marriage failed, HMA Petition No.647/2012 was filed by the husband in December, 2012 seeking dissolution of marriage.

4. The wife filed the written statement as well the counter claim seeking judicial separation. The learned Judge, Family Court proceeded to dispose of the HMA petition with reference to the acts of cruelty post MOU dated May 04, 2010. Therefore, we need not delve on various acts of cruelty alleged prior to MOU dated May 04, 2010.

5. The learned Judge Family Court had granted a decree of divorce on being satisfied that the husband was subjected to mental cruelty within the meaning of Section 13(1)(ia) of Hindu Marriage Act, 1955 for the following reasons:-

(i) The husband had been able to prove that he had been deprived of conjugal relationship by the wife. This was admitted by the wife during her

cross examination.

(ii) Though the parties were living under one roof during the period May 04, 2010 to October 02, 2012, they were not living as husband and wife. The wife denied physical contact to her husband on the pretext of requiring more time to develop understanding between the two.

6. In matrimonial proceedings, the pleadings assume grave significance. In view of Section 20 of Hindu Marriage Act, 1955 the Court is empowered to act upon unfounded allegations in the pleadings treating the same as evidence.

7. We would like to extract Section 20 of Hindu Marriage Act, 1955 which reads as under:-

‘20. Contents and verification of petitions. –

(1) Every petition presented under this Act shall stated as distinctly as the nature of the case permits the facts on which the claim to relief is founded [and, except in a petition under Section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints, and may, at the hearing, be referred to as evidence.’

8. Since the allegations repeatedly made in the written statement and the counter claim *per se* constitute cruelty which entitles the husband straight-way to a decree of divorce, we would like to extract the relevant paragraphs of the written statement and the counter claim to refer to the accusations against the husband in her own words:-

IN WRITTEN STATEMENT

‘32.His habits such as keeping utensils anywhere he likes after eating, putting water on chakla when the respondent is making

chappatis, breaking the belan, entering the washroom when daughter of the parties is using the same etc. etc. is causing gave mental agonies to the respondent. Even the daughter of the parties, who is becoming mature by her age, once said to respondent, "MUMMY MERE PAPA AISA KYON KARTE HAIN? DOOSRON KE PAPA TO AISA NAHI KARTE".

34. Contents of this para are wrong and denied. It is denied that petitioner tried to make understand the respondent about the conjugal relation of husband and wife but the respondent totally denied to keep any conjugal relations with the petitioner for the reasons best known to her. It is denied that whenever the petitioner tried to touch the respondent, respondent started abusing him like idiot and nonsense and pushed the petitioner away from her. It is denied that petitioner had to pass his nights in the feeling of mental harassment. It is denied that respondent did not make any relations of a wife with the petitioner after the settlement till date and thus the parties, though lived under the same roof, but there was no relationship of husband and wife between the parties and therefore, respondent has totally deserted and neglected the company and society of the petitioner. It is submitted that the petitioner crossed all limits of decency by not even sparing her daughter who is now 8 years old by keeping obscene books in the clothes of Riddhi, condoms in drawers etc. It is a shameful and most immoral act of the petitioner by victimizing his own daughter by his uncontrolled lust! Not even this, he used to wake respondent up at midnight for sexual intercourse and even wake up the daughter of the parties and used to ask her to witness the sexual acts and advances which he was making to the respondent. Thus, it would not be an exaggeration to conclude that he had become sexually so perverse and characterless that he even didn't realize that what effect shall be borne by the daughter of the parties who is growing up. The petitioner even didn't hesitate to make his daughter ashamed in front of her friends by humiliating her in their presence. He even said once, "AGAR YEH MRI BAAT NAHI MANEGI TO MAIN BAHAR KI AURAT KE PAAS JAUNGA AUR USSI KE PAAS RAHUNGA". The daughter, Riddi once asked, "MUMMY, JAB PAPA AAPKO CHEDTE HAIN TO KYA AAPKO BURA NAHI LAGTA KYA?". From this fact, it can be well ascertained that how much a tender mind of young girl is being spoiled by none other than her own father!

36.....He created so much fear psychosis in the mind of Riddhi that she was afraid of sleeping at night in her home and used to sleep at the home of nana and naani. She has become terrorized to see her father's violence after consuming drinks and even the sexual violence at midnight which had become a regular affair.

44.Contents of this para are wrong and denied. It is denied that the respondent had deserted and withdrawn from the society of the petitioner for the last more than 2 years immediately preceding the filing of the present petition, though the parties were living under the same room till 02.10.12, but as mentioned above there was no physical relationship between the parties as husband and wife, with the object to end cohabitation and during this period efforts were made or reconciliation but the respondent has refused to reconcile the matter and further told that she has severed up all his relations and connections with the petitioner and she is not interested to live with the petitioner even for a single day. It is submitted that the parties lived together as husband and wife till August 2012, when the petitioner broke all moral limits by showing his extreme lush and vulgar attitude in front of Riddhi, the minor daughter of the parties which compelled the respondent to distance herself and her daughter from the petitioner so that the innocent and minor daughter of tender age is not affected psychologically due to the immoral behaviour of her father in her formative years of age.

45.Contents of this para are wrong and denied. It is denied that respondent has deserted and withdrawn from the society of respondent for more than two years and during this period, efforts were made for reconciliation but proved futile. It is submitted that the parties are virtually separated from August 2012, when the petitioner portrayed his characterless behaviour towards the daughter of the parties.'

IN COUNTER CLAIM

'XII. That the petitioner crossed all limits of decency by not even sparing her daughter who is now 8 years old by keeping obscene books in the clothes Riddhi, condoms in drawers etc. It is a shameful and most immoral act of the petitioner by victimizing his own daughter by his uncontrolled lust! Not even this, he used to wake respondent up at midnight for sexual intercourse and even

wake up the daughter of the parties and used to ask her to witness the sexual acts and advances which he was making to the respondent. Thus, it would not be an exaggeration to conclude that he had become sexually so perverse and characterless that he even didn't realize that what effect shall be borne by the daughter of the parties who is growing up. The petitioner even didn't hesitate to make his daughter ashamed in front of her friends by humiliating her in their presence. He even said once, "AGAR YEH MRI BAAT NAHI MANEGI TO MAIN BAHAR KI AURAT KE PAAS JAUNGA AUR USSI KE PAAS RAHUNGA". The daughter, Riddhi once asked, "MUMMY, JAB PAPA AAPKO CHEDTE HAIN TO KYA AAPKO BURA NAHI LAGTA KYA?". From this fact, it can be well ascertained that how much a tender mind of young girl is being spoiled by none other than her own father!'

XV. That the petitioner came at 11:30 p.m. in the night of 1.10.12 and was in highly inebriated condition. The respondent/counterclaimant gave him the keys of C-719, i.e. the house of the parties, so that he could go and sleep but the petitioner refused to leave and started misbehaving and abusing the parents of the respondent without any rhyme or reason. He even assaulted the father of respondent and manhandled him which caused multiple bruises to him and also his clothes were torn. Thereafter, he came on the street and started abusing and shouting the respondent/counterclaimant and her family members and created an ugly scene. The neighbours warned him to stop creating such a scene by telling him that it is a crime to be drunk and create a scene on street. Finally PCR was called and the petitioner was taken to the Police Station and he begged pardon in front of police from the father of the respondent, so the father of the respondent did not lodge any complaint and he was released after warning.

XVI. That the parties lived together as husband and wife till August 2012, when the petitioner broke all moral limits by showing his extreme lust and vulgar attitude in front of Riddhi, the minor daughter of the parties which compelled the respondent to distance herself and her daughter from the petitioner so that the innocent and minor daughter of tender age is not affected psychologically due to the immoral behaviour of her father in her formative years of age. Not only this, from Oct. 2012, the petitioner stopped paying the instalments to the builder of the flat booked at Indirapuram,

Ghaziabad, by the parties which instalments he was paying through bank as he got a loan sanctioned in his favour on basis of his handsome salary. The purpose was to debar the respondent from the 50% ownership of the property. He even approached the builder to cancel the booking and approached the banks to stop paying the instalments.

XVII. That it is the respondent/counterclaimant who has suffered extreme harassment and cruelties at the hands of the petitioner and she does not want that the petitioner should interfere in her as well as her daughter's life and thus, she has sought the relief of judicial separation and do not want divorce as she does not want to remarry and wants to live her life for the sake of her daughter and she also wants that she should not become the cause for embarrassment for her growing daughter at later stage of life by becoming a divorcee and causing a lifetime complex in the mind of her daughter. Hence, this petition.'

9. In the affidavit Ex.RW1/A filed by the wife, she has preferred to observe silence about the serious allegations made against the husband. The admissions made by the wife during her cross examination being relevant, her cross examination is extracted hereunder:-

'.....I have mentioned in my affidavit that the petitioner family along with the petitioner treated me with cruelty, whenever the petitioner come from the tour they spent more of the time with their parents instead of me and my daughter. I have not placed the copy of the complaint dated 31.08.2012 and if the Court directs me, I shall place the same before the Court. It is wrong to suggest that no incident was ever happened on 31.08.2012 or that the fact stated in para no.16 of my affidavit is totally false. I have not mentioned the date in para no14 of my affidavit regarding the mediator. However, their names are Mr.Goyal, Mr.Malhotra and my family members were also present, who advised the petitioner to mend his ways. I have two brothers, beside me. Both are married. They are living separately from my father. Mr.Mukesh – Brother is residing in Dwarka and Mr.Yogesh – Brother is residing in Shakarpur, with their families. Mr.Goyal is the neighbour of the petitioner and Mr.Malhotra is the colleague of the petitioner. It is wrong to suggest that no such

mediation was ever happened, as mentioned in para no.-14. As per the MOU, the petitioner was required to transfer the car bearing no.-3259 in my name and I have already sold the same. I do not remember, whether, I had filed the copy of complaint dated 01.10.2012, as mentioned in para no.-17 of my affidavit. It is wrong to suggest that on 01.10.2012, no such incident was ever occurred, as mentioned in para no.-17 of my affidavit. It is correct that I have not mentioned in my affidavit regarding the incident, as mentioned in para no.-34 of my written statement, due to the reason that I shall not repeat the same in my affidavit and I have only mentioned in para no.-18, that the petitioner broke all moral limits by showing his extreme lust and vulgar attitude in front of my minor daughter. It is wrong to suggest that I have not mentioned all the allegations, which I have mentioned in my written statement in my affidavit, only due to the reason that these incidents have never happened. It is wrong to suggest that I have levelled all the allegations upon the petitioner with intention that I do not want to live with the petitioner and I have also poisoned my daughter to hate the petitioner and not compel to live with the petitioner. It is correct that I wanted a Judicial separation from the petitioner and I have filed a petition for judicial separation also. Doing the Counselling by the Hon'ble Judge, I have make up my mind that I shall withdraw my Judicial Separation and trying for living together and I can give him another chance for living together, if he mend his ways, the petitioner shall leave his drinking and take care of the child. It is wrong to suggest that the petitioner was not consuming liquor. It is further wrong to suggest that the petitioner was taking care of the child. The petitioner is in touring job and generally remains on tour about 10-15 days in a month. For the physical, mental, emotional and overall growth of my child, I want all of us to live together.'

10. Proceedings dated September 17, 2013 before learned Judge, Family Court records that the application under Order 14 Rule 5 CPC was filed by the husband that issues on counter claim have not been framed. The Court directed separate file in respect of counter claim to be prepared by the Ahlmad and register it as per rules to be placed before the Court on the next date of hearing i.e. December 12, 2013 with HMA Petition No.289/2014 which was also listed for petitioner's evidence. Thereafter the LCR is silent

about the fate of counter claim except that during her cross-examination dated May 17, 2016 the wife stated “*For the physical mental, emotional and overall growth of my child, I want all of us to live together.*”.

11. It is an admitted situation that the wife while tendering her examination-in-chief by way of evidence omitted to refer any of the above accusations imputed against her husband. This omission, however, does not dilute the act of cruelty committed by her for the reason that such accusations do form part of the record.

12. In the case reported as AIR 2003 SC 2462 Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate the Supreme Court held that subsequent withdrawal of allegations by amending written statement by the spouse is of no consequence. In the said case, the husband made allegations against the character of his wife blaming her to be having extra relationship. These allegations were withdrawn by him by seeking amendment in the written statement. The Apex Court while observing that making such serious allegations against the character, honour and reputation of a spouse constitute mental cruelty, held as under:-

‘11. That apart, in our view, even the fact that the application for amendment seeking for deletion of the accusations made in the written statement was ordered and amendments carried out subsequently does not absolve the husband in this case, from being held liable for having treated the wife with cruelty by making earlier such injurious reproaches and statements, due to their impact when made and continued to remain on record. To satisfy the requirement of Clause (i-a) of Sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitute the required mental cruelty for purposes of the said provision, in our view, 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. If the taunts, complaints and reproaches are of ordinary nature only, the Courts perhaps need consider the further question as to whether their continuance or persistence over a period time render, what normally would, otherwise, not be a so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonable conclude that the maintenance of matrimonial home is not possible any longer. A conscious and deliberate statement leveled with pungency and that to placed on record, through the written statement, cannot so lightly be ignored or brushed aside, to be of no consequence merely because it came to be removed from the record only. The allegations leveled and the incidents enumerated in the case on hand, apart from they being per se cruel in nature, on their own also constitute an admission of the fact that for quite some time past the husband had been persistently indulging in them, unrelated and unmindful of its impact. That the husband in this case has treated the wife with intense cruelty is a fact, which became a fait accompli the day they were made in the written statement. The continued on record at any rate till 5.10.1988 and the indelible impact and scar it initially should have created, cannot be said to have got ipso facto dissolved, with the amendments ordered. Therefore, no exception could be taken to the courts below placing reliance on the said conduct of the appellant, in this regard, to record a finding against him.'

13. In view of Section 20(2) of Hindu Marriage Act, 1955 the allegations made in written statement and counter claim can be safely accepted and admitted as evidence of cruelty committed by the wife. The pious relationship between a father and a daughter has been maligned by the wife to such an extent that the wife is guilty of treating the husband with worst form of mental cruelty. The nature of allegations made against the husband which remained unsubstantiated, must have left an indelible mark on the mind of the husband. No spouse can swallow such filthy allegations and also continue with the marital tie.

14. The husband had already given another trial to this marriage by entering into MOU and also substantially complying with the terms of the

settlement. He had already travelled an extra mile as despite being the only son, he left his parents in Shalimar Bagh and shifted to a small premises in Shakarpur which was owned by the parents of his wife and was near her parental home.

15. It sounds paradoxical that wife was not letting the husband to have physical contact but the husband was blamed for keeping condoms accessible to their eight years old daughter and also for waking up the daughter in the midnight to witness their sexual activity. The allegations of sexual perversity against the husband amounted to mental cruelty justifying a decree of divorce. It may also be recorded here that the wife despite filing a counter claim seeking judicial separation neither got any issue framed on that nor led any evidence. Rather by stating that *'For the physical mental, emotional and overall growth of my child, I want all of us to live together.'* in her cross examination she had taken a stand which is in conflict with her plea in the counter claim that *'she does not want that the petitioner should interfere in her as well as her daughter's life and thus, she has sought the relief of judicial separation and do not want divorce as she does not want to remarry and wants to live her life for the sake of her daughter and she also wants that she should not become the cause for embarrassment for her growing daughter at later stage of life by becoming a divorcee and causing a lifetime complex in the mind of her daughter'.* We are unable to perceive how these two situations can be reconciled.

16. Learned Judge, Family Court failed to consider the effect of serious accusations made by the wife against the character of husband even towards his daughter who was a child aged about 8 years at that time. The wife inspite of making serious allegations against the husband impacting his moral character with perverse sexuality did not even try to prove such

allegations while tendering her affidavit by way of examination-in-chief. This leads to the inference that such allegations were baseless.

17. After contesting the suit tooth and nail and even filing the counter claim seeking judicial separation for the sake of child, if during her cross examination she offered to live with the husband alongwith child for the welfare of the child, it must be held to be a pretended concession after committing the cruelty for frustrating the claim of the husband. The wife herein has damaged the very basis of fabric of this marital bond beyond repair. We, therefore, find no reason to interfere with the impugned judgment and decree dated July 21, 2016.

18. The appeal is dismissed.

19. No costs.

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

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

OCTOBER 27, 2016
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