

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

% *Judgment Reserved on : September 06, 2016*
Judgment Delivered on : September 16, 2016

+ **MAT.A.(F.C.) 59/2015**

ASHOK KUMARAppellant

Represented by: Mr.Pradeep Kumar Arya,
Advocate with Mr.Pankaj Singh
and Mr.Raj Karan Sharma,
Advocates

versus

MONARespondent

Represented by: Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The appellant sought dissolution of the marriage solemnized on December 06, 1996 between him and the respondent, invoking Section 13(1)(ia) and (iii) of the Hindu Marriage Act, 1955.
2. The marriage was consummated and on September 29, 1997 the couple were blessed with a daughter whom they named 'Akanksha'. Currently Akanksha is living with her mother.
3. Apparent from the Sections invoked, the appellant alleged being treated with cruelty by his wife and additionally she being incurably of unsound mind or suffering continuously or intermittently from mental disorder of such kind that the appellant could not reasonably be expected to live with his wife.

4. The first instance of mental unsoundness pleaded is that after three weeks of the marriage when the appellant stopped his two wheeler at a petrol pump for fuelling, his wife disappeared when he was in the queue of vehicles and had requested his wife to wait at the corner of the petrol pump. As per the appellant, with great difficulty, he found his wife and could gather from her conduct that she was not in a proper state of mind. Appellant pleads in the petition that his wife would not take regular bath nor wore good clothes and when he requested her to maintain hygiene she used to become violent and throw articles at him and his other family members; at times she used to touch the electricity wires or leave the gas cylinder with the knob on. As per the appellant, Dr.Bhushan Kumar Jain, having clinic at Pitampura, medically treated his wife. Appellant pleads that his wife used to rip the upholstery of the sofa set and she would cut the clothes. As per the appellant his wife was admitted for psychiatric treatment at B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak and remained an inpatient from August 02, 2005 till August 19, 2005.

5. Dismissing the petition for divorce filed by the appellant the learned Judge, Family Court has held that by not examining Dr.Bhushan Kumar Jain and the doctor who accorded treatment to the respondent at B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak the appellant has not proved the case that his wife suffered from schizophrenia. On the issue of cruelty the learned Judge held that no specific incident, with date was pleaded and much less proved through evidence. On the issue of cruelty, the reasoning in the impugned judgment reads as under:-

“23. The onus was on the petitioner to prove that the respondent has treated him with cruelty after marriage. He

has deposed that he found the respondent a negligent uncaring person and never found her in proper frame of mind. She did not take bath regularly and did not put on good dresses. She did not take interest in the physical/sexual relations with him. He, also, deposed that she was negligent and used to touch naked electricity connection and sometimes used to leave the gas connection open – thereby, creating dangerous/unsafe situations. He has, further, deposed that she remained aloof and did not take interest in the household work. He himself has deposed that the cause of such conduct/behaviour was the medical disorder/ailment, she was suffering from. The petitioner, however, failed to bring on record any specific incident or conduct which could be termed disrespectful or insulting towards him or his family members. He only deposed that whenever his family members (mother, in particular) asked her to do household work, she turned violent, started abusing and throwing/breaking articles. He, however, has not himself witnessed any such incident. His mother or any other family member could have been the best witnesses to prove her alleged misconduct/misbehaviour but for the reasons best known to him, he failed to examine them. He, also, failed to examine any of his neighbours or any person of his village or any of his relatives or any of his friends who would have watched her alleged violent behaviour/conduct of the respondent. The unsubstantiated vague allegations cannot be termed cruelty, as understood in the eyes of law. The petitioner has, thus, failed to discharge his onus. The issue is, accordingly, decided against the petitioner and in favour of the respondent.”

6. On the issue of appellant’s wife suffering from an unsound mind the findings are as under:-

“24. The onus was on the petitioner to prove that the respondent had/has been suffering from any mental disorder/ailment or schizophrenia. He has deposed that he had made a ‘guess’ from the conduct/behaviour of the respondent that she was suffering from schizophrenia. He admitted in his cross-examination that he has never studied medical sciences. He, also, deposed that he has never studied

psychology or human behaviour psychology and that he has never noted symptoms of schizophrenia in any other person till the date of his deposition in the court. He, also, deposed that his relatives who had gathered at the time of marriage of his younger brother stated that they should stay away from her. He claimed that his relatives had so said in view of her behaviour/conduct. Interestingly, he has not examined any of such relatives who had allegedly so stated.

25. The petitioner has stated that the actions of his wife were that of a 'schizophrenic' patient at the time of marriage of his younger brother. He has deposed that the respondent had misbehaved with his bua, wife of his friend Sh. Arvind Hooda and other women present at the time of marriage. He, however, has failed to examine either his bua or wife of his friend Shri Arvind Hooda or any other woman who had watched the alleged conduct of the respondent.

26. The petitioner has, also, deposed that his brother's family was staying with him but his brother was not on talking terms with the respondent. He, however, has not given any reason as to why his brother was not on such talking terms with the respondent. It is interesting to note that the petitioner has testified that as per his own perception, his wife was good looking and was physically fit. He married her of his own free will and wish. Obviously, he liked her and had found her physically fit. He has, also, admitted that he has never observed symptoms of ailment – schizophrenia in any other person. Still, he tried to explain the symptoms of a schizophrenic patient are – to remain isolated, talking to oneself, sleeping less, breaking things, using abusing language, leaving the gas connection on, not having proper dressing sense, talking irrelevant things, calling hawkers unnecessarily to the house, laughing at a stretch or weeping at a stretch etc. He admitted that he has not been a medical student and has not studied medical science. He, therefore, could not have known anything about the "schizophrenia" ailment.

27. The petitioner, however, claimed that on watching her behaviour, he thought of providing her medical treatment. He

deposed that he took the respondent to one Dr.Bhushan Kumar Jain and also, got her admitted in Pt.B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak. He has placed on record certain prescription slips of Dr.Bhushan Kumar Jain. He, however, has failed to produce and examine Dr.Bhushan Kumar Jain, though he had cited him as a witness. There is no explanation as to why he dropped him. Further, there is no evidence whatsoever that Dr.Bhushan Kumar Jain had examined the respondent only and not any other person, named, Ms.Mona. In the absence of any conclusive evidence that Dr.Bhushan Kumar Jain had examined respondent only, it cannot be said that the respondent had/has ever been examined by him. Dr.Bhushan Kumar Jain ought to have been put in the witness box and identify that the respondent was his patient. The petitioner has failed to do so.

28. The petitioner has, also, failed to prove that it was the respondent only, who was admitted in Pt.B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak. The petitioner could not establish the medical record, as the same happened to have been destroyed. The best option for the petitioner to prove the alleged mental ailment of the respondent was to examine Dr.Bhushan Kumar Jain. He, however, has failed to do so for the reasons best known to him. The respondent has specifically denied that she was ever taken to any doctor or any hospital. In the absence of any medical evidence, it cannot, by any stretch of imagination, said that the respondent suffered from schizophrenia or any other mental ailment. Further, there is no evidence that any alleged ailment was so dangerous that the petitioner could not reasonably be expected to live with the respondent. The petitioner has, thus, failed miserably to discharge his onus. The issue is, accordingly, decided against the petitioner and in favour of the respondent.”

7. A perusal of the record of the learned Judge, Family Court would evince that the appellant examined himself as PW-1. He tendered by way of affirmative evidence an affidavit of his uncle Balwan Singh, whom he

never examined. One Sant Ram, Record Clerk, Department of Psychiatry, Medical College and Hospital, Rohtak, appeared as PW-2.

8. In his cross-examination the appellant admitted that his married younger brother was residing with him. He admitted that when his younger brother got married his wife participated in the marriage. He said that when his younger brother got married his wife misbehaved with his maternal aunty and wife of his friend named Arvind Hooda. He admitted that the daughter was born on September 29, 1997 at a Nursing Home but said that he could not recollect the name of the Nursing Home. He admitted that no incident of fire took place in his house and said that even his mother used to prepare food in the joint kitchen.

9. Sant Ram PW-2 proved Ex.PW-2/A which contains the writing dated February 05, 2011 as under:-

*“To,
The Medical Record Officer,
Pt. B.D. Sharma PGIMS, Rohtak*

Sub: Disposal of old patient records.

The list of old record of OPD patients is enclosed as under:-

<i>Sl.No.</i>	<i>Items</i>	
<i>1.</i>	<i>Old OPD Patients record files</i>	<i>From 01.01.03 to 31.12.05</i>
<i>2.</i>	<i>OPD Register</i>	<i>From 01.01.2000 to 31.12.05</i>
<i>3.</i>	<i>Alphabetic Register</i>	<i>From 01.01.2000 to 31.12.05</i>
<i>4.</i>	<i>ECT Register</i>	<i>From 03.03.1990 to 31.12.06</i>
<i>5.</i>	<i>Indent Book</i>	<i>From 01.01.1994 to 01.12.05</i>
<i>6.</i>	<i>Bio Feedback Register</i>	<i>From 04.04.1998 to 01.12.05</i>
<i>7.</i>	<i>Workshop Register</i>	<i>From 01.01.1995 to 01.12.06</i>
<i>8.</i>	<i>Consume Register</i>	<i>From 01.01.1998 to 01.12.05</i>

You are requested to kindly make the arrangement to destroy the same.

Encl: Pages 1-5

*Sd/-
Sr.Professor & Head
Department of Psychiatry
PGIMS, Rohtak”*

10. Relevant provisions of Section 13 of the Hindu Marriage Act, 1955 read as under:-

*“13. **Divorce** – (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party –*

(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib)

(ii)

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.”

11. Cruelty as a ground for matrimonial relief has no parameters; it is subjective and relative; what was not cruelty a few decades back is construed as cruelty today. Cruelty could be mental or physical, direct or indirect, intended or unintended. But, mere mismatch of personalities

and fiction arising because of that cannot be termed as cruelty. The conduct of cruelty must be with particulars of the dates and particulars of the conduct. In the instant case we find none. The learned Judge Family Court, in para 23 of the impugned decision, has rightly held that the evidence led by the appellant fails to bring on record any specific incident or conduct which could be termed cruel. The family members, who could be the best witnesses, have not been examined. Therefore, we concur with the findings returned that the appellant has failed to bring home the charge of cruelty.

12. As regards the mental disorder of the appellant's wife, the observations of the Supreme Court in the decision reported as 1988 (4) SCC 247 Ram Narayan Gupta Vs. Rameshwari Gupta are significant, it was observed:-

“The context in which the ideas of unsoundness of ‘mind’ and ‘mental disorder’ occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the ‘mental disorder’. Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognized as grounds of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law..... ‘Schizophrenia’, it is true is said to be difficult mental affliction. It is said to be insidious in its onset and has hereditary pre-disposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid states, the victim responds even to fleeting expression of disapproval from others by disproportionate reactions generated by hallucination of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestations, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions..... But the personality disintegration that characterizes this illness may be of

varying degrees. Not all schizophrenics are characterized by the same intensity of the disease. The mere branding of a person as schizophrenic, therefore, will not suffice. For purposes of Section 13(1)(iii) 'schizophrenia' is what 'schizophrenia' does."

13. An allegation of a person being of unsound mind is a serious allegation having far reaching consequences not only on the mind of the person alleged to be of unsound mind. It affects the person's future life. Therefore, Courts are very cautious before such a plea is accepted. The aforementioned observations of the Supreme Court bring home this approach to be adopted.

14. By not examining Dr.Bhushan Kumar Jain or the doctor who examined the respondent at PGIMR Rohtak, the appellant has failed to discharge the onus placed upon him. Ex.PW-2/A proves nothing inasmuch as it is merely a certificate that old record of OPD patients, for the period detailed in the exhibit, have been destroyed. As per the appellant his wife remained an inpatient from August 02, 2005 till August 19, 2005 and thus nothing prevented the appellant from summoning the record of patients admitted at PGIMR Rohtak for psychiatric treatment for said period. The appellant could have examined his friend Arvind Hooda or his wife to prove that when appellant's younger brother got married the respondent had behaved in a manner which was the conduct of a person of an unsound mind. He did not examine his maternal aunt, in whose presence the appellant claims his wife having evinced conduct of a schizophrenic person.

15. We therefore agree with the findings returned by the learned Judge Family Court that the second charge has also not been established by the appellant against his wife.

16. The appeal is accordingly dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 16, 2016
mamta/dkb