

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

% *Judgment Reserved On : December 05, 2016*
Judgment Delivered On : December 08, 2016

+ **MAT.APP.(F.C.) No.163/2016**

RAJIV CHHIKARAAppellant
Represented by: Mr.Nimesh Chib, Advocate
with Appellant in person

versus

SANDHYA MATHURRespondent
Represented by: Ms.Nandita Rao, Advocate
with Mr.Vikram Deswal,
Advocate and Respondent
in person

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The appellant and the respondent entered into marital bond on March 12, 2004 in accordance with Hindu rites and ceremonies in Delhi. Their relations soon became sour and the respondent herein filed a petition for divorce under Section 13(1)(ia) of HM Act alleging that there has always been a demand of dowry from the side of the appellant and that he took away all her money; used to lock her

in the room before leaving for his job; beat her and ridicule her before his friends. As facts goes, immediately after their marriage, they both shifted to District Kannaaur, Himachal Pradesh where the appellant was serving as an assistant teacher in Central School, at Recknong Peo, District Kinnaur, Himachal Pradesh. They lived there till May 27, 2004 when the respondent returned to Delhi to stay with her parents. The appellant also resigned and came to Delhi. On December 26, 2004 a male child was born to them.

2. They both got job as teachers in Delhi and went on to live in a rented house in Saad Nagar, Delhi for some time. Then they shifted to a rented house at Dwarka, Delhi. However, per allegations of the respondent herein there was no change in the behavior of the appellant, who allegedly used to take drinks; beat her and that on August 07, 2009 left the respondent in her matrimonial home and took away his son to stay with his parents at village Jonti, Delhi. He also took away all her belongings and household items. Though, he returned at night, but left the next day i.e. on August 08, 2009, never to join the company of his wife and that she lived all alone thereafter. The respondent was always apprehensive of the appellant that he may end her life.

3. The appellant in his pleadings denied allegations of cruelty and rather alleged that the issues were trivial arising out of child care, upbringing, interference of her parents, her repeated demand to live

near her parents, her refusal to take care of the respondent's elderly and ill parents etc. The appellant stated that he performed all his martial obligations whole heartedly towards his wife and in-laws and did whatever was expected of a husband and that he always took care of his wife and son and since he is a heart patient, the respondent herein was getting rid of him by filing divorce.

4. The appellant herein examined himself as RW1; whereas the respondent herein examined herself as PW1. In their evidence each of them denied allegations made against each other and rather espoused their cause.

5. The respondent as PW1 reiterated the averments made in her pleadings and deposed about demand of diamond ring, an Ascent car by the appellant and his family members. She deposed that on March 17, 2004 they shifted to District Kinnaur, Himachal Pradesh, where appellant was posted as an Assistant Teacher and that he took all her belongings; did not give her pocket money; used to lock her in house while going to his job; beat her mercilessly; used to boast about his relationship with other ladies etc. She further deposed that on April 17, 2004 she came to Delhi to appear in an examination and while returning to District Kinnaur on May 01, 2004, she constantly was vomiting in the bus but the appellant sat on another seat and did not even ask her for any medicine or tea.

6. The respondent also deposed that appellant used to cast

aspersions on her character and used to remark that she looks like mother of two kids and definitely had physical relations with someone. He used to comment that she is worst than whore. The respondent also deposed that her father purchased her a LIG flat at Sector 2, Rohini for ₹ 6.40 Lac, which they sold and then purchased a flat at Dwarka in the joint names of the appellant and the respondent and even at that time her father contributed ₹2.60 Lac. However, the appellant did not return the money to her father.

7. She further deposed that both of them got employed in Delhi and shifted to rented accommodation in Gali No.2, Saad Nagar, New Delhi and stayed there till July 31, 2006, when he left her to stay with his parents at Village Jonti. During their stay in such rented house the appellant levelled unfounded allegations on her character; abused her; surpassed all limits of decency and often threatened to kill her. Various meetings of elders were held but the appellant did not mend his ways and as a last resort to save her marriage, she shifted to a flat at Dwarka with him on November 11, 2006, but only after lodging a report at PP Mangla Puri, Delhi. (The report, however is not on record). Even during her stay in Dwarka, the appellant would leave her alone for days together; used to take her salary; call her *Awara*, prostitute etc. Even on April 25, 2009, the appellant assaulted her and when she called her father, grappled with him too. She spent that night outside in a *verandah*. PW1 further deposed that on August 07,

2009 the appellant packed his bags, took their son to Village Jonti, Delhi; returned that night; meted same treatment to her and finally left her alone on August 08, 2009. The respondent stayed for sometime at Dwarka and then shifted to her parents' house.

8. The respondent further deposed that it is no longer possible for her to live in the company of the appellant and she apprehend danger to her health and personal safety, the appellant though later gave an apology letter dated June 18, 2010, Mark A to the Assistant Commissioner of Police, CAW Cell, Dwarka, New Delhi to save his skin. In cross-examination she though admitted that the appellant herein would take her for outings on LTC tours but denied suggestions put to her on all crucial issues viz. of beating her, casting aspersions, not repaying money to her father, raising demand of dowry or salary etc. The respondent admitted that in the year 2011 she did attend the marriage of her *devar* but because of the above reasons.

9. The appellant examined himself as RW1 and deposed that there were no such issues which could not have been sorted out between him and his wife and that the respondent and her family had been torturing him. He deposed that he never had beaten his wife nor he ever casted aspersions nor ever demanded dowry etc. He deposed that as he was suffering from heart decease and as the respondent was not inclined to stay with his parents the dispute arose. He also deposed

that the respondent always doubted that he was involved with Ms.Mridula, a teacher, but she was like an elder sister to him. He denied taking any money from his father-in-law for purchasing property. He further deposed that on April 24, 2009, when he failed to attend the *Tehrvi* of the maternal grandmother of his wife, her parents came to his flat, assaulted him mercilessly and he lodged a complaint to police. However, he failed to prove it on record. Nevertheless, he admitted of writing a letter Mark A to Assistant Commissioner of Police, CAW Cell, Sector 9, Dwarka, Delhi, though alleged that he had written it only to pacify the ego of his wife and to save the marriage between them. In his cross-examination he admitted having not filed any document relating to his heart ailment; and also that he did not file any complaint qua any coercion while writing an apology letter Mark A or of being assaulted mercilessly by respondent's father.

10. In the light of the facts stated above, we would now like to read letter Mark A which is as under:-

(Translation)

*“To
The ACP
CAW Cell
Sector 9 Dwarka,
Subject : Compromise Letter
Respected Sir,
In order to compromise with my wife I*

am ready to submit the following undertakings:-

1 I apologize for all my mistakes. I have beaten my wife, but now I would never raise my hand on her.

2 I had casted aspersions on my wife's character. I am sorry for the same and would not do so in future.

3 I am ready to return the money of my father- in-law after selling my flat.

4 I would not never raise any demand for any goods or money from my wife.

5 I would never refuse my wife to visit her parent's or her relatives.

6 I would not take a single penny from the salary of my wife.

I hope that my wife would be satisfied with above and our child would get the company and love of both his parents.

Thanking you in anticipation.

Yours faithfully

Dated: 18.06.10

*Sd/-
(Rajiv) ”*

11. In the apology letter Mark A, as reproduced above, appellant categorically admitted that he would never beat his wife in future nor would make frivolous allegations upon her character; would return the money he took from his father-in-law; would never demand money or goods from his wife and would also not ask for his wife's salary. The letter Mark A is in absolute consonance with the

allegations levelled against him by the respondent in her divorce petition also in her deposition as PW1, and hence it was so relied upon by the learned Judge, Family Court, Dwarka, Delhi to be one of the cogent grounds for divorce granted by him on June 08, 2016 in HMA No.463/09.

12. Though, the appellant argued that the apology letter Mark A was written by him only to satisfy false ego of his wife and to save their marriage, but he did not produce any witness that he was ever coerced to write Mark A. On the contrary, during his cross-examination recorded on February 14, 2014, he admitted the presence of his father in CAW Cell by saying that his father also gave statement to the CAW Cell and that he too was pressurised. Strangely enough, his father did not enter the witness box to support his son, the appellant on this issue.

13. Thus, the explanation given by the appellant is not worthy of any credence especially in the absence of deposition of his own father.

14. On the contrary the cross-examination of the respondent herein rather revealed that such letter Mark A of dated June 18, 2010 was written voluntarily by the appellant and that she never compelled him to write such letter or that he ever made a verbatim copy of her alleged hand written note.

15. On bare reading of the letter Mark A, admittedly to be in the

hand writing of the appellant herein, we are of the view that no prudent man would write such an apology for the acts he never committed. At least he would never admit beatings to his wife; snatching her salary, or making dowry demands, lest these assertions have an element of truth or feeling of remorse. Hence, the argument put forth by the learned counsel for appellant to wriggle out of his admission by saying that such writing was merely to satisfy the ego of the respondent herein appears to be frivolous. The contents of the letter Mark A rather proves the case of the respondent.

16. Additionally, we also take note of the fact that the appellant had entered into a settlement with the respondent, duly recorded in their joint statement dated May 24, 2014, they made before the learned Judge, Family Court, Dwarka, Delhi in petition HMA No.337/2014 under Section 13 (B)(1) of the HM Act. The terms and conditions of such settlement, per Settlement Deed (Ex.C-4) are as under:-

“1. It has been mutually agreed between us that petitioner no.1 shall not claim any monetary benefit from petitioner No.2 towards the full and final settlement amount including permanent alimony, maintenance (past, present and future) or any other amount claimed under any other head including jewellery/articles/ istridhan/ goods etc.

2. It has been mutually agreed between us that the custody of the child namely Kartikya shall remain with the petitioner No.2/father and petitioner No.1/mother has no visitation rights to meet the child.

3. *It has been mutually agreed between us that petitioner No.1 shall withdraw her case pending under Section 13(1) (ia) bearing HMA No.463/09 and if petitioner No.2 fails in co-operating in tendering his statement during the second motion in that event the said petition will be resorted to its original stage/position.*

4. *It has been further mutually agreed between us that petitioner No.1 shall withdraw her case pending under Domestic Violence Act, within a week after recording of statement of second motion.*

5. *It has been further mutually agreed between us that petitioner No.1 shall co-operate in quashing of FIR bearing no.195/10, PS Palam within a month after recording of statement of second motion.*

6. *It has been further mutually agreed between us that we shall withdraw our all respective cases filed against each other or family members, if any.*

7. *That the above settlement is arrived at between the parties out of their free will and without any coercion, fraud and force from any corner.*

8. *We have also agreed that we shall not file any sort of litigation in future relating to this marriage.*

9. *Both the parties will be bound by the terms and conditions of the mutual consent petition and settlement deed Ex.C-4.”*

17. On the basis of the settlement incorporated in the joint statement, their petition under Section 13 (B-1) of the HM Act was allowed by the learned Family Judge, Dwarka Court, New Delhi on May 24, 2014 and they both were advised to make efforts for reconciliation or revival of their matrimonial home and in case they

fail or wish to part ways permanently, they may approach for dissolution of their marriage, per Section 13 (B-2) of the HM Act on the basis of mutual consent.

18. Admittedly, the petition under Section 13 (B-2) of the HM Act was also filed before the learned Judge, Family Court, Dwarka, Delhi, but when it came up for hearing on October 29, 2015, the appellant herein rather made a statement that he does not intend to proceed further in the petition and hence withdrew his consent for divorce by mutual consent. The said petition, thus, was held to be non-maintainable and was dismissed as withdrawn.

19. It was a unilateral withdrawal of the consent by the appellant, despite the fact that the respondent was always willing to abide by the terms and conditions of the Settlement Deed dated May 24, 2014 Ex.C-4, entered in the joint statement recorded on the same day and the respondent herein did not claim permanent alimony/maintenance or the custody of her son. The second motion, though was filed just before the expiry of 18 months statutory period, but the appellant despite enjoying the benefits of settlement, put the respondent in a disadvantageous position and caused her mental cruelty and financial losses. An order dated January 23, 2016, of the learned Family Court proves the respondents' voluntarily giving up of her claim of alimony and that she honoured her commitment arising out of the settlement dated May 24, 2014. Thus, the withdrawal of consent by the appellant

herein without any sufficient or just cause, in the circumstances explained above, rather added to the cruelty meted to her.

20. Though the appellant asserted his right to withdraw his consent at any time prior to the divorce being granted by mutual consent, but the fact is where he has entered into a settlement with his wife and there being no allegation that he ever signed such settlement due to force, fraud or under influence and also when the respondent had acted upon such settlement by withdrawing her divorce petition; foresaking her claim to custody of their son and of her permanent alimony then the withdrawal of consent would have a different connotation as it adds to the misery of the respondent.

21. We also note that a Complaint case viz. No.1007/1/2015 under Section 12 of the Domestic Violence Act, filed by the respondent against the appellant herein also was allowed vide order dated May 31, 2016 of the Court of learned MM, Delhi wherein the appellant was directed not to commit any acts of domestic violence; not to contact the respondent directly and also to pay her the compensation of ₹ 10,000/- which he had not paid till date. Admittedly, this order dated May 31, 2016 is not challenged uptill now and had attained the finality.

22. Thus, we are of the considered opinion that there is no merit in this appeal, primarily, on two counts viz firstly, the unilateral withdrawal of consent by the appellant which rather lead to an

anomalous situation where the respondent wife, a law-abiding lady, adhering to the terms and conditions of settlement, dated May 24, 2014 was left high and dry with a dead marriage and whereas the appellant husband kept on enjoying his freedom without paying any maintenance, alimony etc. and; secondly, the apology letter Mark A which rather proves the contentions of the respondent that the appellant used to beat her; did not allow her to visit her home; cast aspersions upon her character; snatched her salary; took money from her father, which he did not return and rather asked for dowry, thus committed cruelty upon her. We agree with the learned Judge, Family court, Dwarka, on both these counts. The allowing of complaint case No.1007/1/2015 further confirms the case of the respondent.

23. Here we would like to refer to (2007) 4 SCC 511 Samar Ghosh vs. Jaya Ghosh wherein it was held that there can never be any straight jacket formula or fixed parameters for determining the mental cruelty in matrimonial matters. If on consideration of complete matrimonial life of the parties, actual mental pain, agony and suffering as would not make possible for the parties to live with each other would come within the broad parameter of mental cruelty. It was further held that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage rather becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such

cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

24. Moreso, irretrievable breakdown of marriage is though not a ground for divorce, but per judgments reported as 2006 (2) Mh. LJ 307 Madhvi Ramesh Dudani vs. Ramesh K Dudani; and 2007 (4) KHC 807 Shrikumar V. Unnithan vs. Manju K Nair, the concept of cruelty has been blended by the Court with irretrievable breakdown of marriage.

25. In MAT.APP.(FC) 36/2014 decided by this Court on October 21, 2016 Sandhya Kumari v. Manish Kumar, it was held that where it is not possible for the husband and wife to live together except by indulgence in mutual bickering targeting each other mentally, insistence by one to retain matrimonial bond would be a relevant factor to decide on the issue of cruelty, for the reason the obvious intention of said spouse to continue with the marriage is not to enjoy the bliss thereof, but to torment and traumatize each other.

26. Similar is the situation in the present case, the parties are living separately since the year 2009 and considering the conduct of the parties, there seems to be no possibility of their joining together so to insist to retain this matrimonial bond in the circumstances stated above would rather be putting the respondent under intense mental cruelty.

27. Thus, the totality of the evidence, establishes the mental cruelty upon the respondent by the appellant herein and as such, there is no infirmity in the impugned judgment passed by learned Judge, Family Court, Dwarka, Delhi. The appeal is thus dismissed.

28. No costs.

(YOGESH KHANNA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

December 08, 2016
M/VLD