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

% *Date of Decision : November 22, 2016*

+ **MAT. APP. (F.C.) 6/2016**

MANOJ KUMAR Appellant

Represented by: Mr.Abdul Sattar, Advocate
with Appellant in person

versus

PINKI RANI Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J. (Oral)

1. The appeal has reached for hearing.
2. None has appeared for the respondent.
3. Heard learned counsel for the appellant and perused the record of the learned Judge, Family Court.
4. Marriage between the appellant and the respondent was solemnized on February 19, 1995. A male child was born to the couple on November 27, 1995.
5. There were various issues between the parties evidenced by the fact that the appellant filed a petition seeking annulment of the marriage on the ground of cruelty in the year 1996. It was registered as HMA case No.239/1996.
6. The appellant withdrew the same on September 01, 2001. Reason

why the appellant did so has not been pleaded in the second petition seeking annulment of the marriage on ground of cruelty, which has resulted in the impugned order being passed. But, the reason flows from appellant's deposition in the said proceedings, being that, assurance by the respondent to amicably live with him.

7. As per the pleadings in the present petition, the respondent never joined consortium with the appellant after she returned to her parental house in the year 1995. Meaning thereby, the assurance given to him in the year 2001 that she would re-join the union was not complied with by the respondent. The second petition seeking annulment of marriage was therefore filed in the year 2009.

8. Various acts of omission and commission by the respondent, constituting mental cruelty, have been pleaded and we do not intend to enlist all of them for the reason in matrimonial cases we find that both couple have a tendency to exaggerate the facts.

9. We thus look at causes which emerge with clarity in the evidence.

10. In the written statement filed by her, the reason to withdraw from the consortium pleaded by the respondent was dowry related harassment which resulted in FIR No.156/1999 being registered.

11. In respect of said FIR which was registered for offences punishable under Sections 498A/406 IPC read with Section 4 of the Dowry Prohibition Act, we find that vide judgment dated August 29, 2012, proved at the trial in the divorce proceedings as Ex. PW-1/G, the appellant has been acquitted.

12. We do not intend to make a catalogue of the case law, but suffice it to note that the consistent view taken by all Courts in India including the Supreme Court is that an allegation of dowry harassment made by a wife if

not established would by itself constitute an act of cruelty.

13. We have independently perused the evidence led in the instant case before the Matrimonial Court and find that the respondent has not made good the charge of being ill-treated in her matrimonial house on account of dowry.

14. It means that the reason to withdraw from the consortium, as projected by the respondent, is false.

15. Secondly, we find that in the written statement filed, the respondent pleaded that the appellant was in an illicit relationship with one Ms. 'X' (Name not written to maintain the integrity of the lady).

16. The impugned judgment holds that the respondent has failed to establish the charge of illegal relationship with the lady concerned. Surprisingly, in paragraph 52 of the impugned judgment, the learned Judge, Family Court has noted that this shall have no effect on the observations made in the earlier part of the judgment where the petitioner himself by way of positive evidence has failed to prove his own case.

17. Nothing can be more painful to a spouse other than the allegations of adultery made by the opposite spouse. It is settled law that a charge of adultery is a serious charge and if not proved would constitute cruelty. Thus, the evidence on record establishes two acts of cruelty by the respondent; the first levelling false allegations of adultery and the second of harassing the respondent on account of dowry demand.

18. Withdrawal from the consortium without a cause would also be an act of cruelty.

19. In the circumstances, noting that since the year 1995 the couple have not lived together and the child born is 21 years of age, the marriage being

irrevocably broken, cruelty being established, we allow the appeal and set aside the impugned judgment dated October 03, 2015 in HMA No. 534/2011 filed by the appellant. Marriage between the appellant and the respondent is dissolved by granting a decree for divorce on grounds of cruelty as well as desertion.

20. No costs.

21. TCR be returned.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

NOVEMBER 22, 2016

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