

**FAO-M-195 of 2010 &
X-Objections-62-CII of 2010**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-M-195 of 2010 &
X-Objections-62-CII of 2010**

DATE OF DECISION: APRIL 6, 2017

DINESH KOTWAL

...APPELLANT

VERSUS

ANJU KOTWAL

...RESPONDENT/X-OBJECTOR

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.**

**PRESENT: MR. RAMAN MAHAJAN, ADVOCATE
FOR THE APPELLANT.**

**MR. RAJIV KATARIA, ADVOCATE FOR THE
RESPONDENT/X-OBJECTOR.**

M. JEYAPPAUL, J.

1. Appellant-husband Dinesh Kotwal has challenged the dismissal of his petition filed under Section 13 of the Hindu Marriage Act, 1955 seeking divorce on the grounds of desertion and cruelty. The respondent-wife Anju Kotwal has challenged in her X-objections the rejection of her application praying for dismissal of the petition filed by her husband, the appellant herein, on the ground that cruelty alleged by her husband had been condoned by him during the pendency of proceedings.

2. The brief facts of the petition filed by the appellant are that the marriage of the appellant with the respondent was solemnized in the month of March, 1981 at Bhopal as per Hindu rites and ceremonies. They were blessed with one male child on 15.1.1982 and a female child on 15.12.1983. Though

the appellant took care of the respondent, the attitude of the respondent was indifferent and arrogant towards the appellant. The respondent had developed hatred towards the appellant and his parents and had been successful in isolating the appellant from his parents. The respondent had been very cunning and selfish. She used to pick up quarrels without any rhyme or reason. In the month of May, 1988, the appellant was transferred to Jodhpur. But the respondent refused to accompany him. The respondent is working as Reiki Healer. She is of dubious and vicious nature. The appellant visited his house at Panchkula during the month of September, 2000. The behaviour of the respondent was abnormal and arrogant and as a result of which the appellant had to abandon his own house and spend the night at railway station before returning to Jodhpur. The respondent came along with daughter born out of the wedlock to Jodhpur and created violent scenes. Even after the appellant was transferred to Chandigarh in the month of May 2001, the respondent did not give any attention to the appellant. She, in fact, completely renounced the world and is dedicated herself to reiki. For all the above reasons the appellant has sought for divorce.

3. The brief averments made by the respondent-wife in the written statement are that she was always respectable to the appellant and his parents. She never committed cruelty as alleged by the appellant. It was only the appellant who committed acts of cruelty. She had been serving and looking after the appellant to the best of her capability. The appellant had not taken his family to Jodhpur on the ground that he did not have a good accommodation at Jodhpur. The respondent had learnt reiki for her own

peace, but she never worked as reiki healer. The appellant used to treat the respondent and her children as intruders as and when they visited Jodhpur. On 25.1.2001, when the respondent along with her daughter reached Jodhpur, the appellant did not allow them to enter into his house. They were helped by a neighbour who called the police. The appellant informed the respondent that he wanted to remarry and appealed to the respondent to agree for mutual divorce. He gave some photographs of a lady whom he wanted to remarry. As the respondent did not agree for the proposal of the appellant, she was severely beaten by the appellant. Contending that the appellant had come out with false and frivolous allegations, the respondent prayed for dismissal of the petition filed under Section 13 of the Hindu Marriage Act.

4. The respondent filed an application during the pendency of the petition filed by the appellant under Section 13 of the Hindu Marriage Act praying for dismissal of the petition for the simple reason that the appellant had condoned the alleged cruelty. The appellant rejoined the respondent on 22.7.2007. The appellant and the respondent proceeded to Bombay, Shirdi, Alora and Goa from 16.9.2008 to 24.9.2008. The respondent joined the appellant at Lucknow where he had been transferred and lived with him for about 4 days. It was contended by the respondent that the acts of cruelty alleged by the appellant against the respondent had been condoned by him. Therefore, the petition filed under Section 13 of the Hindu Marriage Act deserves to be dismissed.

5. The appellant submitted a reply to the above application disputing the core allegation that he rejoined the respondent and lived with

her happily right from 22.7.2007.

6. On the side of the appellant, he was examined as PW1 and one Dalbir Singh as PW2 and Bihar Lal, Clerk as PW3. The respondent had examined herself as RW1.

7. The trial Court having analyzed the entire evidence on record came to the conclusion that the appellant had come out with general allegation of cruelty. No specific incident of cruelty was averred to and established by the appellant. Though the trial Court found that there was no substance in the application filed by the respondent praying for dismissal of the petition filed by the appellant on the ground that he had condoned the act of cruelty, the trial Court dismissed the petition filed by the appellant as he failed to establish the grounds alleged.

8. We heard the elaborate submissions made by learned counsel appearing for the appellant and the counsel appearing for the respondent.

9. It has been alleged by the appellant that the attitude of the respondent was indifferent and arrogant towards him. The outcome of the alleged indifferent attitude and the arrogance of the respondent was not at all detailed in the petition, nor was any evidence let-in with respect thereto. There was no evidence as to what sort of hatred was developed by the respondent towards the appellant. No details of cunning and selfish nature of the respondent had been portrayed by the appellant. It was alleged that the respondent used to pick up quarrels without any rhyme or reason. Petty quarrels in the family are the direct outcome of the wear and tear in the matrimonial life. But the same cannot be a ground for divorce.

10. There is no evidence to establish that the respondent is practicing as a reiki healer, in spite of the fact that the respondent disputed such allegation. The respondent has rightly took a stand that she had learnt reiki to acquire peace of mind. Unless it is established that a spouse has renounced the world, mere allegation that a spouse has learnt reiki cannot at all be a ground for divorce.

11. Therefore, on the basis of general allegations made by the appellant against the respondent as regards cruelty and desertion, the appellant is not entitled to a decree of divorce as rightly held by the learned trial Court.

12. Learned counsel appearing for the appellant vehemently submitted that the allegation made in the written statement that the appellant had expressed his desire to marry another lady showing a photograph would amount to cruelty, as it had caused pain and agony to the appellant. Further, referring to the averments in the application filed by the appellant seeking amendment of the pleadings which was dismissed by the trial Court and ultimately dismissed by the revisional Court as well the application filed praying for dismissal of the petition under Section 13 of the Hindu Marriage Act on the ground that the appellant had condoned the cruelty, he submitted that the respondent has specifically alleged without any basis that the appellant had developed extra marital relationship with one Lillu Chaudhary which would definitely amount to cruelty, as it has caused pain and agony to the appellant. Despite the fact that there was no specific issue framed by the trial Court as to whether the appellant is entitled to divorce on the allegation

of extra marital relationship levelled by the respondent, inasmuch as the parties have let-in evidence to establish such an allegation and controvert the same through their respective evidence, the trial Court should have granted the relief of divorce sought for by the appellant.

13. *Per contra*, learned counsel for the respondent referring to a decision of the Division Bench of this Court submitted that unless the appellant amended the pleadings seeking divorce on the ground that the respondent had alleged extra marital relationship which caused cruelty to him and the trial Court framed relevant issues permitting the parties to lead evidence relating thereto, the Court cannot jump to a conclusion that there was cruelty on account of the allegation made by the respondent as regards the extra marital relationship of the appellant in the application filed during the pendency of the main petition under Section 13 of the Hindu Marriage Act. It is his further submission that the respondent had, in fact, adduced evidence to substantiate her allegation that the appellant had developed close intimacy with a lady. Further, it is his submission that the petition filed by the appellant under Section 13 of the Hindu Marriage Act on the ground of cruelty should have been thrown out based on the application filed by the respondent giving graphic account of the reunion of the parties which would amount to condonation of cruelty, if any.

14. In **Paras Ram vs. Kamlesh, 1982 AIR(Punjab) 60**, the Division Bench of this Court has held as follows:-

“13. Once the aforesaid conclusion has been arrived at that a mere allegation of adultery without more does not amount to

legal cruelty. It is manifest that in order to succeed on this ground the petitioner must establish the falsity of such an allegation. The burden of proof, however, being a negative burden would in the initial stage be a light one. It would, therefore, become necessary that the petitioner in such a situation would have to amend the petition and plead the false allegation of adultery amounting to cruelty as a specific ground for matrimonial relief. It is only when this has been made a ground of attack that the petitioner can possibly take advantage of such an allegation, if proved false. Unless the truth or falsity of such allegation made in the written statement is put to trial in the manner aforesaid and it is established one way or the other no legal consequences can flow therefrom for the purpose of Section 13(1)(1a) of the Act. It is, therefore, necessary in such a situation that not only the requisite amendment should be made but a specific and clear issue with regard thereto be framed so that the parties should go to trial thereon with their eyes open. We cannot but view with disfavour the framing of rather omnibus issue in matrimonial matters as appears to be the situation in the solitary issue framed in his case.”

15. That was a case where the respondent-wife filed a written statement and subsequently sought amendment thereof alleging specifically that the appellant-husband had illicit relations with some women in the village. It was argued based on such averment in the written statement that

the allegation of extra martial relationship made by the wife in the written statement would *per se* amount to legal cruelty. But the Court in the above decision had held that factually true allegation of adultery would never amount to cruelty. But this Court has observed that the appellant would have to amend the petition in the light of the allegations made in the written statement by the respondent and plead for the relief of divorce on the allegation of adultery amounting to cruelty. After the requisite amendment was made with the permission of the Court, specific issue with regard thereto will have to be framed to enable the parties to lead evidence touching upon the above specific issue.

16. Citing the following decisions of the Hon'ble Supreme Court, it was argued by learned counsel appearing for the respondent that subsequent events shall be taken into consideration to arrive at the conclusion that cruelty was committed. There was no necessity for the appellant to take steps to amend the petition and persuade the Court to formulate necessary issues, as held by the Division Bench of this Court.

17. In *Dr. (Mrs.) Malathi Ravi, M.D. vs. Dr. B.D. Ravi, M.D., 2014 (3) RCR (Civil) 621*, it has been held by the Hon'ble Supreme Court as follows:-

“23. From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. Having held that, the question would be whether a decree for divorce on the ground of

mental cruelty can be granted. We have already opined that the ground of desertion has not been proved. Having not accepted the ground of desertion, the two issues that remain for consideration whether the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive. Learned counsel for the appellant has urged with vehemence that when dissolution of marriage was sought on the ground of desertion alone, the issue of mental cruelty can neither be raised nor can be addressed to. Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the respondent-husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or we should ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. In our considered opinion the issue of mental cruelty should be addressed to by this Court for the sake of doing complete justice. We think, it is the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is

perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect.”

18. In the above case, it has been categorically held by the Hon'ble Supreme Court that subsequent events which are established on the basis of non-disputed materials brought on record can be taken into consideration by the Court. The Court can ignore the technical plea that, as per the procedure, amendment should have been introduced with regard to the subsequent events in the pleadings of the parties. The Court is well within its rights to consider the pleadings and the evidence brought on record as well as the subsequent facts and pass a judgement.

19. In *Vishwanath vs. San. Sarla Vishwanath Agrawal, JT 2012(6) SC 62*, it has been observed as follows:-

“36. Presently to the subsequent events. The courts below have opined that the publication of notice in the daily “Lokmat” and the occurrence that took place on 11.10.1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujrathi. We have

already referred to the second incident and expressed the view that the said incident does not establish that there was an extra marital relationship between Neeta and the appellant. We have referred to the said incident as we are of the considered opinion that the subsequent events can be taken into consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in the case of A. Jayachandra (supra) :-

“The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.”

20. A plea was set up in the above case which had arisen out of the matrimonial dispute between the spouses that an event which took place subsequent to the filing of the petition for divorce shall not be considered. But the Hon'ble Supreme Court was firm in its view that acts subsequent to the filing of the petition can be taken into consideration. When the plea of condonation of cruelty can be permitted to be taken up during the course of proceedings, subsequent event which may amount to cruelty can also be permitted to be taken up by the spouse concerned.

21. In Nedunuri Kameswaramma vs. Sampati Subba Rao, 1963 AIR (SC) 884, it has been held by the Hon'ble Supreme Court as follows:-

“The appellant had already pleaded that this was jeroyti land, in which a pasta in favour of her predecessors existed, and had

teased the suit on a kadapa, which showed a sub-tenancy. It was the respondent who had pleaded that this was a Dharmila inam and not jeroyti land, and that he was in possession of the kudiwaram rights though his predecessors for over a hundred years, and had become an occupancy tenant. Though the appellant had not mentioned a Karnikam service inam, parties well understood that the two cases opposed to each other were of Dharmila Sarvaumbala inam as against a Karnikam service inam. The evidence which has been led in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case.”

22. In the above case, the parties having well understood the pleadings, let in evidence touching upon the core issue involved in the case. Under such circumstances, it was held by the Hon'ble Supreme Court that failure on the part of the trial Court to frame a particular issue would not prove fatal to the case.

23. In Sayed Akhtar vs. Abdul Ahad, 2003(2) R.C.R. (Rent) 213, it has been observed by the Hon'ble Supreme Court as follows:-