

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

% *Judgment Reserved on : January 31, 2017*
Judgment Delivered on : February 06, 2017

+ **FAO 366/2012**

NAVRATAN BAID

.....Appellant

Represented by: Ms.Mala Narayan, Advocate with
Mr.Vijay Shankar and
Mr.Siddharth Menon, Advocates

versus

NEETU BAID

..... Respondent

Represented by: Mr.Arun, Aggarwal, Advocate
with Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J.

1. Petition filed by the appellant seeking annulment of the marriage between the appellant and the respondent on ground of desertion and cruelty has been dismissed by the learned Judge Family Court vide impugned judgment and decree dated March 12, 2012. We note at the outset that in the heading of the judgment the date of pronouncement is recorded as March 12, 2011, but while signing the decision the date mentioned is March 12, 2012.

2. The parties were married on December 04, 1992 and were blessed with a son on November 25, 1993 and a daughter on August 19, 1996. The children are major as of today and are with the appellant.

3. Case pleaded by the appellant was that one Bachraji Chochoraria, a maternal uncle of the respondent brought the two families to discuss the matrimonial alliance. The marriage never took off because the respondent always remained aloof and haughty with the appellant and his family. In March, 1993, for no apparent cause or reason the respondent tried to commit suicide by hanging herself. Her maternal uncle Bachraji Chochoraria was informed. Before him the respondent simply cried without stating the reason for her action. That on flimsy excuses the respondent used to leave the matrimonial house at Kolkata and stay with her parents at Delhi. She would break her bangles, a most inauspicious thing for a Hindu wife. She would bang the door. Shout and yell in the house for no apparent reason. When she was in the family way in the year 1993, she left for Delhi where the son was born on November 25, 1993, information whereof was not given to the appellant and he learnt of being blessed with a son when he rang up the respondent from Kolkata to enquire about her health. The appellant and his family members came to Delhi but were given a cold reception in the parental house of the respondent. To his surprise the appellant saw the respondent not breast feeding the new born baby and giving him buffalo milk. In spite of requests the respondent did not come to Kolkata with the baby boy. She did not come to her matrimonial house till April, 1994, when appellant came to Delhi only to find the baby boy admitted at St. Stephens Hospital. That the respondent had no respect for her in-laws. Appellant's mother being bed ridden was not even given a glass of water by the respondent. That the respondent had a violent temper. That the appellant had to shift from the rented flat which was the matrimonial house of the parties on December 06, 2005. On December 23, 2005 the appellant was compelled to take shelter at his sister's residence. On March 24, 2006, in the

presence of respectable persons, a mutual agreement was executed as per which the appellant undertook to bear all expenses for the children and the respondent with an understanding that if within a year of the agreement the parties could not resolve the pending issues they would agree to a divorce by mutual consent. On May 12, 2007 the respondent left Kolkata with the children. The parties could not patch up.

4. In the written statement filed by her, the respondent denied the allegations made against her. Admitting that the appellant walked out of the matrimonial house on December 23, 2005, the respondent claims this to be a deliberate act intended to leave respondent and her children at the mercy of God. As per the respondent, the appellant was under the influence of his parents and it was they who used to dictate his life. To quote: *‘even the petitioner who claimed himself to be educated person, in fact behaved like a uncultured, uncivilized and child like person much under the influence of his parents, in the past 15 years of matrimonial life and still indulged in thumb sucking like a child.’* As per the respondent, the family of the appellant did not want a daughter-in-law but desired a domestic servant to look after the ailing mother of the appellant and her two aged parents. From the third day after the marriage the respondent was asked to mop the floor of the matrimonial house. She was taunted by the appellant after marriage that her family was not up to the standard of the appellant’s family. She has pleaded that *‘the petitioner is so cruel, irritable and violent in nature and appears to be suffering from some complex or psychiatric problem and has little or no respect for the respondent.’* Denying having attempted to commit suicide in March, 1993, respondent pleads that in April, 1993, at the marriage of a relative she saw the appellant roaming with another girl and when she enquired from the appellant about the girl he shouted at her and abused her. She

subsequently learnt that the appellant was having several contacts with other women who used to contact him on the phone. The day next i.e. April 05, 1993, her in-laws contacted her maternal uncle and made baseless allegations of her suffering from some mental disease. She was compelled to stay with her maternal uncle for some time and on the insistence of her father-in-law, to buy peace and returned to her matrimonial house she gave in writing that if anything happens to her, neither the appellant nor his family members would be responsible. She denied not breast feeding the infant son. She pleaded that when she got pregnant for a second time in the year 1995, the appellant gave her money and told her to get the pregnancy terminated. She had no alternative but to get the pregnancy terminated and had to visit the doctor herself with neither appellant nor any member of the family accompanying her. Admitting that her husband left the matrimonial house on December 23, 2005, the respondent pleaded that this was as per plan. Being the end of the month, there was hardly any ration in the house. For two days the neighbours provided food. Appellant threatened to stop payment of the electricity bills and even the school fee. The respondent explains the compromise executed by her on March 24, 2006 as her compulsion because under it she was assured at least ₹10,000/- per month plus a roof over her head. As per her, things became unmanageable with the meager money she had and thus she was compelled to leave Kolkata and join her parents at Delhi along with the two children.

5. In the rejoinder, the appellant denied the counter allegations made against him and with respect to the pleadings of the respondent that when she became pregnant in 1995 she was forced to terminate the pregnancy, he pleaded that the appellant was shocked to learn of said fact and that it constituted cruelty because respondent terminated the pregnancy without

his consent and that he was not aware of said fact till the respondent pleaded so in her written statement.

6. The pleadings of the parties show that each alleges the other to be cold in the matrimonial bond and indifferent to the feelings of the other. The evidence led by the parties is in harmony with their respective versions and we find the cross-examination conducted by learned counsel for the parties not up to the mark and thus we look to certain critical features concerning the matrimonial life of the parties which emerges from the evidence.

7. The lack of warmth by the appellant, pleaded by the respondent is on account of he being under the control of his parents and being more interested in other girls. In her deposition the respondent has stated on oath :-

“On 4-4-1993 when I went to attend marriage of my relative, I saw my husband roaming with another girl and when I enquired about the said girl, he started shouting, abusing and threatening me. When I brought this fact to the notice of my mother-in-law and other family members they all started supporting my husband. Subsequently I came to know that my husband is having contacts with other women since the phone calls used to come from different women. Even sometimes children have picked up the calls and they know about it.”

8. She was subjected to cross-examination on this assertion made by her. Relevant extracts of her statements during cross-examination are:-

“I do not know the name, address and description of the girl seen by me on 04.04.1993, who was roaming with my husband. I had no talk with that girl. I had never seen that girl thereafter. The said girl did not meet on 04.04.1993. I had not disclosed about that girl to anyone. I attended the phone calls of the girls at my in-laws house. I attended two phone calls of those girls on the mobile phone of my husband in the same night. I had read the phone number. I

tried to contact on the phone number from which I received the phone calls at the mobile phone of my husband. I tried to contract that girl on the next day from the landline installed at the residence of my in-laws house. I do not remember that phone number but the same must be written in the diary. I do not remember in which diary I noted down that number. Whenever any phone call is received making inquiries about my husband, once the said phone was picked up by the children. I do not remember the year when that phone was picked up. It is wrong to suggest that my husband was not roaming with that girl on 04.04.1993 or that children have not picked up the calls. I came to know from the phone calls which I received twice that my husband had contacts with other girl. The phone calls received by me was from the same girl. The phone calls received by me were one after the another within a very short interval. I inquired from that girl about her name and address and purpose. She had not disclosed her name but gave the address. She gave me the purpose for calling as her grandmother was ill for which she required financial assistant from my husband. It is wrong to suggest that the petitioner was not having contacts with other girls.”

9. The discussion of the evidence regarding the respondent alleging that the appellant was interested more in other girls and less in him, an allegation which falls far short of a plea of adulterous relationship, but material enough to decide the strange matrimonial relationship between the parties, is in paragraph 58 of the impugned decision. It reads as under:-

“58. It is settled law that the acts of cruelty with dates and occasions and the places where such acts were committed must be specifically mentioned in the petition. The petitioner has, however, failed to do so. The petitioner has leveled different baseless allegations and has made no efforts to prove the same. The petitioner merely claimed that the respondent has leveled baseless allegations of his having extramarital affairs with different women/girls and this caused him cruelty. I am not in conformity with the

petitioner. It has come over the record that the petitioner himself had been indifferent towards the respondent. He did not offer any explanation to the respondent as to why the girls/women had been calling him. In such circumstances, she would have thought that the petitioner had extra-marital relations with other girls/women. It has, however, come over the record that she has not specified any girl or woman with whom the petitioner had alleged extra marital relations. In fact, she has been throughout ready and willing to join the company/society of the petitioner. If the respondent had any doubt/suspicion against the petitioner, that were due to his conduct only and he alone is responsible for the same. Moreover, the allegations made against the husband do not in terms of mental torture and agony necessarily have a similar impact. The reason why a false charge of unchastity against the wife is viewed seriously, is because of the high moral ground of which the fidelity and commitment of Hindu wives is placed towards the husbands. A false allegation of infidelity made against the husband can be treated as mental torture only if such torture is proved as a fact. The social milieu in which the parties live, their value system and outlook also assume importance in such a situation.”

10. The finding returned by the learned Judge Family Court against the appellant proceeds on the assumption that the testimony of the respondent proves that the appellant was in touch over the telephone with many women and this was the reason why he was indifferent towards the respondent. The learned Judge Family Court has held against the appellant on the ground that the appellant had to render an explanation as to why so many women were calling him. The learned Judge has held that the appellant had to remove the suspicion from the mind of his wife. A gender bias approach to the issue is revealed, when the learned Judge reasons that unchastity by a wife is to be viewed seriously because a higher level of fidelity is expected from a wife. An allegation of infidelity made against the husband cannot be treated as mental torture.

The approach by the learned Judge is totally perverse and contrary to law. An act of infidelity by either spouse, irrespective of the gender is on an equal footing and would cause mental cruelty to the other spouse with the same intensity. The assumption by the learned Judge that the respondent has established the appellant being in touch with many women is incorrect, for the reason it was an allegation made by the respondent against the appellant and she had to prove the same.

11. The respondent could not disclose the name of the girl or girls with whom the appellant, as claimed by her, used to speak over the telephone. She claims that she attended phone calls made by girls on the mobile phone of her husband. We find it unnatural for a husband to leave his mobile phone unattended in the night, to be accessed by the wife, if he is in touch with many girls over the mobile telephone. In her cross-examination, the respondent has said that same night she attended two phone calls received on the mobile phone of her husband which was made by girls. She claims to have noted the mobile number and tried to contact the maker of the call the next day from the landline. She could not recollect the number but claimed to have noted it in a diary. She claims that qua one phone call she enquired the name and address of the girl, who gave the address but not her name.

12. The deposition of the facts by the respondent is contrary to human conduct and does not satisfy the test of reason. Her deposition is not convincing and therefore the stand of the respondent that the marriage between the parties remained cold due to the appellant being more interested in other women is not established. The marriage between the parties was cold is the admitted case of both. The reason for the relations being cold as advanced by the respondent having failed, we turn to the

reasons advanced by the appellant to see whether they satisfy the test of reason.

13. As per the appellant, for no ostensible reason the respondent threatened to commit suicide using a rope in March, 1993 and this scared him and his parents who contacted the maternal uncle of the respondent in Kolkata who had to intervene. As per the respondent when she complained to her in-laws that her husband was roaming with a girl in the night of April 04, 1993, they supported her husband and the next day called her maternal uncle and asked him to take her with him, alleging that she was suffering from a mental disorder.

14. The petition for divorce was filed in the year 2007 and the parties were recalling events of the year 1993 when they deposed in the year 2010 and 2011. Obviously with passage of time events of the past would be somewhat hazy. That around March or April, 1993 the respondent was taken by her maternal uncle to his house in Kolkata is an admitted case of the parties. The unconvincing testimony of the respondent concerning her husband being in touch with many girls and the incident of April 04, 1993 twisted against her and the next day she being sent with her uncle, when weighed against the version and testimony of the appellant, that in March, 1993 she was sent to the house of her uncle, who was summoned to the matrimonial house when the respondent picked up a rope and threatened to hang herself probalizes the version of the appellant.

15. Unfortunately the impugned judgment does not even note the pleadings of the parties on this aspect of the matter and much less the evidence.

16. Though in the petition filed seeking divorce on ground of cruelty the appellant has not pleaded that the unilateral abortion undergone by the

respondent without his consent amounted to cruelty, but learned counsel for the appellant urged that the reason thereof was the lack of knowledge by the appellant of said fact which came to his notice when the respondent filed the written statement. As noted above, in the replication the appellant pleaded that he was shocked to learn of said fact and that this act of the respondent constituted mental cruelty because the respondent terminated the pregnancy without his consent. We find that the impugned judgment does not deal with this aspect of the matter and thus we proceed to note the pleadings of the respondent and the respective evidence on this fact in issue led by the parties.

17. In the written statement filed by the respondent she pleads :-

“It will be worthwhile to mention here that in 1995 the respondent got pregnant for the second time but the petitioner told the respondent that she had to go to her parent’s home at Delhi for delivery since his mother will not look after her. However when the respondent told the petitioner that her father has suffered losses and parents are not in a position to afford the delivery expenses, the petitioner got annoyed and angry and pushed and slapped her and told the respondent to abort the child. The petitioner gave some money and told the respondent to go and get the pregnancy terminated. Under such circumstances when her husband was not even supported, the respondent was left with no other alternative than to get the pregnancy terminated much against her wishes and had to pass through mental agony and distress. Neither petitioner nor any family member even accompanied the respondent and she herself had to go to doctor for abortion and suffer for mental agony, distress and trauma.”

18. The appellant stated on oath that he did not know that his wife was pregnant in the year 1995 and denied in cross-examination that he or his family members forced her to undergo an abortion. In her deposition the

respondent deposed in support of the case pleaded by her in her written statement. During cross-examination she stated :-

“It is correct that the consent of the husband is required for abortion. However, if the doctor is known, no consent is required. No consent of my husband for the abortion was taken. My abortion took place in Watkins Nursing Home. No form was got filled by the doctor of that nursing home.”

19. The testimony of the respondent is not convincing. On the one hand she admits that consent of the husband was necessary for her to undergo the abortion and in the same breath she states that the consent of her husband was not taken. The date when the respondent underwent the abortion has not been pleaded by her nor the month of the abortion has come on record. The reason given by the respondent for she undertaking the abortion is the year 1995 in her pleadings, which have been noted above, is that the appellant told her to go to her parents' home at Delhi for delivery since his mother would not be able to look after her and she told the appellant that since her father had suffered losses he could not afford the expenses for the delivery and at that the appellant got annoyed, pushed her and slapped her and told her to undergo the abortion. It is against human conduct for a husband to force the wife to undergo an abortion on such a trivial issue. In this connection it is relevant to note that the second child, a daughter, was born to the couple on August 09, 1996 and this would mean that the respondent became pregnant somewhere towards the end of October, 1995 or early November, 1995. This fact leans in favour of the stand taken by the husband that there was no cause or reason for him to force his wife in 1995 to undergo the abortion.

20. The respective pleadings of the parties and their testimony throws light on their matrimonial life post 1996 till an event which took place in

December, 2005, shows that there was constant mutual bickering. Each has tried to paint the other black and we do not discuss the evidence on this aspect for the reason there is nothing in the cross-examination of either party which would guide us in any particular direction. Indeed, evidence of allegation and counter-allegation is a word of mouth against a word of mouth and it becomes very difficult to find out where the truth lies because the tendency in matrimonial disputes is to blow up incidents and that is why certain critical features concerning the matrimonial life which emerges from contemporaneous evidence becomes the sole guiding star for a Judge.

21. Ex.PW-1/A is a written memorandum signed by the couple, and six other persons : Chhagan Lal Baid, Chand Mal Baid, Rajender Sirchara, Manik Chand Setis, Surender Nahata and one Vijay Singh. The former three are the relatives of the appellant and the latter three are the relatives of the respondent. The written document records that due to unfortunate circumstances the couple are living separately since December 23, 2005, and a decision has been taken that the couple would live separately. Expenses for the education of the children will be borne by the husband. The company of the children shall be shared by both couple. It was agreed that the respondent would continue to stay in the rented accommodation which was the matrimonial home of the parties and the rent would be paid by the father of the appellant. That the appellant shall, apart from paying the expenses for the education of the children, pay ₹10,000/- per month to the respondent for household expenditure. It records that the parties would try to reconcile their differences for which one year time was agreed to, with the further agreement that if within said one year period the two were not in a position to resolve their disputes, they would separate by mutual consent. It assumes importance to note

that on December 23, 2005 the appellant wrote a letter Ex.PW-1/DA to respondent's father informing him as under:-

"Date:23-12-2005

*To,
Shri Bijay Singhji Nahata,
1st Floor, Flat No.7,
Doctor Complex,
Opp.MCD Hospital,
Lampur Road,
Narela,
DELHI-110040*

Respected Father,

This is in further reference to my earlier letter dated 07-12-2005 in which I had requested you to come and take charge of you daughter in 7 days time. During this time, her rowdily behaviour, intolerable activities and torture have increased considerably and it has become impossible for me to continue to live in the house. So I am leaving the house and sending this letter to inform you.

With sincere regards,

Yours truly,

*Sd/
Navratan Baid"*

22. In their oral testimonies, parties may give colour to the past conduct of each other, keeping in view the current situation in which the parties find themselves, but documented evidence of the past conduct of the parties cannot be tainted by their oral depositions and thus we find that the contemporaneous letter dated December 23, 2005 written by the appellant to the father of the respondent, which makes reference to an earlier letter dated December 07, 2005, brings out the anguish of the

appellant. He writes to his father-in-law that respondent's rowdy behaviour, intolerable activities and torture have increased considerably, rendering it impossible for him to continue to live in the matrimonial house and he was forced to leave the matrimonial house. The grave situation in the matrimonial house resulted in the family members intervening and terminating in the written memorandum Ex.PW-1/A drawn up on March 24, 2006. Unfortunately even this evidence has been overlooked by the learned Judge Family Court. There is no discussion in the impugned judgment regarding this evidence.

23. The couple are not in disagreement that they could not unite as was hoped and expected when Ex.PW-1/A was drawn up and the appellant sought annulment of the marriage by filing a petition in the year 2007. Attempts during mediation to unite the parties or make them agree to separate by mutual consent have failed. We are in the year 2017. Obviously, the marriage has broken down irretrievably.

24. As far as the relations between the parties are concerned, they are sufficiently spoiled. The respondent alleges acts of cruelty and ill-treatment in the form of being virtually treated as a servant in the house, husband having no time for her and interested in other women. The husband alleges a somewhat paranoid behaviour of the wife; alleging that she would not discharge duties of a house wife and for no cause would break her bangles; an inauspicious mark for a married lady in the Hindu ethos. She threatened to commit suicide. There is also evidence that the respondent prematurely encash a fixed deposit in the name of the minor son and there is no evidence that she was starved of funds. There are number of such instances relied by both the parties and we do not think it necessary to place on record the precise particulars of these allegations.

Cruelty is a feeling which one forms in view of the conduct of the other party.

25. Since December, 2005 the couple are living separately. They are past the prime of their lives. The children are major. No useful purpose would be served in maintaining the matrimonial bond. Where a marriage is broken down irretrievably, the insistence by one to continue with the matrimonial bond itself would be evidence of the desire to inflict further cruelty on the other.

26. The appeal is accordingly allowed. Impugned judgment and decree dated March 12, 2012 is set aside. HMA No.276/2010 is allowed. The marriage between the parties is annulled by granting a decree of divorce in favour of the appellant and against the respondent on ground of cruelty.

27. Parties shall bear their own cost.

28. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

FEBRUARY 06, 2017
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