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

Judgment pronounced on 11th April, 2017

+ MAT.APP.(F.C.) 58/2017

REENA DEVI Appellant
Through: Mr. S.S. Sangwan, Advocate.

Versus

RAVINDERRespondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

CM APPL. No. 13028/2017 (Exemption)

Exemption allowed, subject to all just exception.

Application stands disposed of.

MAP. APP. (FC) 58/2017

1. This is an appeal under Section 19 of the Family Courts Act, 1984 against the judgment dated 28.01.2017 passed by the Family Court, West, Tis Hazari Court, New Delhi in HMA No. 656/2016, wherein the marriage between the parties was dissolved by way of decree of divorce passed in favour of the respondent/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act").

2. The brief background of the case is that the marriage of the parties was solemnized on 22.04.2003 as per the Hindu rites and rituals at Rohtak. There is no issue born out of the wedlock of the parties. The

husband working in the Indian Army generally remained away from home, whereas the wife used to reside at her matrimonial house with her handicapped mother-in-law, aged about 68 years.

3. On 08.12.2009, the husband filed a petition for divorce under Section 13(1)(ia) of the Act on the grounds of cruelty that his wife is a short tempered person and did not behave rationally. At times, she physically assaulted his mother. On many occasions, she left his mother alone and went to her parental home for days together. She did not even allow his sisters to visit and meet their mother and lodged many criminal complaints against the husband and his family members. She used to demand money from him, failing which she threatened to commit suicide. She took all the jewellery and valuables along with her whenever she left. She also threatened to physically harm the old handicapped mother of the husband.

4. Vide judgment dated 28.01.2017, the Family Court passed a decree of divorce in favour of the husband under Section 13(1)(ia) of the Act in the following terms:-

"31. The above facts & circumstances and evidence led in this case are definitely strong enough about the nature, conduct, behavior and cruelty by the respondent which have not only caused immense mental pain, agony to the petitioner but are also such that which destroyed the entire matrimonial relationship. The aforesaid judgments relied upon by the Ld. Counsel for the petitioner, has also supported the case of the petitioner. The petitioner has proved his case within the provisions of Section 13(1)(ia) of HMA. Therefore, the petitioner is entitled for a decree of divorce on the ground of cruelty. Thus, the petitioner has brought his case within the four corners of the provisions of Section 13(1)(ia) of HMA...."

5. Learned counsel for the appellant has argued that the Principal Judge, Family Court, Delhi did not appreciate the evidence and failed to apply the trite proposition of law governing the grant of divorce. He further contended that the Family Court has erred in granting the decree in favour of the respondent/husband by holding that the respondent had brought the case within the four corners of the provisions of Section 13(1)(ia) of the Hindu Marriage Act, 1955. Great stress has been laid on the fact that cruel treatment had never been meted to the respondent/husband or to any of his family members by the appellant. Rather, it was the appellant/wife, who was treated with cruelty by the respondent and his family members as on one occasion, she had been poisoned by his mother and sister and had been physically assaulted. He further added that there was no cruelty committed by the appellant in as much as the respondent has not given any incident alleging the same. Learned counsel further contended that respondent/husband was medically unfit, being impotent.

6. We have heard learned counsel for the appellant and perused the material available on record.

7. The respondent was granted decree of divorce on the ground of cruelty meted out to him by the appellant.

8. It is true that the term 'Cruelty' has not been defined anywhere in the Hindu Marriage Act, 1955. It is primarily contextual, pertaining to human behaviour or conduct with respect to their matrimonial duties and obligations. It has to be seen whether the conduct of the party was of

such a nature that no reasonable person would tolerate it. Each case has to be pondered over on the basis of its own facts and circumstances.

9. Before the conduct can be called cruel, it must touch a certain pitch of severity. Cruelty can be physical or mental, intentional or unintentional. The Hon'ble Supreme Court in the case of **V. Bhagat Vs. D. Bhagat** reported in **AIR 1994 SC 710**, observed as under:-

“16. Mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be decided in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

10. In the case of **Savitri Pandey Vs. Prem Chandra Pandey** reported in **[2002] 1 SCR 50**, the Apex Court stated that *"Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension*

in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

11. The contention of the learned counsel for the appellant that the learned Principal Judge, Family Court completely overlooked the fact that the respondent had treated her with cruelty, has to be examined in the light of the evidence led by the appellant to substantiate her allegations. DW-1/Appellant, during her cross examination, had stated that:-

"It is correct that I have not filed any medical documents to prove that mother and sister of the petitioner had administered poison to me and that they physically assaulted me in October, 2006."

12. DW-2 Bani Singh, Tau of the appellant, in his cross examination stated that:-

"The fact about giving poison to the respondent by the mother and sister of petitioner at the demand of dowry was disclosed by the respondent and her mother to me. I never visited to Gandhi Nursing Home where respondent was admitted after poisoning her at the demand of dowry. This fact was also disclosed by the respondent and her mother regarding the fact that she had not made any complaint regarding poisoning to her as the petitioner promised her that he would keep her with him at his place of posting."

13. Perusal of the testimony of DW1/wife goes to show that she failed to produce any medical document to support her claim that the mother and sister of the respondent had administered poison to her or that she

was physically assaulted on one occasion. She has also stated in her cross- examination that she had earlier filed two complaints with the Crime Against Woman Cell, Rohtak in the year 2006 and 2007 which were later compromised by the respondent.

14. The contention of the appellant that the respondent/husband has failed to tender any detail of any specific incident of cruelty, has no force. It is the totality of the evidence that has to be considered and the question of cruelty cannot be adjudged in isolation. It has been held in a catena of judgments that there can never be any straitjacket formula or fixed parameters for determining cruelty in such matrimonial matters.

15. Further, it has been revealed from the testimony of DW-2/Tau of the appellant/wife that it was the appellant who had resorted to committing suicide. DW-2 in his cross examination stated that "*These complaints were made to me immediately after the incident of consumption of poison by the respondent in the year 2006. I have never made any complaint personally to any agency like police in respect of above mentioned incident.*"

16. At this juncture, we may mention the observations made by the Supreme Court in the case of ***Pankaj Mahajan Vs. Dimple @ Kajal : Civil Appeal No. 8402 of 2011 (Arising out of S.L.P. (Civil) No. 29641 of 2009)*** Decided On: **30.09.2011**, wherein it was held that "*it is well settled that giving repeated threats to commit suicide amounts to cruelty. When such a thing is repeated in the form of sign or gesture, no spouse can live peacefully.*"

17. Having said so, we are of the considered view that the appellant/wife did not behave rationally, making it impossible for the respondent/husband to live with her.

18. As far as the plea of impotency taken up by the appellant is concerned, she failed to produce any material on record to authenticate this claim.

19. The respondent/husband had appeared in the witness box and examined himself as PW1. During his cross examination, he had stated that:-

“The respondent is not having any physical problem at all I am also not having any physical problem as I am examined medically being in army. I have got myself examined medically regarding impotency test. I got myself examined in the year 2005 or 2006, exactly I do not remember at this time. I do not remember whether I am having the said report with me or not. Once in the year 2003 or 2004, I had been to the house of respondent at Rohtak where the mother of the respondent had asked me to go for the impotency test at Julka Nursing Home but I had refused for the test which is situated in the area of Municipal Committee. Second time, I got myself examined in a lab namely Doctor’s Lab at Najafgarh, New Delhi. The report was positive. The respondent had been got medically examined in the year 2006 or 2007 by me at Nawada, Delhi. The doctor had told me that the respondent was having a swelling in her stomach. No one had ever said that the respondent was incapable for conceiving.”

20. The appellant had examined herself as DW-1 before the Family Court and stated that:-

“It is correct that I have not produced any medical evidence about the medical incompetency of the petitioner for producing child.”

21. Material available on record shows that the appellant has miserably failed to bring forth any cogent evidence to prove that the respondent/husband was medically unfit and in these circumstances, her version is doubtful and not convincing. Moreover, the appellant had the opportunity to move the court to get her husband medically examined but she did not opt to do so. It has emerged on record that the appellant failed to prove that she had been poisoned or that the husband was medically unfit. Moreover, as the parties have been living separately for a sufficient length of time i.e. more than seven years, it can be safely concluded that marriage had broken down irretrievably. It is abundantly clear that the entire substratum of marriage in this case, has already disappeared.

22. On considering the pleadings and evidence and having gone through the impugned order, we are of the view that there is no serious infirmity in the appreciation of the evidence by the court below, for interference in appeal.

23. Resultantly, the present appeal is dismissed being devoid of merit.

CM APPL. No. 13029/2017 (*Delay in re-filing appeal*)

In view of the order passed in the appeal, the present application is rendered infructuous.

SANGITA DHINGRA SEHGAL, J.

HIMA KOHLI, J.

APRIL 11, 2017

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