

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Decided on: 22.08.2017**
+ MAT.APP.(F.C.) 75/2017, CM No. 16518/2017
SUNIL KUMAR Appellant
Through: Mr. Rajeev Shukla, Advocate.
versus
MANJU Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

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1. The appellant/husband has challenged the order dated 15.02.2017 whereby his petition for dissolution of marriage under Section 13(1) (ia) of the Hindu Marriage Act, 1995 (hereinafter referred to as the “HMA”) has been dismissed by the learned Family Court.
2. The admitted facts of the case are that the marriage between the parties was solemnized according to Hindu rites and ceremonies on 11.02.2008 and a female child, namely Amin, was born from out of this wedlock on 11.06.2010.
3. The appellant/husband filed a petition for divorce on the allegations that the respondent/wife did not stay in the matrimonial home for more than 15 days in routine and most of the time, she used to remain at her parental home at Delhi; that she used to create scenes in the presence of neighbours and family members and also used to pressurise him to get separated from his family.

4. Accordingly, on 29.04.2009, they shifted to Assandh and stayed in a rented accommodation away from other family members. At Assandh, the respondent/wife continued to act in a cruel manner and on account of her refusal to prepare breakfast for the appellant, almost on a daily basis, he had to go hungry to work; on his return from the office, the respondent never served him water or tea and used to humiliate him in front of his friends. It is alleged that the respondent/wife clandestinely obtained a mobile SIM card from Sanjay, son of their landlord, and she used to secretly talk to some person and whenever the appellant would enquire about the person and the number she used to talk on, the respondent would delete the details. At this, the appellant had complained to the parents of the respondent and one Dhari Ram r/o Assandh, who telephonically contacted his father-in-law, Babu Ram and although his father-in-law assured him that he would come to Assandh on 29.05.2011, he did not turn up.

5. It has been further averred by the appellant that on 22.07.2011, the respondent left for her parental home with her brother without intimating him; on 14.08.2011, his father-in-law and brother-in-law came to Pundri and misbehaved with him and his family members; on 13.09.2011, a Panchayat was held at Arjun Nagar, Kaithal which was attended by Babu

Ram (father-in-law), his brother-in-law (Sala), and several other relatives. Before the Panchayat, the respondent's father gave an assurance that in future, his daughter would behave properly. On the said assurance, the appellant took back the respondent and shifted to Pundri on 02.10.2011. However, the respondent did not mend her ways and her behaviour remained cruel towards the appellant. She even threatened to implicate the appellant and his family members in a false criminal case under Section 406/498-A the IPC. Her father and brother telephoned the appellant's father on 19.11.2011 and threatened to implicate him and his family members in a criminal case.

6. The appellant further alleged that the respondent is a hot tempered lady, used to nag and taunt him and even refused to do the household work; that she was not taking care of their child; had refused to cohabit with him w.e.f. 20.03.2011 and that she had deserted his company. Finally, on 11.04.2013, the respondent left the matrimonial home along with their daughter Amin without any cause or reason and without intimating the appellant or other family members.

7. In the written statement filed by the respondent/wife, she has denied all the contentions/allegations levelled against her in the petition and

alleged that it was the appellant/husband who was committing cruelty on her due to which she had to file a petition under Section 12 of Domestic Violence Act, 2002, which is pending trial. The respondent alleged that she was discharging the duties of a faithful wife, doing all the household chores and had never faulted in any of her duties as a wife. She explained that a mobile phone was gifted to her by her father on the occasion of the wedding of her brother and when she had asked the appellant to buy her a sim card, he had quarrelled with her and threatened to throw her out of the house. She denied that she used to talk secretly to anyone on the phone. As per her contention, it was the appellant who had turned her out of the matrimonial home on 22.07.2011. The respondent denied that any Panchayat was called on 13.09.2011 and stated that later on, she along with her daughter was thrown out of the matrimonial home by the appellant on 11.04.2013, in the clothes that they were wearing.

8. On the basis of the pleadings of the parties, the learned Family Court had framed the following issues on 11.09.2014:-

1. *Whether after solemnization of marriage, the respondent has treated the petitioner with cruelty? OPP.*
2. *Whether the petitioner is entitled to decree of divorce as prayed? OPP.*
3. *Relief.*

9. On his part, the appellant had examined five witnesses while the respondent has examined herself, in support of her case.

10. After carefully considering the evidence led by the parties, the learned Family Court arrived at the conclusion that the appellant was unable to prove the element of cruelty and desertion and had thereby failed to establish his case for seeking dissolution of his marriage. Accordingly, his petition for divorce was dismissed.

11. The impugned judgment has been challenged before this Court on the ground that the same is based on surmises and conjectures; that the learned Family Court has failed to apply its mind properly on the facts of the case and beside other factors, it has failed to consider the fact that the respondent had refused to cohabit with him from 20.03.2011 and thereby, not only deserted him, but had also inflicted mental cruelty on him.

12. Learned counsel for the appellant argued that by reading the written statement of the respondent/wife in entirety, it can easily be inferred that she has admitted to the fact that she had refused to cohabit with the appellant after 20.03.2011 which factor has not been considered by the learned Family Court in the correct perspective. Relying on the judgments of the Supreme Court in the case of **Samar Ghosh v/s Jaya Gosh** (reported

at (2007) 4 SCC 511) and Suman Kapoor v/s Sudhir Kapoor (reported at 2009(1) SCC 422), it was argued that the learned Family Court has failed to properly interpret the evidence on record and has reached to a wrong conclusion, and therefore, the impugned judgment is liable to be set aside.

13. We have carefully considered the arguments and contentions of the learned counsel for the appellant and have perused the relevant records filed along with the appeal.

14. As noted above, the appellant/husband had filed the petition for divorce on the ground of cruelty and desertion. Section 13(1) (ia) of the HMA entitles a party to file a petition for a divorce on the ground of cruelty. However, the Act does not define the word ‘cruelty’. A catena of decisions rendered on the above aspect have held that cruelty could be either physical cruelty or mental cruelty. It is easy to ascertain physical cruelty, however, mental cruelty has to be judged on the basis of the contemporaneous behaviour of the parties. In the case of V. Bhagat vs. D. Bhagat, (reported in II (1993) DMC 568), the Supreme Court had observed as under:-

“18. 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...”

15. **Samar Ghosh** (*supra*) lays down guidelines to assess as to what constitutes mental cruelty which are as follows:-

“74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) *A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*

(vi) *Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*

(vii) *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*

(viii) *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*

(ix) *Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.*

(x) *The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

(xi) *If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.*

(xii) *Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*

(xiii) *Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*

(xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage 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.”*

16. Learned counsel for the appellant has also relied on the decision in the case of **Naveen Kohli vs. Neelu Kohli** (reported as **AIR 2006 SC 1675**). In this case, in para 57, the Supreme Court has held as under:-

“57. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be

subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court."

17. There is no doubt that in such like matters, the standard of proof of a fact is deduced on the basis of preponderance of probabilities and the parties need not prove a fact beyond reasonable doubt. It is the overall conduct of the parties during the period that they have lived together and the period subsequent thereto which is considered relevant for arriving at a conclusion. Even from the findings returned in the case of Naveen Kohli (supra), on which the appellant has relied, it is apparent that while assessing the element of cruelty from the conduct of the parties, the Court has to be mindful of the fact that it is not dealing with an ideal couple in an ideal situation. Adequate leeway must be given to normal behaviour and the conduct of the parties. One cannot lose sight of the fact that the foundation of a sound marriage is

tolerance, adjustment and respect for each other. It is, therefore, the conduct of the parties which is contemporaneous in nature in each case that has to be gone into to decide as to whether it constitutes cruelty or not.

18. Applying the yardstick laid down to the present case, as it is clear from the evidence brought on record that the appellant/husband has miserably failed to prove the alleged cruel conduct of the respondent/wife, even on the yardstick of preponderance of probability. He has failed to prove a crucial plea taken by him that the respondent had on her own, left the matrimonial home on 11.04.2013, without informing him and his family members. On the contrary, the appellant's sister (PW-2) had in her cross-examination deposed in so many words that "...On 11.04.2013, respondent was at Pundri with the petitioner and was dropped at Delhi by the petitioner on the request of the respondent." Thus the appellant's own witness and that too his sister, has contradicted him. Further, the appellant had set up a case that a Panchayat was held and the proceedings were recorded and in his statement on oath, he had deposed that the Panchayat proceedings were prepared and he had proved the same as Ex.PW-1/1. But this version stands demolished by the deposition of Shri Miya Singh, Ex. Sarpanch of Village Kurana (PW-3) who had stated in his cross-examination that "...There was no document prepared". Thus,

the appellant's own witness, PW-3, has contradicted his testimony that documents of the Panchayat proceedings were prepared.

19. The appellant has also alleged that the respondent/wife used to humiliate him in front of his relatives, but none of the witnesses produced by him including the appellant himself were able to give any specific instance by mentioning the date or time or the name of the persons in whose presence he was insulted by the respondent. The appellant has also contended that the respondent did not perform household chores. However, his own sister, PW-2 had stated in her cross-examination that *"it is correct that after the marriage of the petitioner with the respondent, the respondent used to do the household work and fulfil all matrimonial obligations"*. She had gone on to depose that *"it is correct that I have no personal knowledge that Manju used to pressurize Sunil for living separately."* PW-2 had further volunteered that *"I cannot state any specific date, when the respondent might have created scene at our house. I can not name any neighbour or friend, in whose presence, respondent might have created scene."* Evidently, the appellant's own witness, who is none other than his real sister, has supported the case of the respondent instead of the appellant. The appellant has, therefore, even by applying the measure of preponderance of probability, failed to prove that the

respondent was not doing household chores or that she used to pressurise him for a separate residence away from his family members or that she used to insult him in front of his friends and relatives.

20. In the light of the above glaring evidence brought on record, we find no illegality or infirmity in the conclusion arrived at by the learned Family Court that the appellant has failed to prove his case under Section 13(1) (ia) of HMA.

21. The appellant has also challenged the findings returned by the learned Family Court under Section 13(1) (ib) wherein it has been held that there was no element of desertion on the part of the respondent/wife. Desertion under HMA means intentional and permanent abandonment of one spouse by the other without one's consent and without any reasonable ground. It amounts to total repudiation of the obligations of marriage. This conduct must be coupled with *animus deserendi*. The appellant was, therefore, required to prove not only the factum of desertion, but also the existence of *animus deserendi*. He has failed to do so on both counts.

22. The appellant has claimed desertion on the part of the respondent, firstly, because she refused to cohabit with him w.e.f 20.03.2011 and secondly, on the ground that she had left the matrimonial home without his

permission and without informing him. From the evidence discussed above, it clearly emerges that it was not the respondent/wife who had left the matrimonial home against the wishes of the appellant, rather it was he who had left her at her parental home on 11.04.2013. There is no evidence on record to demonstrate that the appellant had made any effort to bring the respondent back to the matrimonial home or that she had resisted any such attempt. Except for his bald statement that the respondent had refused to cohabit with him w.e.f. 20.03.2011, there is nothing of any consequence on the record to substantiate the said allegation. On the other hand, PW-2 has clearly deposed “*that the respondent was fulfilling all the duties of matrimonial obligations*”.

23. As a result of the above discussion, we do not find any illegality, arbitrariness or perversity in the impugned judgment for interference. The appeal is accordingly dismissed *in limine* along with the pending application. No order as to costs.

**DEEPA SHARMA
(JUDGE)**

**HIMA KOHLI
(JUDGE)**

AUGUST 22, 2017/ss