

\$~R-20

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

+ **MAT.A.(F.C.) 84/2016**

ANJU @ AJAY Appellant

Represented by: Mr. Sugriva Dubey, Advocate.

versus

YOGESH BANSAL Respondent

Represented by: Mr. Ajay Paul, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned order dated June 03, 2016 the learned Judge Family Court has annulled the marriage between the parties by granting a decree for divorce on ground of desertion as well as cruelty. The cruelty held proved is denial of conjugal bliss by the appellant to the respondent for about 2 months after the marriage took place. Unproved allegations of adultery by the appellant against the respondent lodging a false complaint that the respondent tried to kidnap the child of the parties and denial of access to the respondent to meet the son. False allegation in the written statement that she was compelled to leave the matrimonial house when she was beaten and she was an expectant mother and started bleeding. Desertion has been held proved by the fact that the appellant left the house on the day when she claimed she was beaten during pregnancy and started bleeding.

2. Marriage between the appellant and the respondent was solemnized as per Hindu Rites and Customs on February 21, 2002. A son was born on June

06, 2003, but unfortunately the matrimonial discord between the couple had taken its toll much prior when the appellant left her matrimonial house on October 28, 2002. The son was born when she was in the house of her parents.

3. Pleading for divorce to be granted on ground of cruelty and desertion, case pleaded by the husband was that initially the appellant resisted consummation of the marriage stating that she had a mental block towards sex. As per the husband, the wife was not feeling well in the month of October, 2002. It was then detected that she was in the family way. He could not understand as to why the wife called her father on October 28, 2002 and she left the matrimonial house. Pleading that repeated attempts made to reason with the wife and his in-laws failed, alleging further that birth of the son was never communicated to him or his family members, it was pleaded that on October 14, 2003, the husband's father along with one Jagdish Singh, a resident of Narela and President of the Welfare Association and one Rakesh, a resident of Narela intervened but all efforts fail. He pleaded that in spite of an agreement that he could meet the child at least once a month and this assurance not being adhered to by the wife, he went to meet the son in JNB Nursery School, Alipur in October, 2007, where the child was studying only to find in retaliation a police complaint made by the wife. It is alleged that denial by the wife to even permit access to the son would be an act of cruelty.

4. In the written statement spanning 52 pages, loose and laconic pleading have been made. But suffice would it be for us to highlight that the wife admitted that there was initially no sex between the couple. She pleaded the reason being her husband was living in adultery with a girl and

hence it was he who initially did not consummate the marriage. She pleads that when she was in the family way and her husband learnt about the same he told her that he would get the pregnancy terminated and would adopt all means to do so. She had to intimate her father and seek safety for the child in the womb on October 25, 2002, she was treated with cruelty (meaning thereby beaten), as a result she started bleeding profusely and required hospitalisation. She was in a serious condition. She had to call her father who took her away. She pleaded specifically that her husband was in an adulterous relationship, but did not name any girl. She pleaded that on June 06, 2003, an intimation was given to her husband of she being hospitalized being in the advance stage of pregnancy and delivery was expected at any moment but the husband did not come. She admitted having made a complaint to the police when her husband attempted to meet the child in the school but claimed she did so as she feared that her child may be kidnapped.

5. At the trial the husband, besides examining himself, examined two more witnesses Jagdish Singh and Rakesh as PW-2 and PW-3. These were the two persons whose names were disclosed in the petition as the one who tried to intervene and sort out the issue. The two stood by the case pleaded by the husband. In his deposition, the husband, as we find in all cases verbatim reproduced the contents of the divorce petition. Though affidavit by way of evidence of husband's father was filed but he having died before he was cross-examined the same has to be omitted.

6. In her affidavit by way of evidence, the wife stood by her version in the written statement and did not examine any other witness.

7. Relevant would it be at this stage to highlight certain aspects of the documentary evidence which has come on record and has been used by the

learned Judge, Family Court to grant the decree of divorce prayed for by the husband.

8. The documentary evidence is the record of Aggarwal Nursing Home exhibited as Ex.PW-3/5. It has a telling story to tell and completely demolishes the case of the wife that on account of being tortured in her matrimonial home she suffered bleeding and had to summon her father to rescue her. She gives the date as October 25, 2002. Ex.PW-3/5 shows that on October 23, 2002, the wife was examined by Dr.Manju Aggarwal at Aggarwal Nursing Home. The doctor advised pregnancy test to be conducted. It is obvious that the wife had missed her periods and was suffering from early pregnancy related symptoms. The said document shows that urine culture showed the wife to be pregnant. The doctor opined the foetus to be of 12 weeks. Ultrasound was recommended. Report Ex.PW-3/6 confirms the same.

9. There is no injury recorded on the medical opinion Ex.PW-3/5 or Ex.PW-3/6. The version of the wife in the written statement is completely demolished and suffice it would be to record that an allegation that during pregnancy the husband treated the wife with cruelty (meaning gave her beating) to such an extent that she started bleeding, if false, would constitute cruelty by itself. In her cross-examination, the wife admitted that it was her mother-in-law who accompanied her to Aggarwal Nursing Home on October 23, 2002 and the reports were collected by her mother-in-law. Surprisingly, she deposed during cross-examination that the report was fabricated as told to her by some doctor. She has said on oath that the doctor told her so on October 30, 2002, but could not recollect which doctor told her so.

10. We fail to understand said aspect of the statements made by the wife during cross-examination. The report Ex.PW-3/5 has been authored by Dr.Manju Aggarwal. The correctness of the report is proved from the fact that as per the report the pregnancy was of 12 weeks and indeed a male child was born to the wife on June 06, 2003. What could be the fabrication in the report is just not understood.

11. The version of the wife in the written statement that she had to leave the matrimonial house on October 25, 2002 on account of she bleeding due to cruelty inflicted upon her by her in-laws is totally belied from the documentary evidence. Thus, the reason for her desertion is false.

12. The version of the wife that her husband had an adulterous relationship has not been made good by her during her evidence. She could not name the girl. She did not depose to any fact wherefrom an adulterous relationship could be gathered.

13. The learned Judge, Family Courts has highlighted these two aspects as constituting cruelty apart from a third. The third has two limbs. The first regarding a complaint alleging kidnapping attempt made by the husband. The report is marked A. We have pursued the same. The report does not allege that her husband attempted to kidnap the child. It only informs that the son told her that some people claiming to be his father, grand-parents, uncles and aunts had come to his school and told him to accompany them.

14. Ex.PW-3/8 is a compromise which had taken place at the police station in which it is recorded that the father would give prior intimation if he wants to meet the child.

15. The view taken by the learned trial judge that the complaint alleges a false fact and therefore would be cruelty is not sustainable. That would

mean that save and except a correction in the reasoning to this limited extent the remainder judgment has to be sustained.

16. Learned counsel's argument that there was an undue delay in seeking divorce is noted and rejected by us for the reason the testimony of the two non-family witnesses examined by the husband shows that attempts were being made to patch up and the attempts failed.

17. We find no infirmity in the view taken by the learned Judge Family courts that the husband has been able to establish the grounds on which the marriage has been annulled.

18. The appeal is dismissed.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

JANUARY 27, 2017
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