

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 07.11.2017

MAT.APP.(F.C.) 82/2017

V K S

..... Appellant

Through Mohd. Habib, Advocate along with
appellant in person.

versus

R R

..... Respondent

Through Mr. S. S. Gulia, Advocate along with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal is directed against the order dated 8th March, 2017, whereby, Mr. Dinesh Kumar Sharma, Principal Judge, Family Court, South East, Saket, New Delhi, closed the petitioner's evidence and consequently, dismissed his petition being HMA No. 655/2012, under Section 13(1) (ia) of Hindu Marriage Act, 1955, titled as "VKS vs. RR", for dissolution of marriage, as follows:-

“1.0The present petition u/S. 13 (1) (ia) of the Hindu Marriage, Act, 1955 (hereinafter referred to as “the Act”) having been filed by the petitioner against the respondent for grant of decree of divorce on the ground of cruelty.

2.0 The facts in brief are that the petitioner was married to the respondent on 13.04.2001 according to Hindu rites and ceremonies. The marriage between the parties was duly consummated and one daughter namely Tanya was born out of the wedlock on 19.07.2002 that the respondent is a teacher and getting a salary of Rs.35,000/- per month. It has been alleged that since the very beginning of marriage the respondent tortured the petitioner and his behaviour was not at all sympathetic and forced the petitioner to live separately. It has further been alleged that the petitioner tried his level best to act as an ideal husband despite the non cooperative attitude of the respondent and she always remained in search of excuse so that she can quarrel with the petitioner. The petitioner in fact was humiliated in front of his relatives and friends and has not even cared to fulfil her matrimonial duties and she turned violent and abusive towards the petitioner as she remains under the influence of her mother and sister. It has further been alleged that on 15.5.2008 the respondent threatened the petitioner to implicate him in false cases, in front of his friends. It has been alleged that on 05.09.2003, the petitioner had gone to Bahadurgarh to take the respondent but respondent's mother and sister-in-law insulted the petitioner and abused him and levelled false allegations against the character of the petitioner and mother of respondent even ran behind the petitioner with a lathi in order to beat him. It is further alleged that on 19.07.2000 on the birthday of the daughter, sister of respondent created a scene and threatened to implicate in false case. It is further alleged that on 25.09.2011 when the petitioner demanded breakfast the respondent started abusive language and neighbours gathered there and in their presence the respondent told that she wants divorce from the petitioner and torn the shirt of petitioner and gave him a slap. On 15.05.2012 the respondent threatened to cut her vein and burn her after pouring kerosene on her.

2.1 It has further been alleged that respondent even filed false complaint against the petitioner and members of his family in CAW Cell. The respondent again threatened the petitioner in front of neighbours and the petitioner lodged a complaint on 15.05.2012 with PS Ambedkar Nagar vide DD No. 7B. It has further been alleged that on 17.12.2011 petitioner sent a legal notice calling upon the respondent to mend her behaviour but despite that the respondent continued to treat the petitioner with cruelty. It is further alleged that on 17.12.2011 the respondent left the matrimonial home and took all jewellery articles, cash and stridhan etc. It has further been alleged that the petitioner also filed a petition for restitution of conjugal rights which was settled and withdrawn on 07.04.2012. Thereafter both the parties lived together in their matrimonial home but the respondent continued to harass and treat him with cruelty.

3.0 The respondent vide her written statement, admitted the factum of marriage and the birth of the girl child out of this wedlock. It has been denied that she ever tortured the petitioner or treated him with cruelty. All other allegations levelled in the petition have been specifically denied by the respondent. It has also been specifically denied that respondent ever sought divorce from the petitioner. It has also been denied that the respondent threatened the petitioner to cut her vein and burn her by pouring kerosene on her. It has further been denied that the petitioner lodged a complaint against the respondent on 15.05.2012 vide DD No. 7B. Service of legal notice dated 17.12.2011 is also denied by the respondent. It is denied that the respondent has left the matrimonial home with her mother and taken all jewellery articles, cash and stridhan etc., without permission of the petitioner. In fact the jewellery has been sold by the petitioner and when respondent objected to the same the petitioner beaten the respondent by closing the door of the house and respondent got multiple injuries. Filing of petition by petitioner for conjugal rights has also been denied.

4.0 The petitioner vide replication denied the allegations as alleged by the respondent and reiterated the contents of his petition.

5.0 On the pleadings of the parties, the following issues were framed by my Id. Predecessor on 21.01.2014:

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

6.0 Issues in this case were framed on 21.01.2014 and the matter was adjourned for petitioner's evidence on 29.04.2014. However, on 29.04.2014 adjournment was sought by petitioner and the case was adjourned to 10.09.2014. Again on 10.09.2014 adjournment was sought on behalf of the petitioner and the matter was adjourned to 22.12.2014. On 22.12.2014 adjournment was sought on the ground that settlement talks were going on between the parties and the case was adjourned to 13.04.2015. However, again on 13.04.2015 adjournment was sought by the petitioner and the case was adjourned on 24.11.2015. Again on 24.11.2015 adjournment was sought by petitioner and the case was adjourned to 25.10.2016 and on 25.10.2016 the case was listed for today for petitioner's evidence. Thus I find that during the period of about 5 years there is no progress in the matter. Under these circumstances granting further adjournment would be an injustice to the entire system. The petitioner has not explained any sufficient reason for grant of adjournment. Hence, petitioner's evidence is closed.

7.0 The onus to prove the issues was on the petitioner and the petitioner has failed to prove the same. Accordingly, the petition is dismissed.

8.0 File be consigned to record room."

2. We have heard the learned counsel appearing on behalf of the parties and perused the record.

3. In view of the facts and circumstances of the case, as well as, due to the reason the proceeding has not been disposed off on its merits; we set aside the impugned order dated 8th March, 2017 and restore HMA No. 655/2012, under Section 13(1) (ia) of HMA, titled as “VKS vs. RR” to the file of the concerned Court and remanded it to the said concerned Court for disposal, in accordance with law:-

(i) Mr. VKS, the appellant is granted one final opportunity to lead evidence in the said proceedings, subject to payment of Rs.50,000/-, as costs to the respondent. The cost shall be paid by way of demand draft to the respondent. The writ petition is restored to its original number. The appellant is directed to lead evidence before the concerned Family Court, Saket, New Delhi; by way of affidavit filed on behalf of the appellant before the concerned Family Court, Saket, New Delhi which is stated to be on record. Besides himself, appellant wants to examine Mr. Rama Shankar s/o Shri Amarnath, who is stated to be his brother-in-law (Jeeja). The appellant is allowed to examine Mr. Rama Shankar and cause to be filed the latters evidence by way of affidavit, within a period of two weeks from today, with an advance copy to learned

counsel appearing on behalf of Smt. RR, the respondent in the present proceedings.

(ii) The matter is directed to be taken up for further proceedings, in accordance with law, in the first instance on 11th December, 2017, by the Principal Judge, Family Court, South East, Saket, New Delhi; subject to payment of Rs.50,000/-, as costs by the appellant to the respondent, on or before the next date of hearing fixed before the Trial Court,

4. The Trial Court shall grant only one final opportunity to the appellant to lead evidence in the proceedings seeking dissolution of marriage.

5. However, it is made clear that we have not expressed any opinion on the merits of the case.

6. With the above directions, the appeal is disposed off.

7. A copy of this order be sent to the Principal Judge, Family Court, South East, Saket, New Delhi, for information and compliance, forthwith.

8. A copy of this order be also provided to the learned counsel for the parties under signature of the Court Master.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

NOVEMBER 07, 2017/rs