

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

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Decided on: 12.09.2017

+ **MAT.APP.(F.C.) 130/2017 and CM No. 27084/2017**

ANIL KUMAR BHUTANI

..... Appellant

Through: **Mr. Yogesh Sharma, Adv.**

versus

MANYA BHUTANI

..... 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 assailed the order dated 29.05.2017 passed by the Family Court, whereby his petition for dissolution of marriage under Section 13(1) (ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the HMA"), was dismissed.

2. The admitted facts of the case are that the parties had got married at Delhi on 11.10.2000, as per the Hindu rites and ceremonies. The marriage was consummated and two children, namely, Aniket and Kavya were born from out of this wedlock. In the petition for divorce, the husband has alleged that the marriage was a simple one; no dowry was given or accepted in the marriage or at any time after the marriage and the respondent/wife was treated with love, affection and respect in the

matrimonial home by him and his family member. She, however, misbehaved grossly and abused him and his family members without any rhyme or reason. The respondent did not allow the marriage to be consummated for about ten days due to her cold behaviour. On the day of their *Suhagrat*, she disclosed to the appellant that she was in love with someone else and was not interested in marrying him, but was forced into the marriage. As a good husband, the appellant had asked her to forget the past and start a new life as his legally wedded wife. Throughout her stay, the respondent/wife was constantly fighting and abusing the appellant and his family members with filthy language, kept calling them names which had caused mental cruelty to him and his family members. This had also affected his career and health.

3. The appellant claimed that the respondent did not perform the duties of a devoted Hindu wife and as she refused to do the household chores, his family member, had to do all the household chores; she did not look after him during his illness and never even offered him a glass of water on his returning from work; she used to sarcastically state that he was incapable of giving her physical satisfaction. Her behaviour was motivated by her desire to live separately from the family members of the appellant and she used to

go to her parents house quite frequently. The respondent also pressurized the appellant to have a separate accommodation which was not possible for him due to the expenses entailed and his limited resources. He made efforts to explain his financial constraints to her, but she just refused to understand anything. On every such occasion, the respondent used to abuse the appellant in front of his relatives and thus humiliated him. This caused acute mental torture and tension to him. On one occasion, when the mother of appellant/husband had fallen ill and was not in a position to even stand, he had asked the respondent to take care of his father and to prepare the meals for the family members, but she had straightaway refused and started fighting with him. The respondent used to threaten the appellant that she would go to her parental home and would agree to stay in the matrimonial home only on the condition that she would not be asked to do any household chores.

4. As per the appellant, the constant bickering, abuses and use of filthy language by the respondent continued and rather, escalated over the period. She kept on insisting on a separate accommodation. She refused to have any physical relationship with him with effect from December, 2005, which caused him a great mental trauma. Finally, on 27.12.2007, the

respondent deserted the appellant and left her matrimonial home along with her gold jewellery, clothes and cash. All his efforts to bring her back had failed and she refused to return to him. In order to further harass the appellant and his family members, the respondent filed a complaint under Section 12 of the Protection of Woman from Domestic Violence Act, 2005. Based on these facts and contentions, a decree for divorce on the ground of cruelty was prayed for by the appellant/husband.

5. In her written statement, the respondent/wife had denied all the allegations levelled against her by the appellant. She contended that the boot was on the wrong foot and it was the appellant who was trying to take advantage of his own wrongs as he was the one who had treated her with cruelty. It was averred in the written statement that the petition for divorce is not in conformity with the High Court Rules framed under the HMA Act as it did not mention any specific act of cruelty by giving the relevant dates, time and place of such act or incident. It was also stated that the pleas raised by the husband in the petition are vague, scandalous, malicious, defamatory, frivolous and misleading. The respondent/wife asserted that she was always ready and willing to live with the appellant/husband and is still ready and willing to do so; that she had always been taking care of her

husband, his family members and their children and was also performing all her matrimonial duties. She claimed that it was her sister-in-law, who after leaving her matrimonial home, was residing with them and continuously interfering in their life and she used to constantly nag and abuse her and pass comments degrading her for bringing less dowry. Despite that, the respondent/wife continued to perform her duties. The respondent stated that she was treated with so much cruelty that she had wanted to end her life. She was also made to consume a poisonous substance on 24.12.2007 and then taken to Hindu Rao Hospital where she was treated. Since her life in the matrimonial home was unsafe, she had moved with her parents. It was further contended that false allegations have been made in the petition to the effect that no dowry was demanded or accepted in the marriage. Had that truly been the case, there was no occasion for the appellant to have pleaded that the respondent had left the matrimonial home with her gold jewellery and other articles. She also averred in the written statement that it was her lawful right to invoke the provisions of Domestic Violence Act for seeking redressal of her grievances and she had simply exercised that right. The respondent further stated that the appellant cannot take the benefit of his own wrong, since she

was actually forced to leave the matrimonial home under compelling circumstances after 24.12.2007, when she felt that her life was not safe and secure in the matrimonial home.

6. On the basis of the pleadings of the parties, the learned Family Court had framed the following issues on 24.12.2007:-

“1. Whether after solemnisation of marriage of the petitioner with the respondent the respondent has treated the petitioner with cruelty as alleged? OPP

2. Whether the petitioner is entitled to the relief claimed? OPP

3. Relief.”

7. Both the parties had filed their respective affidavits by way of evidence in support of their cases and they were duly cross-examined.

8. After hearing the arguments of the parties and appreciating the evidence on record, the impugned judgment was passed, dismissing the divorce petition filed by the appellant.

9. In this appeal, the main grievance of the appellant/husband is that the learned Family Court erred in holding that he has not pointed out any specific instance of cruelty and that the averments made in the petition are only bald statements. It was argued by learned counsel for the appellant that what constitutes mental cruelty in a domestic relationship entitling a

decree for divorce is that which goes on for a prolonged period of time. Mental cruelty cannot be discerned from one or two incidents or events and any event running for a short span of time, is itself condonable by the spouses. It was further argued that the appellant had categorically pleaded facts like the abusive nature of respondent, her refusal to do household chores; refusal to take care of his father when his mother had fallen sick; her leaving the matrimonial house without his consent on 27.12.2007; the incident of the first night of their marriage when she had disclosed about her love affair with another person due to which the marriage could not be consummated for a considerable period of time; the fact that she had refused to cohabit with him with effect from December, 2005, till she left the matrimonial home. It was argued by learned counsel that all these instances taken collectively, are sufficient to constitute cruelty.

10. It was next argued by the learned counsel for the appellant that the observation of the Family Court that since the appellant has failed to examine any of his family members in support of his case, his testimony cannot be believed, is contrary to the settled position of law which is that in matrimonial cases, what is required is the preponderance of evidence showing probability of existence of a fact which can sufficiently be relied

upon and those facts need not be proven beyond a reasonable doubt, as is the requirement in criminal cases. It was urged that the Family Court's refusal to believe the testimony of the appellant is contrary to law and the impugned judgment is liable to be set aside on that ground alone. It was further argued that the learned Family Court has failed to consider that the appellant/husband is a man of peaceful nature and had always believed in bringing his wife on the right track and that is why he had persuaded her to forget about her past and adjust herself in the matrimonial home on the first night, when she had disclosed her love affair.

11. The next ground taken by learned counsel to assail the impugned judgment was that the learned Family Court has failed to appreciate the status of the parties who belong to a lower middle strata of the society and disclosure of such liaisons by the respondent to others would have caused much more humiliation to the appellant. It was urged that the fact that the respondent had denied the appellant the right to cohabit with her after December, 2005, till she had left the house, is sufficient to cause cruelty of such a nature which would entitle him for a decree of divorce. The appellant denied that the respondent was ever turned out from the matrimonial home but stated that when she had consumed phenyl, she had

to be taken to the hospital from where she had left for her parental home and ever since then, she did not return to her matrimonial home which fact has been totally ignored by the Family Court. Asserting that the Family Court did not appreciate the facts in the correct perspective and interpreted the facts and circumstances of the case incorrectly, it was argued that the impugned judgment is liable to be set aside and a decree of divorce passed in favour of the appellant.

12. We have given our thoughtful consideration to the arguments addressed on behalf of the appellant. In this case, the petition has been filed by the appellant/husband seeking divorce from the respondent/wife on the grounds of cruelty under Section 13(1)(ia) of HMA. The Apex Court in **Shobha Rani vs. Madhukar Reddi** (1988)1 SCC 105, has held as under:-

“4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to

live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

13. The above principles were reiterated by the Supreme Court in V. Bhagat vs. Mrs. D. Bhagat (1994, 1 SCC 337) wherein it was held that *"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."* Again, in the case of Praveen Mehta vs. Inderjit Mehta (AIR 2002 SC 2582), the Supreme Court observed that *"Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other."*

14. In Praveen Mehta (supra), the Supreme Court had made the following pertinent observations:-

"21.The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the

cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

15. Subsequently, in **Jayachandra vs. Aneel Kaur** (AIR 2005 SC 534), the Supreme Court held that "*...one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. The Court further observed that "to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The Supreme Court went on to observe that "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."*

The above principles were restated by the Supreme Court in the case of *Naveen Kohli vs. Neelu Kohli* (AIR 2006 SC 1675).

16. It is thus a settled proposition of law that the HMA Act does not define the word '*cruelty*'. The existence or non-existence of mental cruelty has to be assessed from the behaviour and conduct of the spouse. Normal behaviour and conduct of a spouse is not sufficient to constitute cruelty. The parties are not expected to be an ideal husband and wife; their conduct has to be ascertained in the backdrop of their social status, educational qualifications, physical and mental conditions and cultural and social background. When a party approaches the Court for seeking the relief of divorce on the ground of cruelty, he is expected to give particulars of the facts which according to him, are of such a nature which would have caused mental cruelty to him of such an intensity that made it impossible for him to continue in the relationship. It is not sufficient to merely plead that the respondent had treated the appellant with cruelty. The behaviour and conduct should be so acute and grave that it has the effect of causing anguish, disappointment and frustration to the wronged spouse and make it difficult for that spouse to continue with the matrimonial alliance. Adopting the said criteria, the court is expected to assess as to whether the facts

pleaded and proved would constitute cruelty sufficient to sever the matrimonial relationship.

17. It is also a settled proposition of law that the person who approaches the Court seeking a relief, has to plead and prove all the facts which can entitle him to the relief prayed for. As discussed above, while laying down the principles which constitute cruelty for the purpose of Section 13(1) (ia) of HMA, the Supreme Court has time and again held that it should be of such a nature which would have caused a genuine apprehension in the mind of the wronged spouse that it was no longer in his welfare to continue with the relationship. Since an inference can be drawn from the attending facts and circumstances of each case, those facts and circumstances need to be pleaded elaborately and with specifics.

18. In the instant case, merely stating that the respondent was neglecting her duties or that she was abusive and had insulted the appellant and his family members in front of others or that she had refused to cook food for him or offer him even a glass of water on his return from work, would not be sufficient to constitute an act of cruelty unless and until specific instances showing such conduct of the respondent/wife are pleaded or

proved. The facts that have been stated by the appellant, cannot be treated as sufficient to constitute cruelty.

19. It has been argued on behalf of the appellant/husband that the appellant has specifically pleaded in the petition that the respondent/wife had refused to take care of his father when his mother had fallen ill and was unable to stand on her feet; that she had refused to cook meals or take care of his father during that period; that she had committed cruelty of a grave and serious nature when on the very first night of their marriage she made a disclosure about her love affair and when she refused to cohabit with him and, thereafter, denied him his conjugal rights with effect from December, 2005 and also when she deserted him on 27.12.2007, yet the Family Court had held that no specific plea has been made by the appellant to prove cruelty and he had failed to prove the same and in the absence of any evidence of corroborative nature, the said allegations had to be treated as bald statements which could not be believed, when facts of such a nature can only be proven by preponderance of evidence and need not be proved beyond any reasonable doubt.

20. There is no dispute that the facts in a civil matter are not required to be proved beyond a reasonable doubt, but by applying the principle of

preponderance of probability, if the evidence on record, points towards the existence of a particular set of facts, the Court can presume the existence of such facts and the said facts can be said to have been proved. Also, in matrimonial cases, in order to prove cruelty, it is the contemporaneous nature of evidence which is important. Such evidence could be in any form, be it letters or complaints, but the ground rule is that the evidence has to be of a contemporaneous nature. Bald statements made in a petition, unsupported by any evidence of contemporaneous nature cannot be considered sufficient to prove the facts alleged.

21. In the present case, the divorce petition is a litany of general complaints made by the appellant/husband against the respondent/wife, but no specific incident of cruelty has been pleaded. It has not been shown if during their seven years of their marriage, he had ever complained about the behaviour of his wife to any person, including her parents. In fact, the divorce petition is bereft of such averments. The Family Court had also brought on the glaring contradictions that had emerged during the cross-examination of the appellant. In his petition, the appellant had pleaded that the respondent/wife had refused to take care of his father and refused to cook meals when his mother had fallen ill and was unable to stand on her

feet, but she did not take care of his father or prepare the meals. But during his cross-examination, the appellant had admitted to the fact that his mother had expired before his marriage was solemnized. The Court had also rejected the argument that the same was a typographical mistake in the plaint and the affidavit submitted by the appellant in evidence, on the ground that in her written statement, the respondent had very clearly taken a plea that her mother-in-law had expired before their marriage, yet in his affidavit by way of evidence filed later, the appellant had testified to the said fact, without seeking amendment of his petition.

22. The learned Family Court observed that the appellant/husband had failed to produce sufficient evidence in support of his plea that his wife had refused to cohabit with him on the first night or disclose about her love affairs to him. The Court had refused to believe this statement in the absence of any other evidence by noticing that the reaction of the husband was not that of a normal person. Assuming that the appellant had been able to prove the ground of cruelty on account of the respondent having refused to cohabit with him on the first night after their marriage, there still remains a question as to whether the appellant had condoned the said resistance put up by the respondent, declining to discharge her marital obligation. In this

regard, Section 23(1)(b) of the HMA gains significance. The said provision requires the Court to satisfy itself as to whether the ground taken in a petition amounts to cruelty under Section 13(1) (ia) of the HMA and the petitioner has not in any manner, condoned the said cruelty. In this context, we can do no better than to reproduce the principles laid down by the Supreme Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastane***, AIR 1975 SC 1534 as below:-

“54. Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of cohabitation and is proved by the fact that on February 27, 1961 when the spouses parted, the respondent was-about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied "but not otherwise", that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was

committed. To constitute condonation there must be, therefore, two things : forgiveness and restoration. The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy Sixth Ed., p. 75. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.”

23. As per the appellant’s own case, he had asked his wife to forget her past and try to adjust in the matrimonial life with him, which shows that he had condoned the acts of the respondent. What could be better proof of such condonation than the fact that the marriage was duly consummated and two children were born from out of the wedlock in the years 2001 and 2005.

24. The appellant/husband’s plea that the respondent/wife had refused to cohabit with him with effect from December, 2005 was also rightly disbelieved by the learned Family Court on the grounds that it was again a bald statement made by him. The appellant had failed to produce any evidence of a contemporaneous nature to show that his wife had refused to

cohabit with him from December, 2005 till 27.12.2007, on which date she had allegedly left him and gone to her parent's residence. The testimony of the appellant was found to be untrustworthy because he had even failed to prove his plea that his wife had deserted him on 27.12.2007. The impugned judgment notes that in his cross-examination, the appellant had admitted that *"we lived together till 24.12.2007"* and this itself falsifies his plea that the wife had deserted him on 27.12.2007. He has failed to prove that the respondent had left him on her own and had refused to live with him. Rather, in his cross-examination the appellant admitted that *"it is correct that I have refused to allow the respondent to live with him."* All these admissions lends credence to the plea of the wife that she was not living with the appellant after the incidence of poisoning on 24.12.2007, and that it was he who had refused to permit her to stay with him. Since the statement of the appellant remains unsubstantiated and he has contradicted himself on material facts during his cross-examination and failed to prove specific instances of cruelty that he had pleaded his petition for seeking dissolution of marriage on the ground of cruelty was turned down. We find no perversity, illegality or infirmity in the conclusion arrived at in the impugned judgment, for interference. Accordingly, the impugned judgment

is upheld and the present appeal is dismissed *in limine*, along with the pending application.

**DEEPA SHARMA
(JUDGE)**

**HIMA KOHLI
(JUDGE)**

SEPTEMBER 12, 2017
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