

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

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Decided on: 21.08.2017

+ MAT.APP.(F.C.) 132/2015 & CM No. 24471/2015

REKHA RAWAT

..... Appellant

Through: Mr. Sujeet Kumar Mishra, Advocate.

versus

YASPAL SINGH RAWAT

..... Respondent

Through: Ms. Riz Mathew, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

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1. The appellant/wife has challenged the *ex-parte* judgment dated 26.05.2011, whereby her marriage with the respondent was dissolved on a petition filed by her husband under Section 13(1) (ia) of Hindu Marriage Act, 1955 (hereinafter referred to as “ The HMA”). The appellant has also challenged the order dated 17.07.2015 whereby an application moved by her under Order IX Rule 13 (read with Section 151) of the Civil Procedure Code (CPC) for setting aside the *ex-parte* judgment dated 26.05.2011, was dismissed by the Family Court.

2. During the course of arguments, learned counsel for the appellant had stated that he did not wish to press the appeal against the order dated 17.07.2015 passed by the learned Family Court dismissing the application filed by the appellant under Order IX Rule 13 CPC and wished to confine

the relief in the present appeal to the findings returned in the *ex-parte* judgment dated 26.05.2011, allowing the petition filed by the respondent/husband for seeking divorce from the appellant on the grounds of cruelty.

3. The impugned order dated 26.05.2011 has been challenged by the appellant on the ground that there was no specific allegation of cruelty levelled against her and all the allegations in the petition were of a general nature, and therefore, the Family Court has erred in passing the impugned judgment in favour of the respondent.

4. The admitted facts of the case are that the marriage between the parties was solemnized according to the Hindu customs, rites and religious ceremonies on 19.02.1999 and one female child, namely Swati was born out of their wedlock on 08.08.2002.

5. The respondent/husband has averred in the petition that the appellant/wife was suffering from a mental disease called schizophrenia and that her behaviour was cruel not only towards him and his family members, but also towards their child. She was in the habit of leaving the matrimonial home at the drop of a hat and going to her father's place who was staying nearby. The appellant had done so in May, 2003, without any

intimation to the respondent. On her returning from her parental house around September, 2006, her behaviour had become far more cruel towards the respondent and their child and on getting infuriated, she would treat the child savagely. She used to beat the child frequently and dangle her in a dangerous position. It has been averred that due to this behaviour, the respondent/husband was constrained to make a complaint to the DCP, South-West District and Sr. P.P.S. to Spl. Secy. (IS), MHA vide letters dated 17.12.2007 and the said letter was also sent to the SHO Dabri Police Station, South West District, New Delhi on 20.12.2017. The respondent had informed the authorities of the appellant's erratic and abnormal behaviour and the danger posed to the life of the child. On 30.01.2008, the respondent had also made a complaint to the Member Secretary, National Commission for Protection of Child Rights, asking that action be taken to prevent the abuse of the child at the hands of the appellant.

6. In the last week of March, 2008, when the respondent returned from his office, he found the house locked from inside. On peeping through window, he saw that the appellant was mercilessly beating the child and had dangled her in the air. Petrified, he had immediately informed the police at 100 number. After some time, the appellant had opened the door

and allowed the respondent to enter the house. He was threatened by the appellant and her parents that they would implicate him and his family members in a false dowry case. The respondent has alleged that he was constantly abused by the appellant and on 01.10.2007, she had physically assaulted him. Suspecting that he was having an extra marital affair, she used to spy upon him and would frequently call up at his workplace to keep a constant tab on him and his whereabouts. The constant abusive fights picked up by the appellant ever so often and use of filthy language by her was causing immense mental agony and suffering to the respondent and had put him under grave stress. The appellant also forced his parents to leave the house on 21.07.2007, and they had no option but to return to their native place at Uttarakhand. When things reached a breaking point, the respondent was forced to file a petition for dissolution of marriage under Section 13 (1) (ia) & (iii) of the Hindu Marriage Act.

7. The appellant had filed her written statement in opposition to the petition and denied all the allegations levelled against her as incorrect.

8. After the issues were framed on 27.04.2009, the parties were directed to lead evidences. The respondent/ husband examined himself as PW-1 and he was duly cross-examined by the appellant/wife. Thereafter she

abruptly stopped attending the court proceedings and did not cross-examine the other witnesses of the husband/respondent. As a result, the testimony of the respondent's father (PW-2) remained uncontradicted. Subsequently, the appellant was proceeded against *ex-parte*.

9. After elaborately discussing all the evidence brought on record, the learned Family Court passed a decree of divorce in favour of the respondent, under Section 13 (1) (ia) of the HMA. The impugned order records that counsel for the respondent/husband, on instructions, had not pressed the second ground for divorce taken under Section 13 (1) (iii) of the HMA and had confined the case to the ground of cruelty alone. It is this judgment that has been impugned by the appellant/wife in the present appeal.

10. Learned counsel for the appellant had cited the judgments in **Kollam Chandra Sekhar vs. Kollam Padma Latha**, (2014) 1 SSC 225 and **Ram Narain Gupta vs. Rameshwari Gupta**, (1998) 4 SCC 247 to urge that having invoked the provisions of Section 13 (1) (iii) of the Act, the respondent was under an obligation to prove that the appellant was of unsound mind or intermittently suffering from schizophrenia and that the disease was of such a nature that he could not reasonable be expected to

live with the appellant. He had argued that in the absence of any substantive evidence placed on record with respect to the appellant's mental illness, the learned Family Court had gravely erred in granting the divorce.

11. Reliance was placed on the decision of a Division Bench of this Court in the case of **Shri Jagdish v. Smt. Monika in Mat. App. (FC) 40/2014 decided on 02.04.2014**, to contend that the respondent was required to point out each and every instance which could be construed as cruelty on the part of the appellant for succeeding in the case, but he had failed to do so. It was next argued that even in cases where a party is proceeded against *ex-parte*, the court is still required to assess the evidence and judge if a case is made out or not and a decree could not have been passed against the appellant merely because the evidence has remained un rebutted.

12. We have given our thoughtful consideration to the arguments addressed by learned counsels for the parties and have carefully examined the trial court record.

13. We may commence by observing that the findings in the case of **Kollam (supra)** and **Ram Narain (supra)** have no application to this case

for the reason that initially, the respondent had invoked the provisions of Section 13 (1) (ia) and (iii) of the HMA, but later on, Section 13(1) (iii) was not pressed by him and the Family Court has not granted divorce on the said ground. Rather, the marriage has been dissolved on the ground of cruelty committed by the appellant/wife *qua* the respondent/husband.

14. The other argument advanced by learned counsel for the appellant/wife is that the allegations levelled by the respondent in the plaint are vague and of a general nature and no specific incident of cruelty has been pleaded by him. Hence, dissolution of marriage on the ground of cruelty, is bad in law and the impugned judgment is not sustainable on the said ground.

15. We find no force in the above argument in the light of the facts that have been pleaded by the respondent/husband and reiterated in his deposition. The pleadings contain specific instances of cruelty on the part of the appellant/wife. It has been pleaded that the behaviour of the wife towards the respondent, their child and his parents was abusive and quarrelsome and on 21.07.2007, fed up by her persistent insults, his parents were compelled to leave the matrimonial home. The respondent has proved on record the letters written by him to the police and the National

Commission for Protection of Child Rights, elaborating *inter alia* the cruel behaviour of the appellant towards him and their child. The respondent has categorically pleaded that his wife used to beat the child mercilessly and has mentioned a specific instance when he had to call the police at 100 number to save the child from the cruel behaviour of the appellant.

16. The argument that cruelty meted out to the child cannot be treated as cruelty to the husband, for him to seek dissolution of marriage, is found to be devoid of merits. When the child is being reared by both parents and they are under a moral obligation to take care of her physical, emotional and mental well being, it cannot be urged that to invoke the grounds of cruelty, the wronged spouse cannot point out instances of grossly excessive cruelty meted out by the spouse to their helpless child. In fact, that would be a relevant consideration to examine as to whether the conduct of the spouse is such as to cause a reasonable apprehension in the mind of the wronged spouse that it will be harmful or injurious for him to continue living with the spouse. (Refer: **Dr. N.G. Dastane vs. Mrs. S. Dastane AIR 1975 SC 15 34**). In the instant case, the frequent acts of the appellant of abusing and insulting the respondent and his parents, locking him out of the house, gravely ill-treating their child on several occasions, grossly

excessive show of temper, etc. when looked at collectively, demonstrates the utter lack of sensitivity on the part of the appellant/wife and a pattern of behaviour that would cause unending misery to the respondent and his family members, beyond tolerance

17. There is no dispute with regard to the legal position that no decree can be passed merely because the evidence remains uncontradicted and irrespective of the appellant having been proceeded against *ex-parte*, the Court would still be required to examine if the uncontradicted testimony of the witnesses produced by the respondent, satisfy the conditions of law. However, the records reveal that the respondent/husband was duly cross-examined by the appellant's counsel and no material contradiction had emerged during his cross-examination which could render his testimony as unreliable. On the contrary, his testimony stands corroborated by the uncontradicted testimony of his father (PW-2). Further, their oral testimony finds support from the contemporaneous evidence in the shape of letters written by the husband to different authorities voicing his grievance against the intensely cruel behaviour of the appellant *qua* him and the child.

18. In view of the above facts and circumstances, we are of the opinion that the impugned judgment does not call for any interference. The

conclusion arrived at by the learned Family Court is backed by sound reasoning. The present appeal is accordingly dismissed *in limine*, along with the pending application, with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

**HIMA KOHLI
(JUDGE)**

AUGUST 21, 2017

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