

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 132 of 2017

Smt. Prisha Verma W/o Shri Amit Singh, Aged About 33 Years D/o Dr. Premish Verma, R/o 251/3, B-10 First Floor, Street No.07, Near Gyandeeep School, Bholanath Nagar, Sahadra Delhi, Police Station Sahadra, Delhi, Present Address H I G 13, Maharana Pratap Nagar, Police Station I T I Rampur, District Korba, Chhattisgarh(Plaintiff)

---- Appellant

Versus

Amit Singh S/o Shri Shyamveer Singh, Aged About 37 Years R/o 251/3 B-10, First Floor, Street No.07, Near Gyandeeep School, Bholanath Nagar, Sahadra, Police Station Sahadra, Delhi.....(Defendant)

---- Respondent

For Appellant	:	Shri Rohit Sharma, Advocate
For Respondent	:	None appears

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment on Board

05/07/2018

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment dated 19.5.2017 passed by learned Family Court, Korba in Civil Suit No.267-A/2016 by which, the plaintiff's/appellant's application for grant of decree of divorce on the ground of cruelty has been dismissed.
2. The respondent-husband was issued notices by ordinary as well as registered mode both. In the absence of there being otherwise report, the Registry has listed this matter for hearing, treating notice as deemed to have been served upon completion of 30 days as per proviso to Rules 167 of the High Court of Chhattisgarh Rules, 2007. We may also add that even before the trial Court, respondent was proceeded ex-parte as despite paper

publication of notice, he did not choose to appear to contest the matter.

3. The appellant herein, the wife, moved an application for grant of decree of divorce before the Family Court on the pleadings that the appellant was married to respondent on 10.11.2004 at Delhi and, though, the relation between the parties remained cordial for about five years and they were also blessed with a daughter on 30th July 2009, thereafter, there were encounters affecting their marital life. It was also pleaded that the respondent committed cruelty by refusing to extend financial support, as also pleading of misbehaviour, hurling abuses, not engaging in employment, not serious in managing income, entering into quarrel with the appellant to insist her father towards payment of money to start business, quarreling with the appellant when demand of money made, indifferent behaviour and apathy towards marital relation and frequency of such cruelty conducted every day. It was further pleaded that because of cruel conduct and behaviour, the appellant had to leave her matrimonial house in April 2011 and come back to her parental house along with the daughter and since April 2011, the parties have been living separately. The other pleadings made on the aspect of cruelty were that on 13.4.2011 when an attempt made to bring about reconciliation, respondent became offensive and attempted to assault and she was also threatened that if she annoys him, she would be killed. Because of this threat, the appellant was horrified and she left the matrimonial house and started living with her parents. It was further pleaded that though number of times, attempts were made to reconcile the things but instead of taking steps on his own level, respondent demanded Rs.10 lakh as the condition to keep his wife and daughter. Though legal notice was given but the same was not replied and ultimately the appellant was left with no option but to move application for grant of decree of divorce on the ground of cruelty.
4. In order to prove its case, the appellant presented herself and four other namely Dr. Premish Verma, Sunita Ganveere, Manoj Giri and Dhaneshwari Mahto.
5. Learned trial Court, however, held that the nature of allegations and

instances of cruelty, as pleaded in the application and deposed in the examination, do not amount to cruelty but are mere instances of ordinary domestic disputes between the husband and wife and on that ground, decree of divorce cannot be granted.

6. Learned counsel for the appellant argues that the appellant not only came out with very specific allegation and instances of cruelty, both physical and mental, but also proved the same by trustworthy evidence. It is submitted that in her evidence, the appellant and other four witnesses of the appellant have proved all the instances of physical and mental cruelty. As these factual averments made and the oral evidence led before the trial Court remained un-controverted, learned trial Court was obliged under the law to consider the case of the appellant, treating pleadings and evidence as un-controverted. He next submits that learned trial Court fell in error of law in holding that family dispute is separate and distinct from 'cruelty' as defined under Section 13 (1) (ia) of the Hindu Marriage Act, 1955. Learned trial Court, it is argued, ought to have appreciated that the proved circumstances and instance of misbehaviour and overt act of the respondent-husband amounted to cruelty. In support of his submissions, learned counsel for the appellant places reliance in the case of **Shobha Rani Vs. Madhukar Reddi** (AIR 1988 SC 121).
7. We have given our anxious consideration to the submissions made by learned counsel for the appellant and perused the records. Before we proceed to deal with the submission and correctness of the pleadings and evidence on record, we consider it apposite to refer to observation made by their Lordships in the Supreme Court in the case of **Shobha Rani** (supra) as regards the approach which the Courts are required to adopt while dealing with such issues relating to claim of grant of decree of divorce on the ground of cruelty. It was held as under:

“It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a

spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon*, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty.

These preliminary observations are intended to emphasize that the Court in matrimonial cases is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins v. Gollins*, [1963] 2 All. E.R. 966 (1972):

"In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial

offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."

Chandrachud, J. (as he then was) in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, [1975] 3 SCR 967 (1978) said:

"The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

8. Having dealt with legal position as adumbrated in the aforesaid decision which has been succinctly followed, stated and re-stated by the Supreme Court in subsequent decisions, we shall now deal with the material on record to find out whether the case for grant of decree of divorce is made out. The specific pleadings made by the appellant in her application are as below:-

"A. that the non-applicant refused to provide financial support to meet domestic requirement, misbehaved, hurled abuses, entered into quarrel to insist upon her father towards demand of money, acting indifferently against the appellant and towards marital relations and these overt act being repeated every day. (para -3 of the plaint)

B. that on 13.4.2011, when attempt was made to ease the relation keeping in view the future of the daughter, respondent became offensive and attempted to assault and also threatened that if he is troubled, he

would kill the appellant. (para -4 of the plaint)

C. imposing a condition of demand of Rs.10 lakh for keeping wife and daughter with him (para-5 of the plaint)."

9. It is relevant to note here that in the proceedings before the Court below, even though notices were issued, respondent did not appear and finally notices was served by paper publication on the respondent. Even thereafter, he did not choose to appear and, therefore, he was proceeded ex-parte. From the records, we do not find that any application to set aside ex-parte order was filed by the respondent before the Court below or before any other Court.
10. In order to prove her case, the appellant has also examined herself and four other witnesses which we shall deal with one after the other. In her affidavit under Order 18 Rule 4 CPC, appellant stated in para 1 & 2 that she was married to respondent on 10.11.2004 at Delhi and they were blessed with a daughter on 30th July 2009 and further that when she had to go to Kanpur to undertake BDS course, respondent insisted to go along with her requesting that some job may be arranged for him at Kanpur and though respondent resided with the witness at Kanpur but, he did not make any financial arrangement due to which, for all expenditure, the appellant had to depend upon her parents. She has further deposed that while studying at Kanpur, the appellant along with her friend Dr. Simmpi Giri and her husband Manoj Giri had gone for pilgrimage and during that period there were several disputes and even attempt was made to assault and the appellant was saved through intervention by Dr. Simmpi Giri and her husband Dr. Manoj Giri. It is also deposed that during solemnization of marriage of appellant's sister at Jaipur, the appellant had misbehaved with her relations which gave rise to lot of stress. In para -4 of the affidavit, it has been very specifically deposed that at the time when the appellant was undergoing pregnancy and when doctor stated that caesarean operation is necessary, the appellant did not make any arrangement in discharge of his obligation as husband and finally, she had to contact her father to seek

proper nursing care. Even during visit of appellant's father at Kanpur, the respondents, at many occasions, entered into dispute and also attempted to assault her and this time, she was rescued by her father and the nursing staffs. It is further deposed that the respondent was completely oblivious towards performance of his marital obligation. He used to leave the house early and come late in the night in state of intoxication, not taking any care of the daughter and thus in this manner, appellant was being continuously maltreated and subjected to cruelty. She has further deposed that when the appellant took up a job, respondent used to doubt her chastity and there used to be frequent quarrel. It is further deposed that demand of Rs.10 lakh as financial aid was provided by appellant's father and when he was asked as to why he was not successful in his business, he blamed appellant and daughter as unlucky and also at times, attempted to assault, which situation continued giving rise to lot of stress. In para-7 of the affidavit, she has clearly stated that on 13.4.2011, when attempt was made to reconcile the dispute, the respondent became offensive and was about to assault her and also threatened that if he is further troubled, he would kill her and daughter Manya. Afraid of this behaviour, the appellant had to leave respondent and come back to her parental house and reside there and since then, she is residing with her parents.

11. Dr. Premish Verma, father of the appellant, also supported the case of the appellant with regard to the behaviour of the respondent and various instances of cruelty as deposed by the appellant.

Sunita Ganveere has also supported the case of the appellant and also repeated the same story and instances of misbehaviour, cruelty committed by the respondent.

Dr. Manoj Giri who is another doctor and stated to have been with the appellant during pilgrimage, has fully supported the evidence of the appellant that she was misbehaved and attempt was made to assault her by the respondent.

Lastly, the evidence of Dhaneshwari Mahto also supported the same by stating that the appellant was insisting Dr. Premish to pay Rs.10 lakh as a

condition of giving divorce.

12.The aforesaid pleadings and evidence have remained un-controverted. Taken together, the cumulative effect is that the respondent has been continuously subjecting the appellant to cruelty on many occasions which have been narrated in detail by the appellant. They include misbehavior, abuses, quarreling, extracting money from her father, misbehaviour in intoxicated condition, refusing to take any care whatsoever of the wife at the time of pregnancy and operation, completely ignoring to take care of his wife and his daughter and repeating attempt of assaults, abuses and threat of life.

13.The evidence on record is thus overwhelming to prove the cruelty. But then the learned trial Court has refused to grant decree on an assumption, though erroneous in law, that family dispute may not amount to cruelty, which classification is not contemplated under the Hindu Marriage Act. It would depend upon facts and circumstances of every case whether particular act on the part of spouse amounts to cruelty or not and merely because the dispute is because of some kind of domestic problem, it cannot be said that under no circumstance, it would amount to cruelty or that under all circumstances, it would amount to simple domestic problem. It would essentially depend upon the nature of overt act, the degree, its impact physical and mental, on the other spouse and host of circumstances.

14.In the result, we are of the view that the appellant has made out a case for grant of decree of divorce on the ground of cruelty. We accordingly allow the appeal by setting aside impugned judgment and allow the application for grant of decree on the ground of cruelty.

15.Let a decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge