

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

% **Date of decision: 20th August, 2018.**

+ **FAO 784/2003**

JAGMOHAN GOSWAMI

..... Appellant

Through: Mr. Rajinder Dhawan, Mr. B. S. Rana
and Mr. Rajesh Arora, Advocates.

Versus

SUDHA SAXENA

..... Respondent

Through: Respondent-in-person

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 28(1) of the Hindu Marriage Act, 1955 impugns the judgment and decree [dated 17th September, 2003 in HMA 239/2000/98 of the Court of Additional District Judge, Delhi] of dismissal of the petition filed by the appellant husband for dissolution of his marriage with the respondent wife under Section 13(1)(ia) of the Act.

2. The appeal came up first before this Court on 17th November, 2003, when notice thereof was ordered to be issued and the Trial Court record requisitioned. Vide order dated 15th December, 2004, the appellant husband was directed to pay to the respondent wife ₹15,000/- on account of litigation expenses. The order dated 14th February, 2006 records that the said amount had been paid. Vide order dated 23rd March, 2007, the appeal was ordered to be admitted. On 23rd October, 2008, the appeal was dismissed in default on non-appearance of either of the parties but on application of the appellant husband was, vide order dated 29th March, 2011, restored to its original

position. Since then, the appeal is being adjourned from time to time. The appeal was listed last on 17th July, 2018, when the respondent appeared in person and stated that her advocate Mr. Sunil Mittal was busy in another Court and unable to argue on that date. Though an attempt was made to hear the counsel for the appellant, but he also sought adjournment. In the circumstances, the appeal was listed for hearing for today, making it clear that no further adjournment shall be granted.

3. Today, the respondent appearing in person, states that she is unable to afford an advocate and will argue in person. The counsel for the appellant has been heard and the Trial Court record requisitioned perused.

4. The counsel for the appellant has taken me through the impugned judgment and decree and particularly to internal pages 19 to 28 thereof in which the learned Additional District Judge has crystalized seven incidents of cruelty on which the appellant husband had sought divorce and has dealt with each of the said incidents. The counsel for the appellant husband states that he is not pressing the first and the sixth incident and has argued on the rest of the incidents and findings thereon. Upon enquiry, whether the learned Additional District Judge, while dealing with each of the alleged incidents of cruelty has missed out any evidence, for the need to look into the evidence recorded, the counsel for the appellant states that the entire evidence has been discussed.

5. During the course of hearing, it has been informed that the appellant husband and the respondent wife have both retired from their respective employments; while the appellant husband was working in the Delhi State Civil Supplies Corporation and retired as Deputy Manager, the respondent

wife was working with State Trading Corporation and retired as Manager; that the marriage between the parties took place on 9th May, 1997; at that time, the appellant/husband was 42 years of age and the respondent wife was 41 years of age (the respondent wife states she was 38 years of age at that time)

6. It is not in dispute that the parties, for their honeymoon went to Manali and stayed there from 16th May, 1997 to 20th May, 1997. The second incident of cruelty was of the respondent wife, at Manali, comparing the appellant husband with the waiter of the hotel in which the parties were residing. The third incident of cruelty is of 20th May, 1997 (incorrectly recorded in the judgment as 28th May, 1997), while the parties were still at Manali; it is the case of the appellant husband that at the club house, some other persons passed certain remarks against the respondent wife; though the appellant husband wanted to leave the club, but the respondent wife insisted on playing badminton with those persons and asked the appellant husband to return alone to the hotel; that the appellant husband forcibly took the respondent wife to the hotel where the respondent wife quarrelled and gave fist blows resulting in chest injury.

7. The learned Additional District Judge, on the basis of evidence led has held that the appellant husband had failed to prove the second and third incidents. It was reasoned, (a) that cruel behaviour attributed to the respondent wife is not believable as newly wedded couples are not expected to behave in such a way; (b) that the photographs of the parties taken during the honeymoon and proved before the Court showed the parties in a 'happy and enjoying state'; thus, it appeared that the appellant husband had

concocted the said incidents; (c) that had any such incidents happened, the parties would have cut short their honeymoon and not continued with the honeymoon; and, (d) that the comments which were made at the club house against the respondent wife had not been disclosed in the examination-in-chief of the appellant husband and had been disclosed only when asked so in the cross-examination.

8. I have seen the photographs referred to by the learned Additional District Judge, in the Trial Court record and on which Mark 'A' has been put collectively. Though the said photographs do not bear the Exhibit mark and were not admitted into evidence, obviously because of non-production of the negatives thereof, but it is not the case of the appellant husband that these photographs were not taken or are not of the honeymoon at Manali. A bare perusal of the said photographs shows that the inference drawn by the learned Additional District Judge therefrom cannot be said to be misplaced.

9. The counsel for the appellant husband has contended that the reasoning of the Additional District Judge, of incidents as alleged being not expected from newlywed couples, is fallacious.

10. There is some merit in the aforesaid contention. I have perused the examination-in-chief and cross-examination of the appellant husband. The appellant husband, in cross-examination admitted that despite the incident deposed by him, the parties remained at Manali, though claimed that he was not in a happy mood. It is in these circumstances that the learned Additional District Judge has given the reasoning aforesaid of the incidents alleged being not believable. The appellant indeed is found to have not proved the second and third incidents in the manner required by law.

11. The fourth incident of cruelty pleaded by the appellant husband was of 20th June, 1997 when, according to the appellant husband, the sister of the respondent wife came to the house of the appellant husband at 9 pm in the night to take the respondent wife and on objection by the appellant husband, the respondent wife and her sister abused the appellant husband and gave fist blows to the appellant husband and of which the appellant husband claimed to have made a police report.

12. The learned Additional District Judge, with respect to the said incident has held, (i) that the complaint lodged was the DD entry of 23rd June, 1997, i.e. three days after the incident; (ii) though the appellant husband in the report made on 23rd June, 1997 claimed that the sister of the appellant husband was also present at the time of incident but had not examined the said sister; (iii) in fact, the written complaint was dated 21st June, 1997 and submitted on 23rd June, 1997 i.e. three days after the incident; (iv) in the said complaint, the appellant husband had cast aspersions on the character of the respondent wife; (v) that the said incident also did not find place in the notice preceding the petition for dissolution of marriage; and, (vi) that from all these circumstances, it appeared that the said incident also had been concocted by the appellant husband; if the incident had happened, the appellant husband would have lodged the report on the very said date or at least the next morning and the delay in lodging the report creates a doubt as to the authenticity thereof.

13. The fifth incident of cruelty pleaded by the appellant husband was of 18th February, 1998, when the respondent wife was alleged to have gone to the office of the appellant husband and threatened the appellant husband in

the presence of two persons examined as PW-2 and PW-3. PW-3 also proved the entry in the Visitor's Register of the office showing that the respondent wife had gone to the office of the appellant husband. The respondent wife in her written statement denied the incident in totality and denied visiting the office of the appellant husband and disputed the authenticity of the entry in the Visitor's Register. The respondent wife also examined a witness as RW-2, to prove that on the concerned date, the respondent wife was in her office.

14. The learned Additional District Judge, with respect to the said incident had held, (i) that though the witness deposed by the appellant husband to be present at the time of incident on 18th February, 1998 was examined as PW-2 but was not examined with respect to the said incident; (ii) that the witness examined as PW-3 deposed that he was deputed at the Reception Counter on 18th February, 1998 and the respondent wife had visited the office and also abused and threatened the appellant husband at the Reception Counter itself but the appellant husband in his deposition did not depose that the abuses and derogatory words deposed of by PW-3 were uttered by the respondent wife; he only deposed that the respondent wife created a scene; if the respondent wife had uttered the words deposed of by PW-3, the appellant husband in his deposition would have stated so; (iii) that PW-3 also failed to furnish proof of being posted at the Reception Counter on the concerned date; (iv) that the Visitor's Register proved also did not inspire confidence, as against entry at serial No.4 therein, the name of one K.K. Puri as well as of respondent wife were entered; (v) that if the respondent wife had visited the office of the appellant husband, her name should have appeared at serial No.5 and it was not explained in evidence, why two names were entered

against serial No.4 i.e. of K.K. Puri as well as respondent wife; (vi) that it appeared that the entry at serial No.4 had been manipulated; (vii) that the respondent wife being herself a Government official, if had entered the office of appellant husband, would have made a proper entry and not written her name in front of the name of the previous visitor; (viii) that it was evident that PW-3, in an attempt to help the appellant husband had wanted to depose what the appellant husband himself had not deposed and what PW-2 was not even examined with respect to; and, (ix) that all these facts create a doubt of the incident having occurred.

15. Again, no fault is pointed out in the detailed reasoning aforesaid given by the learned Additional District Judge. The reasoning given by the learned Additional District Judge, on a reading of the evidence led, is inferable therefrom and it cannot be said that a case for interference in appeal is made out.

16. The counsel for the appellant husband has finally contended that the parties, after their marriage on 9th May, 1997, have stayed together for 90 days only and have been residing separately since then and has contended that the factum of the respondent wife staying away from the appellant husband itself is cruelty. Reliance is placed on para 29 of ***K. Srinivas Rao Vs. D.A. Deepa*** (2013) 5 SCC 226 holding that staying together under the same roof is not a pre-condition for mental cruelty and a spouse can cause mental cruelty by his or her conduct, even while he or she is not staying under the same roof; in a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating

number of judicial proceedings making the other spouse's life miserable.

17. Though I agree with the counsel for the appellant husband, that staying apart of the parties for over fifteen years has eroded the very foundation of their matrimony but I am bound to act as per law and the jurisdiction to dissolve marriage on such a ground of irretrievable break-down only vests in the Supreme Court. Law does not permit me to, having not found the appellant husband to have proved the ground of cruelty pleading which the petition for dissolution of marriage was filed, on the ground of irretrievable break-down of marriage, dissolve the marriage.

18. There is no merit in the appeal.

19. Dismissed.

AUGUST 20, 2018

SR/bs

(corrected & released on 18th October, 2018)

RAJIV SAHAI ENDLAW, J