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

% *Date of Judgment: 13th November, 2018*

+ **MAT.APP(F.C.) 129/2017**

BIJENDER SINGH Appellant

Through: Ms. Shashi Jaiswal, Adv.

versus

NARESH KUMARI Respondent

Through: Mr. Nargis Jahan, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 18.04.2017 passed in a petition filed by the appellant/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred as 'HMA') seeking dissolution of marriage by a decree of divorce. The petition has been dismissed by the Family Court which has led to the filing of the present appeal.
2. The brief facts of the case necessary to decide the present appeal are that the marriage between the parties was solemnised on 09.02.2007 as per Hindu rights and ceremonies. No child was born out of their wedlock. Both the parties have been residing separately since 06.02.2013.
3. The learned counsel for the appellant submits that the judgment of the Family Court is contrary to law and thus, liable to be set aside. It is

contended that the findings of the Family Court are based on conjectures and surmises and the petition seeking decree of divorce should have been allowed on the ground of cruelty on the appellant/husband and his family members. Counsel further contends that the learned Family Court has completely lost track of the fact that the behaviour and the conduct of the respondent/wife during her stay in the matrimonial home was non-cooperative with the appellant/husband and his family members. Learned counsel highlights the fact that the respondent/wife had filed a false and frivolous complaint against the appellant herein at the CAW Cell leveling false allegations against him with a view to pressurize the appellant/husband and his family members and to extort money from them. Counsel contends that a false FIR was registered against the appellant/husband and his family members which would tantamount to cruelty. It is contended that the Family Court has overlooked the grievances of the appellant/husband and the cruelties inflicted by the respondent/wife on the appellant/husband and his family members. Learned counsel also submits that the Family Court has wrongly reached to the conclusion that leaving of the respondent/wife from the matrimonial home without any cause or reason would not amount to cruelty as it is held that it would be improbable that the respondent/wife would have left the matrimonial without any rhyme or reason. Learned counsel also contends that the FIR arising out of the complaint made by the respondent/wife under Sections 498A/406/506 of IPC registered at PS – Beri, Jhajjar, Haryana has been closed and the appellant and the members of his family have

been discharged and this would be a sufficient ground to allow this appeal and set aside the order of the Family Court.

4. This petition is opposed by learned counsel for the respondent who submits that despite the fact that the respondent/wife was mistreated, tortured and repeatedly thrown out of the house, she is still interested in joining the matrimonial home. She submits that there is no infirmity or illegality in the order passed by the Family Court which would require interference by this Court. She submits that the instances of cruelty are vague and general in nature and would not amount to cruelty within the definition and the settled law as laid down by the Supreme Court of India. Learned counsel further submits that the respondent does not have a father and is solely dependent on her brother who is also unemployed. She has studied only upto 9th standard and in this backdrop to say that she left the matrimonial home voluntarily has rightly not been accepted by the Family Court. Learned counsel also clarifies that although the appellant/husband and his family members have been discharged in the FIR registered against them but an appeal has been filed which is pending in Court. Thus, no benefit can accrue in favour of the appellant on this ground.
5. We have heard the learned counsel for the parties. The basic facts which are not in dispute are that the marriage between the parties was solemnised on 09.02.2007. No children were born out of their wedlock. Parties have been residing separately since 06.02.2013. The ground on which divorce is sought is that the respondent/wife is of quarrelsome nature and is in the habit of leaving her matrimonial home at the instigation of her family members, without the consent of

the appellant/husband. The appellant/husband also claims to be living a life of stress on account of the arrogant nature of the respondent/wife.

6. The allegations so made have been denied by the respondent/wife and on the contrary, it has been stated that the behaviour of the appellant/husband was not good from day one and dowry was demanded by the appellant/husband. It is also submitted that she was tortured, abused and insulted and she was forced to leave the matrimonial home and not that she left the home voluntarily.
7. We may note that the following issues were framed by the learned Family Court:

“1. Whether after solemnization of marriage, the respondent has treated the petitioner with cruelty? OPP.

2. Whether the petitioner is entitled to decree of divorce as prayed? OPP.

3. Relief.”

8. The appellant (petitioner before the Family Court) appeared as PW-1. The respondent also appeared as RW-1. No other evidence was led. The appellant/husband had deposed on the lines of the divorce petition filed by him. The respondent/wife also testified on the lines of the written statement filed by her. The Family Court has relied upon various judgments of the Supreme Court of India to discuss the law on cruelty which read as under:

(i) V.Bhagat vs. D. Bhagat, reported at II (1993) DMC 568 (SC)

(ii) A Jayachandra vs. Aneel Kaur reported at (2005) 2 SCC 22

- (iii) *Naveen Kohli vs. Neelu Kohli* reported at AIR 2006 SC 1675
- (iv) *Vinita Saxena vs. Pankaj Pandit* reported at (2006) 3 SCC 778
- (v) *Samar Ghosh vs. Jaya Ghosh* reported at (2007) 4 SCC 511.

9. In the case of ***Savitri Pandey v. Prem Chandra Pandey*** reported at (2002) 2 SCC 73, the Hon'ble Supreme Court while construing the question of "cruelty" as a ground of divorce under Section 13(1)(i-a) of the Act made the following observations:

"6.....Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. 'Cruelty', therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other...."

(Emphasis Supplied)

10. It is a settled law that the allegations of cruelty should be grave and serious and should be of such a nature that one spouse cannot live with the other spouse. In the present case, as held by the Family Court, the

allegations of cruelty are vague and general in nature and are not such which would show the mental pain and suffering inflicted on the appellant herein. Simply to say that the conduct of the respondent/wife was quarrelsome or she was non-cooperative, in our view would not fall within the definition of cruelty or mental cruelty. Neither of the allegations so made been duly substantiated. The submission with regard to the respondent/wife leaving the matrimonial home would also not come to the rescue of the appellant/husband as he has failed to prove that the respondent/wife left the matrimonial home unprovoked. We have also taken note of the family background, economic condition of the parties and also the fact that the respondent/wife does not have father, and her brother is unemployed. Both the parties belong to the weaker section of the society. The appellant has studied upto 12th standard and the respondent upto class 9th standard. In such a situation, as rightly considered by the Family Court, it cannot be reasonably expected that she would leave her matrimonial home without a just cause.

11. We find no infirmity or illegality in the order passed by the Family Court. There is no ground made out to entertain the present appeal.
12. The appeal is accordingly dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

NOVEMBER 13, 2018//PB