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

+ **MAT.APP.(F.C.) 209/2019**

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Reserved on: 15.11.2019
Date of decision: 06.12.2019

VIKRAM SOLANKI

.....Appellant

Through Mr. Piyush Chhabra, Ms. Priyanka
Tiwary, Mr. Vishal Kumar and Mr.
Mosim, Advocates

versus

SUMAN LATA

..... Respondent

Through Mr. Tishampati Sen, Ms. Riddhi
Saneheti and Ms. Aarti Krupa
Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been filed by the appellant/husband against the judgment of the learned Family Court, dismissing his petition seeking divorce from the respondent/wife on grounds of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short the 'Act').

2. The parties were married at Delhi on 18.02.2010 according to the Hindu Rites and Customs. Though the marriage was consummated, but no child was born to the parties. According to the appellant/husband, after the

marriage, he discovered that the respondent/wife was a greedy, short tempered and quarrelsome woman and her cruel behaviour led him to file the petition on 24.05.2014, seeking divorce from her. The parties examined themselves as their respective sole witnesses. After considering the pleadings and the evidence that came on record, the Family Court concluded that whatever differences existed between the parties, could at best be described as a normal wear and tear of matrimony. Holding that the appellant/husband had failed to prove the allegations to establish that the conduct of the respondent/wife was of such a grave nature that it was impossible for him to continue the matrimonial life with her, the petition for divorce filed by the appellant/husband was dismissed.

3. According to the learned counsel for the appellant/husband, the Family Court had focused only on two instances of cruelty while the petition was replete with several instances, which the appellant had reiterated in his affidavit and which had remained unrebutted for lack of cross examination by the respondent/wife. He further submitted that the Family Court had laid undue stress on the fact that the appellant/husband had not agreed to take back the respondent/wife to the matrimonial home despite her continued willingness to be with him, overlooking the fact that it was because he was fed-up with her cruel behaviour and misconduct that he had sought divorce from her in the first place. In these circumstances, learned counsel submitted that the Family Court has come to an erroneous conclusion that the appellant/husband had failed to establish his case and had wrongly dismissed his petition. It was contended that the impugned judgment is liable to be set aside and the marriage between the parties, dissolved.

4. Though it is settled law by a catena of judgments of the Supreme

Court including A. Jayachandra vs. Aneel Kaur, **AIR 2005 SC 534** and Samar Ghosh Vs Jaya Ghosh, **2007 (4) SCC 511**, relied upon by the Family Court in the impugned judgment, cruelty which is a ground for dissolution of marriage, may be defined as wilful and unjustifiable conduct of one spouse of such a character as to cause danger to the life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such a danger in the mind of the other spouse. If from the conduct of a spouse it is established or a legitimate inference can be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his/her mental welfare, then the said conduct would amount to cruelty.

5. There can be no comprehensive definition of mental cruelty and human conduct governed by the human mind is extremely complex and complicated. Human ingenuity also has no limits. Further, what may not tantamount to mental cruelty for one, could cause extreme distress to another as personal upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religion, beliefs, human values and their personal value system would all impact on how the conduct of one spouse would affect the other. It is equally true that the courts are not required to call for proof beyond a shadow of doubt in order to establish cruelty and it may proceed on the probabilities of a case. Further, since there is no direct evidence in the case of cruelty other than physical cruelty, the court would be required to analyze the mental process and mental effect of the instances that are brought out in evidence, to establish cruelty.

6. In other words, the party seeking dissolution of marriage on grounds of cruelty, would have to bring adequate material on record, which would

establish either that there was physical cruelty or in the case of mental cruelty, the impact that certain conduct had on him/her. Incidents would have to be specifically related and vague assertions would not suffice.

7. In the present case, the Family Court has recorded the grievances of the appellant/husband to describe the conduct of the respondent/wife as cruel. For the sake of convenience, these may be listed as below: -

- (i) *She was greedy and sought new jewellery from the appellant/husband;*
- (ii) *She was short tempered and quarrelsome;*
- (iii) *She used to insist on frequent outings including to take food outside the home;*
- (iv) *She was evasive of doing household work and preparing food ;*
- (v) *She used to sit before the television, watching movies and serials frequently;*
- (vi) *She was not discharging her matrimonial duties and responsibilities towards the appellant/husband and his family members;*
- (vii) *She used to pick up quarrels with the mother of the appellant/husband on petty matters.*
- (viii) *She used to insist that the appellant/husband separate from his mother;*
- (ix) *On 25.12.2012, she demanded that the mother of the appellant/husband transfer the house belonging to her, to the name of the respondent/wife or add her name as a joint owner; and*
- (x) *She used to threaten suicide and false implication of the appellant/husband and his mother.*

8. According to the appellant/husband on 04.05.2013, the respondent/wife had picked up a petty quarrel with him and left the

matrimonial home and despite his best efforts, she did not return which propelled him to seek divorce.

9. The respondent/wife has refuted all these allegations and on the contrary, claimed that her mother-in-law and her husband had subjected her to harassment and ill treatment for the sake of dowry. In any case, the onus was on the appellant/husband to prove his case and it would be useful to refer to the evidence that has been brought on record by him.

10. The evidence produced by the appellant/husband falls really short for establishing that the respondent/wife is a greedy, short tempered and quarrelsome woman. The details of the occasions when the respondent/wife had demanded new jewellery, were not even spelt out. In what other manner was she greedy, has also not been explained. The appellant/husband has not been able to specify as to on how many occasions during a week or a month, he had been forced to eat out in a restaurant instead of the respondent/wife cooking food at home. He has not even cared to specify the names of such hotels/restaurants where he had been forced to take her and which were evidently expensive.

11. During her cross examination, while refuting the suggestion that she used to ask for gold jewellery and expensive items, the respondent/wife deposed that no husband would have so much money to bring such expensive items for his wife on a daily basis. No suggestion was given to her as to the frequency at which the parties used to dine out. It is apparent that these allegations have simply been levelled by the appellant/husband without any basis. During his cross-examination, the appellant/husband had disclosed that after the marriage on 18.02.2010, the parties had gone to Goa for honeymoon for 4 days but he could not remember when else had he

taken the respondent/wife for outings thereafter. He admitted as correct the suggestion that both of them had gone to Srinagar, Kashmir on a tour.

12. If the respondent/wife was insisting that her husband take her on tours, such insistence cannot be described as cruel treatment. If the wife was enjoying the company of her husband and if the husband was unwilling to spend that time with his wife, it would be taken the other way round. A desire of the wife to see different places in the company of her husband, cannot be considered as cruel conduct on the part of the respondent/wife by any stretch.

13. As regards the allegations that the respondent/wife was not discharging her matrimonial obligations by taking care of the appellant/husband and his family members and that she was spending time watching television, it has been conceded by the appellant/husband that the respondent/wife used to go to work at an Anganwari, which was located at her parental home. An employed woman would definitely find it necessary to juggle her household duties with her professional obligations and if there was any short fall noticed by the husband and his family members in contrast to their expectations, it was for them to adjust and accommodate a working wife and not set exacting standards for her in the discharge of the household obligations. To our mind, any such short fall, if at all, would not tantamount to cruelty. There is no disclosure of the names of the T.V. serials, which the respondent/wife was addicted to watching at the cost of her duties towards the family. Moreover, if a wife is spending more time watching television, then the husband and family members are expected to counsel her with affection and not rush to the court with a petition for seeking divorce. These are certainly no ground for dissolution of the

marriage.

14. Regarding the separation that according to the appellant/husband was insisted upon by the respondent/wife, suffice it is to note that the appellant/husband has admitted in his cross examination that the parties lived together as husband and wife at his native place in Palam Village from 18.02.2010 till July, 2013 and during this time, he had no occasion to complain to the police about the misbehaviour or other acts of the respondent/wife. The evidence on the other hand establishes that the mother of the appellant/husband had filed a civil suit seeking an injunction order against the respondent/wife to restrain her from entering the said house at Palam Village, which was the matrimonial home. The appellant/husband admitted that the respondent/wife had made a statement in that court that she will not go to the matrimonial house without the orders of the court. In other words, she was willing to abide by the directions of the court. During her cross examination, the respondent/wife had admitted that she did not file any appeal against the orders passed by the civil court restraining her from entering the matrimonial house at Palam Village. In these circumstances, filing of a petition under the Protection of Women from Domestic Violence Act, 2005, can hardly be considered as an act of cruelty on the appellant/husband. Thus, the evidence on record falsifies the allegations of the appellant/husband that the respondent/wife used to insist that he get separated from his mother or that the property belonging to his mother, be transferred in her name.

15. With regard to the threat of filing cases to falsely implicate the appellant/husband and his mother, there is nothing on record to show that any criminal case was filed by the respondent/wife. From the deposition of

the respondent/wife as elicited during her cross examination, it is evident that the police had come when the appellant/husband had filed the divorce petition and he and his mother did not allow the respondent/wife to enter the matrimonial home and the appellant/husband had locked the door. There is no reference to any FIR having been registered against the appellant/husband at the instance of the respondent/wife.

16. Learned counsel for the appellant/husband had suggested that the respondent/wife had not resigned from the Anganwari when she had got married and nor had she applied for transfer to the locality where her matrimonial home was situated because she had no plans to stay in the matrimonial home forever. This is indeed a strange suggestion. Similar is the contention that because the respondent/wife had not got her Aadhar card and Election card transferred from the address of her parental home to that of the matrimonial home, it reflected her disinclination to continue her matrimony with the appellant/husband. Such frivolous grounds are most unacceptable when the relief sought is to put an end to what is otherwise a deep relationship between two persons, i.e. husband and wife.

17. Repeatedly, husbands are seen pleading that their wives are not cooking food for them and are not discharging household duties, without mentioning any specific instances, either in the pleadings, or in their evidence. It is time to call the bluff on such pleas. Times have changed. Mere cooking of food or performing household chores cannot be determinative of the strength of a matrimonial bond. Emotional quotient will have deeper meaning and will have to be assessed on the basis of the conduct of the parties. Refusal to perform household chores and/or cook food, *per se*, cannot be a ground for seeking divorce unless and until it is

coupled with other facts, which would establish complete lack of interest in the matrimony and is reflective of a disinclination towards the marriage or at the very least, a certain overall perversity of conduct and character.

18. It is time that Family Courts strictly enforce Rule 7 of Part-E of Chapter-1 of Volume-II of High Court Rules and Orders, 1967 and insist on clear averments in the pleadings as to the nature of the cruel acts with details of the date, time and places of such occurrences. Rule 7 is reproduced hereinbelow for ready reference: -

“7. Contents of petition—In addition to the particulars required to be given under Order VII Rule 1 of the Code and Section 20(1) of the Act, all petitions under Section 9 to 13 shall state:

(a) The place and date of marriage;

(b) Whether the petitioner and the respondent were Hindu by religion at the time of marriage and whether they continue to be so up to the date of filing of the petition;

(c) The name, status and domicile of the wife and the husband before the marriage and at the time of filing the petition;

(d) The address where the parties to the marriage reside at the time of the presentation of the petition and last resided together;

(e) The names of children, if any, the marriage, their sex and their dates of birth or ages;

(f) If prior to the date of the petition there has been any proceeding under the Act between the parties to the petition, full

particulars thereof;

(g) The matrimonial offence or offences alleged or other grounds, upon which the relief is sought, setting out with sufficient particularity the time and places of the acts alleged, and other facts relied upon, but not the evidence by which they are intended to be proved, e. g.:

(i) If the petition is for restitution of conjugal rights the date on or from which and the circumstances under which the respondent withdrew from the society of the petitioner;

(ii) If the petition is for decree of nullity of marriage on the grounds specified in clause (c) and (d) of sub-section (1) of Section 12 of the Act, the particulars of force or fraud and the circumstances in which force or fraud had been practised alongwith the time when the facts relied upon were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts;

(iii) In every petition for judicial separation/divorce by either the husband or the wife on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, the petitioner shall state the name, occupation and place of residence of such person or persons so far as they can be ascertained, the specific acts of sexual intercourse and the occasion when and the place where such acts were committed;

(iv) In the case of alleged desertion, the date and the circumstances in which it began; in the case of cruelty, the

specific acts of cruelty and the occasion when and the place where such acts were committed;

(v) In the case of unsoundness of mind or mental disorder, the time when such unsoundness of mind or mental disorder began to manifest itself and the nature and the period of the curative steps taken;

(vi) In the case of virulent and incurable form of leprosy or venereal disease in communicable form, when such ailment began to manifest and the nature and the period of the curative steps taken;

(vii) If the petition is on the ground specified in Section 13(1)(vii), the date of renunciation and the particulars of the religious order which the respondent has entered into;

(viii) If the petition is on the ground specified in Section 13(1)(vii), the date and the place where the respondent was last seen or heard of alive and the steps, if any, taken to ascertain his or her whereabouts;

(ix) Where the petition is founded on the ground of rape or sodomy the occasion when, the place where and the names and addresses of persons with whom such acts were committed. In case of conviction for committing rape or sodomy, the particulars thereof;

(x) Where the petition is founded on the ground of bestiality, the occasion when, the place where and the particulars of the beast with whom the husband had been guilty of bestiality;

(xi) In the case of divorce under Section 13(2)(iii) of the Act,

particulars of the decree under Section 18 of the Hindu Adoption and Maintenance Act, 1956 or of order under Section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding Section 488 of the Code of Criminal Procedure, 1898) together with an affidavit that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(xii) In the case of divorce under Section 13(2)(iv) the date and the place of birth of the wife together with the date and the place of repudiation and its mode;

(h) The property mentioned in Section 27 of the Act, if any;

(i) The relief or reliefs prayed for.”

19. Frivolous petitions cannot be allowed to strain the system and waste precious judicial time. No doubt, the law facilitates divorce. However, that does not imply that half baked allegations levelled by husbands or even wives should be permitted to drag the other spouse into unfair and protracted litigation and the resultant stress and unhappiness. Such petitions often form the basis for initiation of various other cases as per legal advice, which over a period of time, vitiates the already strained relationship between the parties. It is often seen that thereafter, the husband cries cruelty on the basis of such subsequent litigation, also escaping the rigours of proving his allegations as set out in his petition and yet often, succeeding in obtaining divorce from the wife who in the process, is twice victimized. Courts must be conscious of this unintended result and remind itself of the principle that a man cannot be allowed to take the benefit of his own wrong.

20. From the reasoning noted above, we find no merit in the present appeal. The impugned judgment is upheld and the appeal is dismissed, with costs of Rs.25,000/- imposed on the appellant/husband to be paid to the respondent/wife within four weeks.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

DECEMBER 06, 2019
MK/s