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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAT.APP.(F.C.) 240/2019 & C.M.Applns.41403-06/2019**

EKTA ARORA

..... Appellant

Through: Mr. Rajesh Kumar, Ms. Santwana,
Ms. Saumya Johari, Advocates.

versus

AJAY ARORA

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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17.09.2019

1. By the impugned judgment dated 07.06.2019, the Family Court has dissolved the marriage of the appellant/wife with the respondent/husband.
2. The brief facts of the case are that the appellant/wife and the respondent/husband had got married at Delhi on 06.09.1998 and were blessed with twins, a boy and a girl, on 15.06.1999. The respondent/husband approached the Family Court seeking a divorce on the grounds of cruelty by moving a petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") alleging *inter alia* that he could not continue with the marriage on account of the cruel treatment meted out to him by the appellant/wife, as detailed in his petition.
3. The appellant/wife filed her written statement denying the allegations that she had treated the respondent/husband with cruelty. However, on an

assessment of the evidence brought on record by the parties, the Family Court held that the respondent/husband was entitled to dissolution of marriage on account of the cruel conduct of the appellant/wife. Vide impugned judgment dated 07.06.2019, the Family Court has accordingly dissolved the marriage of the parties.

4. It has been averred in the appeal that the Family Court had wrongly concluded that the general allegations made by the respondent/husband sufficed as proof of cruelty on the part of the appellant/wife; that the mother of the respondent/husband was not examined as a witness though most of the allegations of cruelty made by the respondent/husband were in connection with the alleged conduct of the appellant/wife towards his mother. In short, learned counsel for the appellant/wife submitted that the Family Court has not properly evaluated the evidence and the statements of the appellant/wife, which has led it to erroneously allow dissolution of the marriage between the parties.

5. Learned counsel for the appellant/wife has also relied on the judgment of the Supreme Court in Parveen Mehta VS. Inderjit Mehta reported as (2002) 5 SCC 706 to submit that cruelty for the purpose of Section 13(i)(ia) is to be taken as the behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him/her to continue the matrimonial relationship with the other. According to the learned counsel, the generalized allegations levelled by the respondent/husband against the appellant/wife in the present case, did not meet the said standard and therefore, a decree of dissolution of marriage, was most unjustified.

6. Before proceeding further, it may be mentioned here that in the

pleadings as also in the affidavit by way of evidence, the respondent/husband had alleged that the behaviour of the appellant/wife towards his mother and his sisters was hostile and that she had suspected his character, alleged that his mother had beaten her and had further accused the mother of an incestuous relationship with the respondent/husband, her son. In the impugned judgment, the Family Court has noted the allegations made by the respondent/husband and gone on to observe as follows: -

“15. The petitioner levelled allegations against the respondent such as the respondent neither adjusted nor cooperated with the petitioner during tough time; the respondent immediately after marriage made complaints about the status and family of the petitioner; The respondent was disrespectful to the widowed mother, sisters and family members of the petitioner; the father of the respondent also instigated the respondent not to live with the petitioner; the petitioner after birth of the children used to fight with the petitioner frequently; the respondent threatened to insult the sister of the petitioner on the occasion of first birthday of the children; the respondent never did household chores which were being done by the mother of the petitioner. The respondent also refused to cook food for the petitioner and the children; the respondent did not come back from her parental home for about 20/25 days when she had gone there due to accident of her brother and said allegations are related to the behaviour of the respondent and part of the normal wear and tear of life. These allegations are not enough to cause reasonable apprehension in the mind of the petitioner that it was not safe for the petitioner to continue the matrimonial relationship with the respondent and as such to constitute cruelty. The said instances of cruelty as pleaded and deposed by the petitioner are not sufficient to constitute cruelty on the part of the respondent within the meaning of section 13(1)(i-a) of the

Act.”

7. It is clear from the above observations that those allegations which appeared to be of general nature, did not prevail upon the Family Court, but there were specific allegations against the appellant/wife, which the Family Court considered to be a conduct of extreme cruelty that are listed below: -

(a). Firstly, the appellant/wife made defamatory allegations against the mother of the respondent/husband to the effect that she was a characterless lady and fulfilled her sexual lust with various persons and that she used to sleep and have sex with the respondent/husband, her own son.

(b). Secondly, the concern of the appellant/wife was the immovable property owned by the mother of the respondent/husband. The entire cross-examination of the respondent/husband was centred on the said property/house left by his father, non payment of the maintenance and the other legal proceedings in the Domestic Violence petition. Though, in her cross-examination, the appellant/wife has admitted that her mother-in-law had a right to stay in her own house, she conceded that she was actually residing in the house of her married daughter.

(c). Thirdly, that the appellant/wife falsely claimed that she had been assaulted by her mother-in-law and had called the police on 08.08.2007, alleging of such beatings at the hand of her mother-in-law and other family members while admitting that subsequently, she had written a letter of apology for this conduct.

(d). Lastly, the Family Court noted that there was no cohabitation between the parties since the year 2009 and the said cohabitation had been prevented by none other than the appellant/wife.

8. Though, learned counsel for the appellant/wife has argued that the letter of apology referred to by the Family Court was written by the appellant/wife in order to save her marriage and she was interested in living with the joint family, the said letter has not been filed on the record for us to draw any different conclusion. Merely arguing that the appellant/wife was interested in residing with the mother-in-law, would hardly be a ground to dislodge the conclusion drawn by the Family Court on the basis of the specific facts and circumstances referred to here-in-above.

9. A man accused of infidelity and subjected to character assassination may still bear it with a stiff upper lip, but when his mother is accused of a loose character and of being of immoral and of having an incestuous relationship with her own son, the pain suffered by the respondent/husband is truly too deep for forbearance and amounts to mental cruelty. The appellant/wife has not denied these specific allegations in her written statement and has simply stated that these are false and concocted. When, as noticed above, the respondent/husband used the words reproduced in para-24 of his petition indicating how she had insulted his aged mother and had even repented later on, only to continue assassinating the character of the widowed lady and the respondent/husband, all that the appellant/wife had to say in reply was that these allegations were false, concocted and malicious. However, learned counsel for the appellant/wife has not been able to point out any questions put to the respondent/husband in his cross-examination challenging or questioning these allegations as reproduced by him in his affidavit of evidence.

10. Admittedly, the respondent/husband and his mother are residing in his sister's house. In a conservative social background from which the parties

hail, it is anathema for a mother or a brother to reside in the house of a married daughter/sister. But the conduct of the appellant/wife appears to have left them with little choice. The appellant/wife admits that the house where she is residing with her two children at A/135, Shankar Garden, Vikaspuri, New Delhi – 110018, belongs to her mother-in-law and in a suit instituted by the appellant/wife to claim rights in it, the Court has declared her to be its absolute owner. It is interesting to note that even in the present appeal, a good part of the averments made, relate to the rights in the immovable property which reflect that the primary interest of the appellant/wife, does not seem to be in the matrimonial relationship with the respondent/husband, but rather, in the property owned by her mother-in-law. During the course of arguments, learned counsel for the appellant/wife has clarified that the mother of the respondent/husband is still alive, though it has been erroneously recorded in the impugned judgment that she has expired.

11. It was also argued that the respondent/husband had admitted to have voluntarily left the matrimonial home. But such voluntariness, if at all there was, cannot be interpreted to be an act of desertion on his part as admittedly when his mother was admitted in the hospital for treatment from 02.08.2007 to 04.08.2008, the appellant/wife had filed a complaint on 03.08.2007, alleging that the mother-in-law had actually beaten her and slapped her. The Family Court has rightly observed that the appellant/wife instead of taking care of her mother-in-law, chose to file a false complaint against her and other family members under the Protection of Women From Domestic Violence Act, 2005, and within four days of the mother-in-law returning to her home, she had given a call to the police on 08.08.2007, again alleging

that the mother-in-law, just out of hospital on 04.08.2008, had beaten her up alongwith other family members. Clearly, the respondent/husband was justified harbouring a fear that it was not safe for him to continue with the matrimonial relationship and was well entitled to seek a decree of divorce on the grounds of cruelty at the hands of the appellant/wife.

12. In her cross-examination, the appellant/wife admitted that she had been continuously filing cases without any basis. This conduct would clearly give rise to a reasonable apprehension in the mind of the respondent/husband, which stood substantiated by the evidence brought on record by him. Since, the appellant/wife has examined only herself in the case and so did the respondent/husband, nothing much hinges on the non-examination of the mother, who was in any case aged and living with a pacemaker. In the given circumstances to insist on her examination and to subject her to unsavoury cross-examination by the appellant/wife, would not have been justified. We are of the view that her non-examination is certainly not fatal to the case of the respondent/husband, as sought to be contended by the learned counsel for the appellant/wife.

13. The Family Court has rightly rejected the claim of the appellant/wife in the written statement as well as in her affidavit of evidence that she had not denied cohabitation even though the husband was given to excessive cohabitation as no such case was put to the respondent/husband when he was being cross-examined. As it is an admitted position that the parties have been living separately since the year 2009, the Family Court could not have but concluded that there was no cohabitation between the parties since that time and denial of the said position was not at all justified and the same took place only on account of the conduct of the appellant/wife.

14. In our view, the judgment cited by the learned counsel for the appellant actually supports the conclusion drawn by the Family Court in the impugned judgment. The Supreme Court had held in Parveen Mehta VS. Inderjit Mehta (supra) as under : -

“21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

(emphasis added)

15. Following the very case cited and relied upon by learned counsel for the appellant/wife, it is clear that the conclusions drawn by the Family

Court, call for no interference. The conduct of the appellant/wife has been one of extreme callousness and insensitivity, which has resulted in a situation where it became impossible for the respondent/husband to reside with her and live a normal matrimonial life.

16. The present appeal is therefore dismissed as meritless alongwith pending applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

SEPTEMBER 17, 2019/MK