

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 6th March, 2019
Pronounced on: 3rd May, 2019

+

MAT.APP (F.C.) 97/2017

D K

..... Appellant

Through: Mr.Bharat Bhushan, Advocate.

versus

S

..... Respondent

Through: Mr.Basant Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

MAT.APP(F.C.) 97/2017

1. The present appeal has been filed by the appellant/husband assailing the order of the Family Court dated 22.04.2017 whereby the petition filed by the husband under Section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') has been dismissed by the Family Court.
2. Brief and necessary facts for adjudication of the appeal are that the marriage between the parties were solemnized on 20.01.2003 at Delhi according to Hindu Rites and Ceremonies. After the marriage the parties cohabited at Rohtak, a daughter namely Vanshika was born out of the wedlock on 22.11.2004.

3. The case of the appellant as pleaded before the Family Court was that it was a simple marriage without any dowry. The behaviour of the respondent changed after six months of the marriage itself and she along with her parents started harassing the appellant who is serving in the Delhi Police. She compelled the appellant to deposit half of his salary in her account and on resistance she left the matrimonial home, without his permission in January, 2004.
4. The appellant thereafter visited the parental house of the respondent and requested her parents to advise her to return back, but she refused. A month later he again visited her parental home, with the *biradari panchayat* and some relatives and with their intervention the respondent returned in February, 2004. The parties lived together upto January 2005 and during this period were blessed with a daughter. After living together for some time happily, behavior of the respondent again changed and she again left the matrimonial home in January, 2005 and when the appellant requested her to come back, the parents of the respondent reiterated their demand for deposit of his 50% of his salary in her account.
5. Again on 6.6.2006 a *panchayat* was convened at the parental house of the respondent and the respondent agreed to return after receiving six gold bangles, which were kept by her mother. Despite an undertaking to the *panchayat* that the family of the respondent would not interfere in the life of the parties, they did not stop interfering and on 6.3.2007 when the appellant was away on duty, the brother of the respondent came with three other persons and took her back. She also took away

all her jewellery along with some silver ornaments of the appellant's mother.

6. Again on 17.3.2007 the appellant with some respected persons of the family and the village went to the parental house of the respondent, but her family members refused to talk and send the respondent back to the matrimonial home. It is pleaded that her mother and brother misbehaved with the *panchayat* members and threatened to implicate the appellant and his family, in false dowry cases. The custody of the minor daughter Vanshika was also denied to the appellant.
7. Further, claims of the appellant were that, again on the occasion of the marriage of his younger brother, which was to be held on March, 2011, a *panchayat* was conveyed on 2.1.2011, but the parents of respondent refused to send her back. On 25.12.2011, another attempt was made by the appellant to get the respondent back but he was unsuccessful. The appellant filed a petition under Section 9 of HMA at Rohtak, but when the respondent showed her unwillingness to join, the said petition was dismissed on 1.6.2007. Respondent filed a case under Section 12 of the Protection of Women from Domestic Violence, 2005 (hereinafter referred to as 'D.V. Act') at Sonapat which was dismissed. To create more trauma for the appellant, the respondent handed over their minor daughter to her sister and *jija* at Gurgaon. Reconciliation efforts at the family counseling centre Rohtak also failed. It was thus the case of the appellant that the respondent had inflicted mental cruelty upon him and deserted him without any cause and thereafter the present petition was filed seeking dissolution of marriage on the grounds of 'cruelty' and 'desertion'.

8. Respondent had contested the petition and filed her written statement. Factum of marriage and birth of the daughter were not denied. However, it was denied that it was a simple marriage, as according to the pleading of the respondent, the marriage was solemnized with great pomp and show and lots of gifts, ornaments, furniture, electronic gadgets, etc. besides cash were given, which also did not satisfy the demand of the appellant. It was pleaded that the respondent was subjected to harassment, cruelty and violence by the appellant and his family for dowry and on 19.3.2007 she was thrown out of the matrimonial home, only in three apparels. She was thus forced to live at her parental house except for some period when she stayed at her sister's house. It was further the case of the respondent that she had filed a petition under Section 125 Cr.P.C claiming maintenance, which was settled on 6.11.2012 and the appellant agreed to pay Rs.9,000/- per month towards the maintenance of the daughter, which was to be enhanced as per the increments in the salary of the appellant. Respondent claims that the appellant had also filed a case claiming the custody of the minor daughter which was contested by her. In the written statement it was denied that she had harassed the appellant or demanded the deposit of 50% of his salary in her account. It was denied that the respondent left the matrimonial home on her own accord on several occasions, as alleged by the appellant. It was pleaded that despite having given more than Rs.10,00,000/- at the time of marriage, the appellant and his mother had on 21.1.2003 subsequently demanded Rs.5,00,000/- on account of the fact that the brother of the appellant had been selected in Delhi Police and would

get an appointment only on the payment of money. On the same day, respondent informed her father, who then called the appellant and his brother and gave him Rs.5,00,000/- on 26.1.2003, after borrowing money from two people. Thereafter, the brother of the appellant Pawan got appointed on 27.1.2003. A serious allegations in the written statement was also made that the appellant took the respondent to a doctor on the pretext of medical examination but after the ultrasound was conducted and it was revealed that the fetus was a female child, mother of the appellant created a scene on 8.5.2004 and compelled the respondent to get the child aborted. However, due to strong resistance of the respondent, they did not succeed in their design. It was denied that the appellant had given her six gold bangles or that the appellant made any effort to take her and the daughter back to the matrimonial home. It was averred that marriage of the sister of the respondent was to be solemnized on 12.3.2007 and brother of the respondent had visited the matrimonial home in the night of 4.3.2007 to bring her to her parental home on the occasion of the marriage. It was denied that respondent left the home without any cause or that she took away her isticdhan or the dowry articles. As to the minor daughter living at the house of younger sister, it was pleaded in the written statement that this was for the purpose of studies and to keep her away from the threats of the appellant.

9. The appellant filed a replication to the written statement and denied the averments made therein, while reiterating the averments of the divorce petition.

10. On the pleadings of the parties, following issues were framed on 6.3.2013:

“1. Whether the petitioner has been treated with cruelty by the respondent after solemnization of marriage? OPP
2. Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of this petition?
3. Relief.”

11. In support of his case, the appellant examined himself as PW-1 and his neighbour Mahender Sharma as PW-2. Respondent examined herself as RW-1. Both the parties filed their respective affidavits leading evidence and both parties cross-examined each other.
12. The appellant testified on the lines of the petition and relied upon a letter dated 14.1.2003 (Mark-A); photocopy of letter received under RTI Act about Km. Vanshika's admission in Miniland Preparatory School, Sonapat, Haryana (Mark-B); photocopy of certificate issued by the Red Cross Society, Rohtak (Mark C); photocopy of letter dated 21.12.2011 (Mark-D colly); photocopy of ration card (Mark-E colly) and photocopy of statements, order dated 6.11.2012 in maintenance petition no. 169/2012 passed by Shari Kamlesh Kumar, Additional Principal Judge, Family Courts, Rohini (Mark-F).
13. On being cross-examined, PW-1 clarified that he was given normal furniture, a motorcycle and gold ring apart from Rs.11,000/- during the marriage and related ceremonies. He denied the suggestion that the marriage was not solemnized in a simple manner and testified that there were about 200 persons in the ceremony. He testified that during the pregnancy of the respondent he had taken her to the doctor

on several occasions and had given the expenses for the delivery of the child. He denied that Rs.5,00,000/- were demanded for the appointment of his younger brother. It was also denied that any costly items like television, fridge, gold etc. were taken on '*lagan*' or on any other ceremonies. He denied that the appellant did not get any ultrasound of the respondent conducted during pregnancy and further stated that he had no knowledge whether the gender of fetus was ascertained and also denied the suggestion that he or his mother had asked the respondent to abort the child. Interestingly, during his further cross-examination, PW-1 clarified that during the period from January, 2003 to December, 2003 his family and the respondent lived together with a common kitchen and the respondent fulfilled all her marital obligations and they had no complaints against each other. He further stated that the salary of the appellant was kept in the almirah of the respondent and could be used by her as required and he never questioned the expenses. He stated that in April 2005, father of the respondent threatened to ruin his life. He further testified that respondent finally left at 06:00 P.M. on 6.3.2007 without anyone's knowledge or permission. He deposed that between January, 2003 to January, 2005 respondent continuously visited her parental home but did not remember the details of such visits. In cross-examination, PW-1 stated that from June, 2006 onwards the respondent remained with him for about 18 months and behaved normally and her misbehavior started only after her mother and sister-in-law visited the matrimonial home. He denied the suggestion that he was informed of the marriage of the respondent's sister or that her brother had come to

invite him. He learnt about the respondent leaving the matrimonial home on 6.3.2007 with her brother and three other persons, from one Shri Shyam Prasad. He denied the suggestion that he did not make any effort to bring the respondent back. He clarified that on 2.1.2011 he had gone to bring the respondent back for his brother's marriage. He denied that the guardianship petition was filed only to harass the respondent.

14. PW-2 neighbour of the appellant testified in respect of respondent leaving the matrimonial home on 6.3.2007 with her brother. On cross-examination he clarified that he was illiterate and that his house was opposite to that of the appellant. He denied the suggestion that mother of appellant was at home when the respondent left with her brother on 6.3.2007.
15. Respondent in her examination-in-chief testified on the lines of the written statement. On cross examination, she denied having given her daughter in adoption to her brother-in-law. She deposed that she was residing at Gurgaon for the past one or two years in a separate rented room in the same premises where her brother in law was residing. She further deposed that she had got the ration card corrected. She had undertaken to get her daughter admitted at Tri Nagar instead of Gurgaon but she could not secure admission. She denied that during the proceedings of petition under Section 9 of HMA, the appellant was willing to take her back without any conditions. She deposed that she had filed a maintenance petition in Sonapat but this was not to harass the appellant. She deposed that it was on her complaint dated 3.8.2015 to the Gurgaon police that the appellant was arrested under

Sections 107/151 Cr.PC. Respondent testified that she stayed at her parental home from 6.3.2007 to 19.3.2007 due to her younger sister's marriage but returned to the matrimonial home on 19.3.2007 but was turned out of the house on the same day. She testified that her visits to parental home were mostly during her pregnancy and she mostly visited the hospital where her father was employed. It was denied that repeated petitions were filed by her to harass the appellant or that she did not return to matrimonial home despite the efforts of the appellant and the village folks. All suggestions of the appellant that false allegations of dowry demands were made, were denied by the respondent.

16. The family court found that the appellant had not been able to prove that the allegations levelled by him amounted to cruelty and in any case most of the allegations remained unsubstantiated. As regards the grounds of desertion, the family court found that the appellant had not been able to substantiate that the respondent had deserted him for a period of two years preceding the date of filing the petition and observed that in fact it was the appellant who had prevented the respondent from returning back to the matrimonial home by imposing conditions which could not be fulfilled. The petition was accordingly dismissed finding that the appellant was not entitled to a decree of divorce.
17. Learned counsel for the appellant submits that the family court has erred in drawing an inference against him that he had not been able to prove deposit of half of his salary in the account of the respondent and only because she had access to money did not mean that he was not

compelled to deposit separately 50%, in her account. He contended that the family court has ignored that the appellant was not even invited on the occasion of the marriage of the respondent's younger sister, although he had testified to this effect and there was no cross-examination on this aspect. It was argued that the trial court has even failed to consider the testimony of PW-2 who had clearly deposed that the respondent had left her matrimonial home on 6.3.2007 when there was no body at home and this was without any intimation to him. Even the allegation of demand of Rs.5,00,000/- by the appellant from the respondent has been believed by the family court wrongly though the respondent could not substantiate the same and making false allegations is cruelty. It was further argued that the respondent hounded the appellant in different courts and made false claims. He was even arrested by the Gurgaon police under Sections 107/151 Cr.P.C. and this by itself was 'cruelty' to entitle him to a decree of divorce. It was vehemently argued that the respondent went to the extent of applying for a ration card and in the application form she had mentioned the name of one Prashant Sharma against the column 'name of the father'. The said application form was also attested by a superior officer of the father of the respondent and this was a fact admitted by her during her cross-examination. It was further submitted that after March, 2007 the appellant had made various efforts to reconcile but the family court has erred in not taking into account those attempts and has rather held the appellant responsible for the respondent not joining the matrimonial home.

18. Per contra, counsel for the respondent defended the judgment of the family court and submitted that the petition had been rightly dismissed against the appellant. It was submitted that she had not given her daughter in adoption to anyone. Prashant Sharma was her brother-in-law and the error in the name shown against the column of 'name of the father' was an inadvertent mistake. The respondent had in fact got the ration card corrected. The respondent, it was argued, could not get her daughter admitted at Tri Nagar and was thus admitted to a school in Gurgaon, where she was living. It was argued that during the proceedings under Section 9 of the Hindu Marriage Act filed by the appellant before the Rohtak Court, the respondent was willing to go back, but the appellant had imposed several conditions, which made it impossible for her to go back. Filing of the maintenance petition at Sonipat was sought to be justified by the learned counsel for the respondent on the ground that she had to fend for her daughter, who was admitted in a preparatory school at Sonipat. The counsel also justified the lodging of the complaint under Section 107/151 Cr.P.C. on the ground that the harassment by the appellant had led her to follow this path. It was further argued that the respondent left for her parental home only for a short period in March, 2007 and this was on the occasion of her younger sister's marriage, but soon thereafter returned back to her matrimonial home. She was however turned out of the matrimonial home and did not leave the same on her own accord. It was also submitted that no criminal proceedings were initiated at the initial stage, as the respondent always looked for a reconciliation.

19. We have heard learned counsels for the parties and examined their contentions as well as the pleadings and the evidence.
20. The family court has disbelieved the allegation of the appellant that the respondent along with her parents repeatedly demanded that the appellant should deposit 50% of the salary in the account of the respondent. In our view, the family court has rightly held that the respondent on her own returned back to the matrimonial home on 6.6.2006 and the appellant was unable to prove any deposit having been made by him thereafter, in her account. Considering the background and the culture of the parties, such a pre-condition even seemed improbable. We also agree with the reasoning that the parties lived together happily till March, 2007 but this issue never cropped up and also that no independent person from the Panchayat, if any, was examined to support such a demand by the respondent or her parents. The allegation of the respondent, however, that the appellant demanded Rs.5,00,000/- from the respondent for the employment of his brother has been disbelieved by the family court in the absence of any cogent proof of the payment of the said sum and in our view rightly so.
21. The family court has not agreed with the appellant that the respondent left for her parental home on account of a discord between the parties and that she had left without any permission from the appellant or his family members. It is customary for a sister to visit her parental home on the marriage of her sister and it is not unusual that the brother of the respondent would have visited her and taken her for the wedding. The family court is justified in observing that this act does not amount

to 'cruelty'. As against the testimony of PW-2 in this regard, the family court has gone by the testimony of the respondent, that she had left the premises on 6.3.2007, after taking permission and in fact the appellant and his brother had accompanied them upto Punjabi Bagh to see them off as the same could not be impeached during cross-examination. What has also weighed with the family court on this issue was the fact that the appellant was working in the Delhi Police and if the respondent had left with all the jewellery and other articles, without his permission, he would have surely known what steps to take and would have taken recourse to law. The family court has believed the testimony of the respondent that after the marriage of her sister on 12.3.2007 she joined the matrimonial home on 14.3.2007, but was turned out on 19.3.2007 in three apparels.

22. We also find justification in the finding of the family court that from March, 2007 the respondent was staying at her parental home, but the efforts made by the appellant for reconciliation were only a camouflage. Even in the petition under Section 9 of the Hindu Marriage Act filed by him at Rohtak, he laid several conditions for the respondent to come back. The family court was also not convinced that the absence of the respondent, before the Counseling Centre at Rohtak was intentional as there was nothing on record to show that the notices were served upon the respondent. The family court has also rightly observed that any conduct of the respondent prior to 6.3.2007 in any case stood condoned as the appellant had himself admitted that the parties lived happily till 6.3.2007, despite a few separations in between.

23. The appellant had made a very serious allegation against the respondent that she had shifted to the residence of her sister at Gurgaon only to deprive him of the visitation rights and even in the school records the name of the brother-in-law was shown as the father's name. The family court however believed the testimony of the respondent that she had sent the minor daughter to the house of her sister for the purpose of studies only and to protect the child from the repeated threats of the appellant on account of the strained relations between the party. The family court also found that the error of the father's name was not such an issue which could lead to an inference of cruelty. In our view the family court has rightly disagreed with this contention of the appellant, as it is not uncommon that when spouses have strained relationship, the wife often takes refuge and shelter under her parental family members. Shifting their daughter to her sister's house was only an act to make her more comfortable and to remove her from the hostile environment of her own place of residence.
24. As regards the contention of the appellant that the respondent had levelled false allegations in her written statement qua the demand of Rs.5,00,000/- and this was cruelty, the family court noticed the stand of the respondent that she had not initiated any proceedings under Sections 498A/406 IPC and merely putting up a defence would not amount to cruelty. We find no flaw in this reasoning of the family court as well.
25. It was lastly contended that the respondent had not joined the matrimonial home despite the appellant having filed a petition under

Section 9 of the Hindu Marriage Act. The family court has not agreed with the appellant on this count also. It is noticed that the joining back of the respondent had been made conditional by the appellant and thus there was no seriousness on his part to repair the matrimonial bond. The family court had also in the earlier part of the judgment returned a finding that the respondent had been thrown out of the matrimonial home in three apparels and thus the conclusion by the court that there was no desertion on the part of the respondent is plausible and justified.

26. The concept of cruelty has been now amply crystallized and summarized in various judgments reported as *V. Bhagat Vs. D. Bhagat, II (1993) DMC 568 (SC)*, *A. Jauachandra Vs Aneel Kaur (2005) 2 SCC 22*, *Naveen Kohli Vs. Neelu Kohli, AIR 2006 SC 1675* and *Vinita Saxena Vs. Pankaj Pandit, (2006) 3 SCC 778*. In fact in the case of *Samar Ghosh Vs. Jaya Ghosh, (2007) 4 SCC 511* the Hon'ble Apex Court had laid down broad parameters to define the concept of matrimonial cruelty and which we find apt to notice. The sum and substance of these parameters is that no uniform standard can be laid down to define or assess cruelty. We quote hereinunder the broad parameters for ready reference:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not

make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount

to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

27. Applying these broad parameters to the present case and looking at the evidence led by the parties and examining the analysis and the reasoning of the family court we find that the appellant has not been able to substantiate any of the allegations levelled by him. The family court has given credence to the version of the responded on the basis of her testimony and dismissed the divorce petition against the appellant.

28. We find no infirmity in the judgment of the learned family court.
There is no merit in the appeal and the same is hereby dismissed with
no orders as to costs.

JYOTI SINGH, J.

G.S. SISTANI, J.

MAY 3rd, 2019
Ssc/rd/AK

