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

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Date of Judgment: 28th February, 2019

+ **MAT.APP.(F.C.)317/2018**

D R

..... Appellant

Through: Mr. S.N. Pandey, Advocate

Versus

R S

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM.APPL 50434/2018 (delay of 53 days)

1. This is an application filed by the applicant/appellant seeking condonation of 53 days delay in filing the present appeal. Despite service, none has chosen to appear on behalf of the respondent/husband. For the reasons stated, the delay in filing the appeal is condoned.
2. The application stands disposed of.

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3. Aggrieved by the decision of the Family Court dated 04.09.2018 by which a petition seeking divorce on the ground of cruelty and desertion under Section 13(1) (ia) & (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') has been rejected which has led to the filing of the present appeal.

4. As noted hereinabove, despite service respondent/husband has chosen not to appear in the matter. We may also note that even before the Family Court, after notice was served upon the respondent/husband, he entered appearance along with his counsel on 08.09.2017. He was directed to file the written statement. However, thereafter the respondent stopped appearing and was proceeded *ex parte* by an order dated 13.12.2017.
5. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 08.10.2006 at Chandigarh as per Hindu rites and ceremonies at the Arya Samaj Mandir. One daughter was born out of the said wedlock on 20.04.2010 at the parental home of the appellant/wife. The daughter is in the care and custody of the appellant. As per the appellant/wife, she left the matrimonial home on 15.12.2014 i.e. after the incident of 14.12.2004. The petition seeking a decree of divorce on the ground of Cruelty and Desertion under Section 13 (1) (ia) & (ib) of HMA was filed by the appellant/wife on 05.06.2017.
6. Mr. Pandey, learned counsel appearing for the appellant submits that the appellant/wife in the petition seeking divorce had set out various instances of cruelty, including that the respondent/husband used to beat the appellant, he was having illicit relations with a particular lady and he not only used to accompany her to the home but whenever the appellant/ wife objected to his relationship, she was brutally beaten.
7. Mr. Pandey also submits that the learned Family Court has overlooked the instances of cruelty and has dismissed the petition on the ground that no specific instances have been averred in the petition and all the

allegations were termed as vague, non-specific and general in nature. He submits that specific instances have been given by the appellant/wife in her evidence and there is no rebuttal to the same.

8. Mr. Pandey has drawn the attention of the Court to para 7 of the impugned judgment whereby the Family Court has, in fact, noted the specific instance regarding a quarrel with the appellant/wife and due to which the respondent had broken the glass of the Cab. He submits that on account of the behaviour of the respondent/husband, the Cab facilities provided to her were cancelled and withdrawn. The counsel further submits that the said instance has been overlooked by the Family Court on the ground that the said instance had taken place in the presence of her mother-in-law. However, the appellant/wife had not examined neither her mother-in-law nor she had examined the Cab driver.
9. We have heard the learned counsel for the appellant/wife. There is no quarrel to the proposition of law set out in the impugned judgment. It is a settled law that in a petition seeking grant of divorce, Rule 7 of the Hindu Marriage Rules, 1979, which we reproduce below, is to be followed and applied:

“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 Secs.9 to 13 shall state—

(a) to (f) xxxxx

(g) the matrimonial offence or offences alleged or other ground, 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) to (iii) xxxxx

(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;*”

10. A reading of the entire petition and the evidence so filed would show that instances of cruelty have been set out, although not in the manner as prescribed in Rule 7, except for the instance of 15.12.2014, which took place at about 12:15 AM at night. In our view, the Family Court has erred in reaching the conclusion that the mother-in-law or the Cab driver should have been examined for the reason that the respondent/husband had chosen not to appear in the matter and there is no rebuttal to the evidence tendered by the appellant herein. Para 20 of the impugned judgment reads as under:

“20. The only specific allegation attributed by the petitioner against the respondent is regarding breaking of window of the cab on 15.12.2014. The said incident had taken place in the presence of the mother in law, who was also pushed by the respondent. The petitioner however, has not examined her mother in law nor she examined the cab driver nor she examined any other person from her office to prove said allegation.”

11. The Family Court has observed that a single incident is not sufficient to hold that the respondent treated the appellant herein with cruelty. In our view, the sole incident is required to be looked into by taking into account the surrounding circumstances and the evidence which has gone unrebutted. Accordingly, the order dated 04.09.2018 passed by the Family Court is set aside.

12. In the case of **V. Bhagat v. Mrs. D. Bhagat**, reported at (1994) 1 SCC 337, it was held by the Hon'ble Supreme Court that the mental cruelty in Section 13(1)(ia) of HMA can broadly be defined as the conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. The relevant paras 16 and 17 read as under:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

17. At this stage, we may refer to a few decisions of this Court rendered under Section 13(1)(i-a). In *Shobha Rani v. Madhukar Reddi* [(1988) 1 SCC 105], Justice K. Jagannatha Shetty, speaking for the Division Bench, held: (SCC pp. 108-09, paras 4 and 5)

“Section 13(1)(i-a) uses the words ‘treated the petitioner with cruelty’. The word ‘cruelty’ has not been defined. Indeed it could not have been defined. It has been used in

relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents.

Because as Lord Denning said in Sheldon v. Sheldon [(1966) 2 All ER 257] 'the categories of cruelty are not closed'. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.'

(Emphasis Supplied)

13. Applying the law laid down in the case of **V. Bhagat (supra)**, we find the conduct of the respondent/husband as such which has caused mental pain and suffering to the appellant/wife and made it impossible for her to live with him and the ground of cruelty stands proved. Resultantly, we set aside the impugned judgment dated 04.09.2018 passed by the Family Court. We also hold that the appellant/wife is entitled to a decree of divorce on the ground of cruelty under Section 13(1) (ia) of HMA. The decree sheet be drawn up accordingly.
14. The appeal stands disposed of in above terms.

G.S.SISTANI, J.

JYOTI SINGH, J.

FEBRUARY 28, 2019

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