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

Date of Decision: 23.02.2021

+ **MAT.APP.(F.C.) 28/2021 & CM APPL. 7402/2021**

BINDU Appellant

Through **Ms. Sindhu Sakkarwal, Adv.**

versus

KULDEEP Respondent

Through **None.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") assails the judgment dated 17.12.2020 passed by the Addl. Principal Judge, Family Court, West District, Tis Hazari Courts, Delhi, in HMA NO. 803/2016, allowing the divorce petition preferred by the respondent/husband on the ground of cruelty under Section 13(1)(ia) of the HMA.
2. The facts in brief are that the marriage between the parties was solemnized on 03.05.2013 in accordance with Hindu rites and ceremonies, but they have been residing separately since 25.06.2016. There is no issue from the wedlock.

3. A few months after separating, the respondent/husband on 10.08.2016, preferred a petition under Section 13(1)(ia) of the HMA seeking dissolution of the marriage on the grounds of cruelty. The case of the respondent before the Family Court was that notwithstanding the cordial manner in which the appellant herein was received by his family and all his efforts to maintain congeniality in their marriage, the appellant treated his family and him with cruelty and cold insolence. The divorce petition contained detailed descriptions of the instances of cruelty, which included the appellant being physically violent with the sister-in-law of the respondent by pushing her down the stairs, the incident of disturbance caused by the appellant at the wedding ceremony of the respondent's sister, which led to his parents disowning him and the appellant from their movable and immovable properties by way of a notice dated 17.05.2017 published in the newspaper Rashtriya Sahara; as also the appellant's repeated threats to the respondent's brother that she would ensure termination of his services from the Delhi Police, which caused the respondent's brother to begin residing separately.

4. The appellant filed her written statement opposing the divorce petition by denying the allegations levelled by the respondent and alleging that the respondent and his family members ill-treated her by demanding dowry as a pre-requisite for allowing the appellant to stay in her matrimonial home and severely beating her for failing to fulfil their monetary demands. This behaviour compelled her to call the police to complain against the respondent and his family members; however, she was precluded from making a written complaint as the disputes between the parties were orally settled at the police station. She further averred that the divorce petition had

been preferred only on account of her inability to give birth to a child, after she had suffered a miscarriage.

5. Before the learned Family Court, the respondent, in support of his allegations, filed his evidence by way of affidavit which set out the details of all the incidents displaying cruelty on the appellant's part, including the manner in which she had physically assaulted his sister-in-law on 30.12.2014. In reply, the appellant filed her evidence by way of affidavit, wherein she baldly denied the allegations. Though both sides cross-examined each other, it transpires that the appellant failed to cross-examine the respondent on any of the specific incidents of cruelty set out by him.

6. In these circumstances, the Family Court vide the impugned judgment held that the testimony of the respondent as regards the allegations of cruelty against the appellant remained unrebutted. Consequently, a decree of divorce was passed in favour of the respondent by holding that the appellant had treated him with cruelty. The relevant findings of the Family Court read as under:

“34. The above discussion would show that the respondent had assaulted the wife of the elder brother of the petitioner; she caused substantial disturbance at the time of the marriage of the sister of the petitioner; her acts had led to separation of the petitioner from his family members. She used to make threats of making complaints which would lead to termination of services of the brother of the petitioner. The respondent had been referring to the various family members of the petitioner in most uncivilised manner. I am of the opinion that the action of the respondent have been such that the petitioner cannot now be asked to live with the respondent. Moreover, it appears that there is no possibility of reconciliation between the parties.

35 In view of above discussion, it is held that after solemnisation of marriage, the respondent treated the petitioner with cruelty within the meaning of section 13(1)(ia) of The Hindu Marriage Act. Thus, issue No.1 is decided in favour of the petitioner and against the respondent.”

7. In support of the appeal, learned counsel for the appellant submits that the Family Court has erroneously reached the conclusion that the appellant had physically assaulted the sister-in-law of the respondent. She submits that the learned Family Court failed to appreciate that the respondent's sole testimony was insufficient to prove the purported incident of 30.12.2014, as the respondent was not even physically present in the house at the time this incident had been alleged to have taken place. Moreover, as regards the call made to the police on that day from the mobile phone of the sister-in-law of the respondent, the appellant submits that since she was not permitted to retain a mobile phone at her marital home, she could not make a complaint about what had actually taken place on that day, whereas the respondent's sister-in-law had managed to make a false complaint - which has been wrongly believed by the Family Court. She further submits that in any event, none of the allegations levelled by the respondent, including the allegation that the appellant had physically assaulted his sister-in-law, amount to cruelty against the respondent, and therefore on this ground itself, the impugned judgment is liable to be set aside.

8. We have heard learned counsel for the appellant and perused the record, including the impugned judgment.

9. The submission of learned counsel for the appellant that no conclusion regarding cruelty could be drawn against the appellant on the

mere testimony of the respondent, has to be viewed in the context of the fact that the appellant had failed to controvert the specific averments made by the respondent before the Family Court.

10. We are of the view that the appellant, not having cross examined the respondent on the specific averments made by him is now precluded from claiming that the allegations made by the respondent in the divorce petition, which were substantiated by the unrebutted testimony of the respondent and the documents placed on record, are incorrect. By failing to cross examine him, the appellant has failed to impeach the credibility of the testimony of the respondent. In fact, it further transpires that the appellant not only failed to cross examine the respondent in respect of specific incidents of cruelty alleged by him, but she also failed to lead any evidence to substantiate her own allegations against the respondent.

11. Inasmuch as the appellant's grievance is concerned that any purported incident of cruelty towards the respondent's family cannot be treated as 'cruelty' for the purpose of dissolving her marriage with him, we are of the considered view that any abusive treatment meted out by the appellant to the relatives of the respondent would definitely have an adverse impact on him and cause him mental trauma and embarrassment. Such conduct of the appellant, which is not expected in a matrimonial relationship, would tantamount to causing mental cruelty upon the respondent. Therefore, the submission of the appellant that no finding of cruelty ought to have been arrived at, does not impress us.

12. For all these reasons, we are of the opinion that there is no infirmity in the impugned judgment which invites our interference. Moreover, considering that the parties, having separated on 25.06.2016, (i) have never

lived together since then, (ii) do not have any issue from the wedlock and, (iii) have not made any effort, particularly by the appellant, to restore their relationship, we do not find ourselves inclined to entertain the appellant's prayers against the dissolution of her marriage with the respondent. Accordingly, the present appeal, along with the pending application, is dismissed with no order as to costs.

REKHA PALLI, J

VIPIN SANGHI, J

FEBRUARY 23, 2021/kk