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

+ **Date of Decision: 07.10.2021**

% **MAT.APP.(F.C.) 5/2020 and CM APPLs. 452/2020**

LAXMIAppellant

Through: Ms. Deepali Gupta, Adv.

versus

KANHAIYA LALRespondent

Through: Mr. Raj Kumar Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT OF THE COURT

CM APPL 450/2020

1. This is an application under Section 5 of the Limitation Act 1963 read with section 28(4) of the Hindu Marriage Act seeking condonation of delay of 2363 (though mentioned as 2303 in the heading) days in filing the appeal. We have heard the Learned Counsels. The reasons given in the application are:

- i. Paucity of funds;
- ii. Appellant suffering from depression and having no means of sustenance;
- iii. Respondent/husband failing to pay even meagre amount of maintenance;
- iv. Mother of the appellant being seriously ill and no one else to look after the mother.

2. The very fact that the appellant has filed the present case through Delhi High Court Legal Services Committee for legal aid clearly indicates the financial condition of the appellant. We have no reason to disbelieve that the appellant had no financial sources to engage a lawyer and/or file the appeal in time. We do not doubt the genuineness of the reasons given by the appellant. Liberal view is required to be taken while considering an application under Section 5 under the Limitation Act when there is “sufficient cause” shown for non-filing within the period of limitation. Otherwise, grave and serious prejudice would be caused to the appellant in case the delay is not condoned. We may refer to *Ummer v. PottengalSubida and Others*¹.
3. The impugned order is dated 20.05.2013 and, on 26.06.2013, a judgment has been delivered by Mahila Courts-2, Dwarka Courts, New Delhi, wherein the Mahila Court has given a *prima facie* finding of cruelty meted out by the respondent to the appellant. That being so, the appellant could, in any event, have filed a fresh petition on grounds of cruelty basing it on the order of 26.06.2013 of the Mahila Courts. There being no bar, and the appellant being very much within her rights to file a fresh petition on the grounds of cruelty, we see no reason to relegate the appellant to filing a fresh petition as that would only entail multiplicity of proceedings and delays.
4. In view of aforesaid, the delay of 2363 days in filing the appeal is condoned. CM No. 450/2020 is allowed.

¹ (2018) 15 SCC 127.

MAT.APP.(F.C.) 5/2020

5. Issue notice. Mr. Raj Kumar Verma along with the respondent, who is present in person, accepts notice. We have with the consent of the parties taken the MAT APP 5/2020 for hearing and are proceeding to dispose it off.
6. The present appeal has been filed by the appellant/wife against respondent/husband under Section 19(1) of the Family Courts Act 1984, seeking the setting aside of decree dated 20.05.2013 passed by the Family Court, Dwarka, New Delhi, wherein the petition filed under Section 13(1)(i-a) of the Hindu Marriage Act 1955, by the appellant/wife for grant of divorce from the respondent/husband on the grounds of cruelty, was dismissed.
7. Briefly stating the facts giving rise to the filing of the present appeal are that the parties were married on 09.05.2005 at Khairthal, Rajasthan according to Hindu rites and ceremonies. Though the marriage was consummated, no child was born from the wedlock.
8. It was the case of the appellant that at the time of marriage, the father of the respondent had taken Rs. 1,40,000/- from the mother of the appellant towards the arrangement of marriage to be made at Khairthal, but despite this, the respondent and his relatives were not satisfied with the arrangements that were made.
9. It was further stated that immediately after the marriage, the appellant was informed by the respondent that he had agreed for the marriage only for dowry and cash, and he was in dire need of money for his business. The respondent had further said that he had no interest in the appellant and had no liking for her. Additionally, the appellant was

told by the respondent husband, that she must not expect anything from him and must ask her mother for daily expenses and needs.

10. It was further stated that the respondent and his family members demanded motorcycles, domestic articles like fridge, television, washing machine, etc. and threatened that if she failed to bring money for these items she would not be allowed to live peacefully in the matrimonial home and was threatened to be killed.
11. On account of the cruel behaviour of the respondent, the appellant came back to her mother's house in the month of June 2005, but again went back to her matrimonial home where she was again subjected to same cruelties and demand for motorcycle.
12. On 27.01.2006, the respondent along with his brother and other family members tried to put the appellant on fire by putting kerosene oil but she was able to escape and came to her mother's house at Delhi and since then she is residing with her mother. The petitioner had lodged an FIR bearing no. 204 of 2007 at P.S.-Dabri, under Section 498-A/406/34 IPC against the respondent and his family members.
13. The respondent, in his written statement denied all the allegations. It was stated that it is the appellant who has harassed the respondent physically and mentally and the respondent, in fact, had left his family to settle in Delhi with the appellant.
14. It was further stated that the respondent is already providing maintenance to the appellant under Section 125 Cr.PC. It is also stated that the FIR registered against him is also false.
15. Both the parties filed their respective evidence which were in terms of the pleadings. The Family Court after going through the pleadings and the evidence led by the parties, came to the conclusion that the

appellant was not able to establish that she was subjected to cruelty whether physical, or mental. The testimony of the appellant with regard to the alleged harassment and cruelty was found to be vague. The family court was of the view that she has not been able to explain or prove that the conduct of the respondent amounted to cruelty within the parameters of Section 13(1)(1a) of the Act.

16. We called both the parties and interacted with them. We had impressed upon them that the marriage between the parties was only for a period of 8 to 9 months, and for the last 15 - 16 years they have been staying apart. The golden thread of marriage between husband and wife has been broken since January 2006. However, the respondent- who appeared in person along with his counsel, stated that he is still ready and willing to take the petitioner back and it is stigmatic to be called a “divorcee”. We have, therefore, heard the arguments and gone through the pleadings.
17. Learned Counsel for the appellant has taken us through the judgment of learned MM, Mahila Courts-2, Dwarka Courts, Delhi, wherein, vide judgment and order dated 26.06.2013, the Metropolitan Magistrate, Mahila Court 2, Dwarka Court, New Delhi has returned a *prima facie* finding which reads as under “*in view of consistent and coherent testimony of the complainant/ aggrieved person it is prima facie established that the respondent Kanhaiya Lal subjected the aggrieved person to domestic violence during her stay at the matrimonial house.*”
18. No appeal has been filed by the respondent against the said finding and the said finding (even though *prima facie*) has hence attained finality. The said finding having been returned *prima facie*, it fell

upon the respondent to raise doubts about the same, to persuade the court not to accept the same upon preponderance of probabilities. The respondent has not been able to raise any doubts about the said *prima facie* findings. Since the appellant and respondent have never stayed together and/or cohabited as husband and wife thereafter, there is no question of the appellant condoning the acts of cruelty at the hands of the respondent. The said judgment of the Mahila Court is dated 26.06.2013, which is after the date of the judgment and decree dated 20.05.2013, and we are inclined to accept the said findings in the facts and circumstances of the case.

19. The courts have been consistent in their view that no party should have to put up with cruelty meted out to her/him. Additionally, parties cannot be forced to live together after the long period of separation. The same has been observed in the Supreme Court judgment in ***Samar Ghosh v. Jaya Ghosh***², wherein the Court held the following:

“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.***

²(2007) 4 SCC 511.

- (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.”***

(emphasis supplied)

20. We are also supported in our view by the judgments of the Supreme Court *Sivasankaran v. Santhimeenal*³, wherein the Supreme Court has observed that the court can dissolve a marriage when there is actually no chance of the marriage surviving, and it is broken beyond repair. For the same, the Supreme Court relied on the judgment of *Naveen Kohli v. Neelu Kohli*⁴, wherein it was observed:

“74. ... once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a

³ 2021 SCC OnLine SC 702.

⁴ (2006) 4 SCC 558.

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.

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. ...

86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto.”

(emphasis supplied)

21. Additionally, in *Ram Avtar Bairwa v. Sunita Devi @ Santra*⁵, the court has blended the allegation of cruelty with irretrievable breakdown of marriage by observing the following:

“28. As regards the irretrievable breakdown of marriage, we are of the view that there is no doubt that irretrievable breakdown of marriage by itself is not a ground under HMA, on which alone a decree of divorce can be passed. However, the irretrievable breakdown of marriage is a circumstance which the Court can take into account when cruelty is proved and blend them together. There is no doubt that irretrievable breakdown of marriage has been blended with cruelty in recent judgments so as to dissolve the marriage

⁵ MAT. APP. (F.C.) 185/2018.

between the parties, where the marriage is completely dead and beyond repair. In the present case, we find that the marriage is beyond salvage and the parties are living separately for the last more than 13 years. Thus, neither of the party would achieve anything by denying relief sought by the appellant. The appellant/husband has faced mental agony for almost 13 years by facing proceedings under Section 498A of IPC. The appeal is thus allowed on the ground of Section 13(1)(ia) of HMA alone.”

22. The fact of the matter is that the parties stayed together only for a period of 8 - 9 months, and have been staying separately for the last 15 - 16 years. Keeping them bonded by the bond of marriage would in itself tantamount to cruelty. If not both, atleast one party would be living in hell-day in and day out, feeling caged in an unwanted and, possibly, a repulsive relationship. When a man and a woman get married, they do so with the intent of finding love; happiness; mental, physical and psychological satisfaction; progress; and; procreation. The dream of the parties is to jointly face the challenges that life has to throw, and to grow and progress financially, socially, spiritually, etc.
23. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither of the parties to a marriage enters into the matrimonial bond, only to break it later. For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes

messy and bitter for both of them. Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties. It is well known and medically established that constant feeling of sorrow, hatred, stress, pain, hurt-and the like, do also manifest in the form of serious diseases such as heart diseases, diabetes, cancer, etc. [The same has been a point of study in an article by Timothy W. Smith and Brian R. W. Baucom, wherein it was stated that quality of intimate relationships matter as “*strain and disruption are associated with increased risk*” (of coronary heart disease)]⁶. The data from NCRB suggests that there are more suicides resulting from unsettled marital disputes, compared to those resulting from divorce. In our view, there is no reason, not to recognize this as cruelty, entitling the court to pass a decree of divorce on the ground of cruelty.

24. In today’s day and age, with education, knowledge and awareness, the capacity of both-men and women, to adjust, accommodate, tolerate has gone down. Materialism has increased. The capacity to forget and forgive and move on is less. Stresses of life have increased with increased competition and faster pace of life. These factors are leading to matrimonial breakdowns. The conduct of the parties to a marriage cannot be described in black and white. There is a lot of grey, and it is

⁶ Timothy W. Smith and Brian R. W. Baucom, “Intimate Relationships, Individual Adjustment, and Coronary Heart Disease: Implications of Overlapping Associations in Psychosocial Risk” [2017] 72 (6) American Psychologist (American Psychological Association) 578.

not always possible to pin-pointedly say that one spouse is the villain, while the other is the victim. Both may be villains and victims at the same time. In such situations, the mere continuation of the relationship between the warring spouses causes immense emotional and psychological trauma to the parties which would, in itself, tantamount to cruelty by both parties, upon the other.

25. In the facts of the present case; there is no point of keeping the marriage alive, keeping in view the period of separation and the multitude of proceedings initiated by the appellant against the respondent, wherein the appellant has been successful in *prima facie* proving the allegations of domestic violence against the respondent. Additionally, there was no contest on behalf of the Respondent against any of the allegations made, and he did not oppose the judgment of the Dwarka Court establishing the case of domestic violence against the Respondent. As a fresh cause of action arose against the Respondent, the same has to be taken into account. After living separately for almost 16 years, we do not wish to relegate the Appellant to another round of litigation, by asking the appellant to file a fresh petition for divorce on the grounds of cruelty basing it upon the judgment and order dated 26.06.2013 passed by the MM Mahila Court, Dwarka. That course will only prolong the agony of the parties, or at least the Appellant, as the marriage between the Appellant and the Respondent is beyond repair, and at best is only a legal tie. By refusing to sever the tie, we would not be preserving the sanctity of the marriage, but would be showing scant regard for the feelings and the emotions of the parties, or at least the Appellant, and only prolong her mental agony.

26. In this view of the matter, we allow the appeal and dissolve the marriage between Ms. Laxmi and Mr. Kanhaiya Lal by a decree of divorce on the ground of cruelty contained in Section 13(1)(ia) of the Hindu Marriage Act. Decree sheet be prepared.

VIPIN SANGHI, J.

JASMEET SINGH, J.

OCTOBER 7, 2021/dm

