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

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Date of Decision: 24.01.2022

% **MAT.APP.(F.C.) 30/2021**

RITA KHANEJA

..... Appellant

Through: Ms. Arati Mahajan Shedha & Ms. Malvi Balyan, Advocates.

versus

RAJESH KHANEJA

..... Respondents

Through: Mr. Anil K. Gujral, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

VIPIN SANGHI, J. (ORAL)

1. The respondent herein had filed a petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (HMA) against the appellant before the Learned Principal Judge, Family Courts, West District, Tis Hazari Courts, New Delhi. The Family Court, after completion of the trial, inter alia, has held that the appellant herein had inflicted cruelty upon the respondent/petitioner after solemnisation of marriage and allowed the petition filed under Section 13(1)(ia) of the HMA and granted the decree of divorce against the appellant.

2. Aggrieved by this, the appellant filed the present appeal under Section 19 of the Family Courts Act challenging the impugned Judgement dated 11.11.2019.

3. A perusal of the record reveals that the marriage of the parties was solemnized on 30.09.1998, according to Hindu rites and ceremonies at Lajpat

MAT.APP.(F.C.) 30/2021

Page 1 of 5



Nagar, New Delhi. The marriage was consummated; however, no child was born out of the wedlock. They have been living separately since April, 1999, i.e for about 23 years now, and have been in litigation since mid of 2000, while the petition for divorce was filed in 2005.

4. The Judicial view in context of long-time separation of parties, has been well settled with time. In *Samar Ghosh Vs. Jaya Ghosh*, (2007) 4 SCC 511, while enumerating instances of human behaviour which may be relevant in cases of mental cruelty, the Supreme Court has indicated an illustrative list of instances. The part relevant for this discussion reads as follows:

“101. ...

(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.

...

(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)

5. Recently in the case of *Sivasankaran v. Santhimeenal*, 2021 SCC OnLine SC 702, the Supreme Court held that the court can dissolve a marriage when there is actually no chance of the marriage surviving, and it is broken beyond repair. The Court Relied on *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558, wherein it held as follows:



“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. ...”

6. In *Laxmi v. Kanhaiya Lal*, MAT.PP.(F.C.) 5/2020 decided by this Court on 07.10.2021, where the parties lived together only for a period of 8 to 9 months, while they had been living separately for the last 15-16 years, this court has held as follows:

“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 matters as “strain and disruption are associated with increased risk” (of coronary heart disease)]1. 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.”

7. The bond of marriage is a scared thread, through which two individuals aim to embark on the journey of life while co-existing together in the society. In the present case, the parties have never lived together for any significant length of time, since inception of their marriage. The parties in the present case have levied allegations of serious nature against each other, and their respective families. Both the parties have stated that the marriage of the parties was an acrimonious one since the beginning. The period of separation and the nature of allegations of the parties against each other are enough to show that their matrimonial bond has broken and is beyond repair.

8. During the course of hearing we interacted with the parties and their respective counsels. During the interaction, both the parties have submitted that, to put a quietus to the matter, they are agreeable to obtain a divorce by mutual consent. We have interacted with the respective counsels of the parties as well. The parties and their counsels have submitted that they are making these submissions with complete understanding, without any coercion, and out of their own free will.



This Court in the order dated 08.10.2021 in **MAT. APP. (F.C.) 67/2014 Nupur Aggarwal vs Rishi Aggarwal**, deliberated upon an issue whether this Court can modify the decree of divorce passed under Section 13(B)(1)(ia) of HMA into a decree of divorce by mutual consent under Section 13B of the HMA. In that case, we had placed reliance upon the following judgements:

- (i) **K. Omprakash vs. K. Nalini**, 1983 (3) APLJ 284.
- (ii) **Justin Abraham vs. Preethy N. Thomas**, reported as MANU/KE/0973/2019 dated 11.01.2019.
- (iii) **Linish P. Mathew vs. Mruthula Mathew** reported as MANU/KE/0942/2012, dated 20.7.2012.
- (iv) **Devi Santosh Tiwari**, MANU/MH/1783/2012, dated 25.09.2012.
- (v) **DhiranHarilal vs. N. Mansu**, MANU/GJ/0071/1988, dated 10.09.1987.

9. Accordingly, decree of divorce dated 11.11.2019, passed by the Additional Principal Judge, Family Courts, West District, Tis Hazari Courts, New Delhi, in HMA No. 549/19, granted under Section 13(1)(ia), of the Hindu Marriage Act, stands substituted by the decree of divorce by mutual consent under section 13B of the Hindu Marriage Act. It is agreed that this substitution of the decree shall not prejudice the rights and contentions of the appellant to peruse her claims with regard to permanent alimony or maintenance, if any. The decree sheet shall be drawn accordingly.

VIPIN SANGHI, J.

JASMEET SINGH, J.

JANUARY 24, 2022