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

Judgment reserved on: September 22nd, 2022

% *Judgment pronounced on: October 19th, 2022*

+ MAT.APP. 22/2008

BHOPAL SINGH Appellant

Through: Mr. Hemant Malhotra with
Mr. Pankaj Malhotra, Advocates.

versus

URMILA DEVI & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.:

1. The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 assailing the impugned order/judgment dated 21.01.2008, passed by the learned Additional District Judge, Delhi in HMA case No.215/2006. Learned Trial Court, vide the impugned order, has dismissed the petition for dissolution of the marriage filed on the ground of adultery and cruelty.
2. The facts in brief, as alleged by the appellant/husband are that the marriage between the appellant/husband and respondent No.1/wife was solemnized in the month of April/May 1975 at District Meerut, (U.P.) in accordance with the Hindu Customs and Ceremonies. The

marriage was duly consummated and three children were born to the parties, who are now major. The appellant/husband was employed with Delhi Jal Board and was allotted government accommodation. The appellant/husband has alleged that respondent No.1/wife never cared for the appellant/husband and his parents. The respondent wife neglected to fulfil marital obligations and spoiled the matrimonial relations of the parties.

3. The appellant/husband has alleged that respondent No.1/wife left the matrimonial home when the youngest son Rakesh was only two years old, without the consent of the appellant/husband. She did not bother to join the matrimonial home despite all efforts made by the appellant/husband and his elders. It has been alleged that respondent No.1/wife continued to live at her parental home enjoying her life without caring for the education and welfare of the children. The three children were brought up by the appellant/husband and his parents and respondent No.1/wife never bothered to participate in the social, traditional or customary ceremonies of the family of the appellant/husband. It has further been alleged that at the time of the death of the old mother of the appellant/husband, respondent No.1 came to the matrimonial house at Village Sultanpur, Ghaziabad (U.P.) in July 1999 and stayed there only up to January 2000 and left the matrimonial house along with the unmarried daughter without the consent of the appellant or his old and ailing father. The appellant/husband has alleged that during the stay of the respondent No.1/wife in the matrimonial house, the appellant/husband noticed the undue close intimacy of respondent No. 1/wife with respondent no.2,

who, as alleged, not only instigated her against the appellant/husband but also started interfering in the matrimonial affairs of the appellant/husband and respondent No.1/wife. On 15.05.2000, respondent No.2/the younger brother of the appellant/husband brought respondent No.1/wife along with elder son Pawan Kumar and daughter Rita to join the company of the appellant/husband. The appellant/husband has alleged that he had found both the respondents in a compromising position. Upon inquiry, it was revealed to him that both the respondents were having extramarital relations since long. The appellant/husband has also stated that he was compelled to leave the Government accommodation in November 2001. However, respondent No.1/wife had left the home around 3-4 days before the accommodation was surrendered after taking her entire jewellery and other belongings in the absence of the appellant/husband.

4. The case of the appellant/husband is that respondent No.1/wife in order to harass the appellant/husband used to take the entire salary of the appellant/husband. She also made false police complaints against the appellant/husband thereby causing mental cruelty to him.
5. Respondent No.1/wife in the written statement filed by her stated that the petition was filed on the ground of adultery without any justification particularly when all the children from his wedlock are major. Respondent No.1/wife denied all the allegations levelled by the appellant/husband and denied that she had been non-cooperative or that she had failed to fulfil her matrimonial obligations. Respondent No.1/wife also denied that she lived at her parental home after deserting the appellant/husband. According to respondent

No.1/wife, she used to visit her parents only with the consent and knowledge of the appellant/husband. It was specifically denied that respondent No.1/wife treated the petitioner with cruelty. Respondent No.1/wife contended that respondent No.1/wife had looked after her mother-in-law till her death as per family customs. The respondent No.1/wife denied that on 15.05.2000, respondent No.2 brought respondent No.1 and children Pawan and Rita to the appellant/husband's residence or that the respondents were ever found in a compromising position. The existence of any kind of illicit relations between the respondents was also denied. Further, respondent No.1/wife denied that the respondents had ever planned to usurp the entire earnings of the appellant/husband. Respondent No.1/wife categorically denied that she instigated her children to kill the appellant/husband. The entire averments of cruelty and adultery were denied.

6. The learned Trial Court on the basis of the pleadings of the parties, framed the following issues:-

- “(i) Whether the respondent no.1 was/is living in adultery with respondent no.2 i.e. whether respondent No.1 had voluntarily sexual intercourse with the respondent no.2 since the solemnization of marriage? OPP*
- (ii) Whether the petitioner was treated with cruelty by the respondent no.1 after the solemnization of marriage? OPP*
- (iii) Whether the petition does not show any cause of action? OPD*
- (iv) Relief.”*

7. The appellant/husband had examined himself as PW1 and his elder

brother Sh. Tejpal Singh as PW-2. Respondent No.1/wife examined herself as RW1 and her brother Sh. Shripal as RW2.

8. The learned Trial Court on issue No.1 regarding the adultery returned a finding that the appellant/husband miserably failed to establish the ground of adultery. The learned Trial Court *inter alia* held that the appellant/husband had narrated the incident dated 15.05.2000 in the manner that he found both the respondents in a compromising position. However, it was nowhere pleaded or testified that the appellant/husband found the respondents having sexual intercourse with each other on 15.05.2000 or any other day. The learned Trial Court noted that there was no material or concrete evidence on record to establish the adulterous relationship between respondent No.1/wife and respondent No.2. In regard to issue No.2, the learned Trial Court *inter alia* held that the appellant/husband did not remain consistent in establishing the ground of cruelty. It is pertinent to mention here that the learned Trial Court after noting the evidence regarding desertion of respondent No.1/wife *inter alia* held that respondent No.1/wife was not living out of the matrimonial house continuously so as to desert the petitioner or the children. Thus in a way, the plea of the appellant/husband that respondent No.1/wife did not live in the matrimonial home was not established. It is also pertinent to mention that the learned Trial Court recorded that PW2 - Sh. Tej Pal Singh, the brother of the appellant/husband had deposed that he had seen the appellant/husband and the respondent No.1/wife quarrelling with each other in the year 1996 on the point of illicit relations between the respondent No.1/wife and the respondent No.2/younger brother.

9. The learned Trial Court also noted that there was not enough evidence on the point that respondent no. 1/wife instigated and misguided her elder son Pawan Kumar and daughter Rita against the appellant/husband. Learned Trial Court rejected the plea of the appellant/husband that cruelty was caused to him on account of the defamatory complaint alleged to have been filed by the respondent No.1/wife against the appellant/husband thereby accusing him of his illicit relationship with his elder sister-in-law.
10. Learned counsel for the petitioner has assailed the impugned order/judgement dated 21.01.2008 and has submitted that the learned trial court has completely ignored the social background of the parties. The divorce petition was dismissed despite the fact that there were clear allegations of cruelty duly substantiated by the evidence against respondent no. 1/wife. It has been submitted that respondent no. 1/wife never behaved well with the appellant/husband and always tried to humiliate him in front of others. Further, it has been submitted that the appellant/husband was compelled to hand over his salary to respondent no. 1/wife. It has been stated that the appellant/husband did, in fact, hand over his entire salary to respondent no. 1/wife against the receipts. It has also been submitted that respondent/wife also made baseless allegations of an illicit relationship between the appellant/husband and wife of her elder brother and has filed false complaints against the appellant/husband as well as Rakesh Kumar son of the appellant. It has been submitted that this alone is sufficient to grant the decree of divorce on the ground of cruelty. It is an established principle that cruelty cannot be defined in a watertight

compartment. Though adultery might not have been proved by the appellant/husband in the present case but the fact that there was a quarrel between the husband and the wife on this ground shows that all was not well in the marriage.

11. It is pertinent to mention here that during the course of submissions learned counsel for the appellant/husband has not insisted upon the divorce on the ground of adultery. Learned counsel has further submitted that the relationship between the parties is dead and there is not even a remote likelihood of revival of the same. It has been submitted that there is a complete and irretrievable breakdown of the marriage between the parties and therefore the continuance of the matrimonial relationship for the namesake or denial to dissolve the marriage would itself amount to cruelty. Learned counsel has submitted that the learned trial court has completely misapplied the law laid down by the apex court and the high court.
12. Mr. I.S.Saroha, learned counsel for the appellant/husband has emphasised that since there is a complete and irretrievable breakdown of the marriage between the parties, this court may grant the decree of divorce. To buttress this contention reliance has been placed upon the ***Samar Ghosh vs. Jaya Ghose*** 2007 (2) JCC 1028, wherein the Apex Court has *inter alia* held as under:

99. 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.

(emphasis supplied)

13. Reliance has also been placed upon **Sunita Devi vs. Om Prakash** 174 (2010) DLT 471 wherein it has been held as under:

Human emotions do not run on dotted lines. Every person has a different level of tolerance and sensitivity and certain allegations of cruelty levelled by one spouse may cause mental cruelty to his/her spouse and the same very allegations in some other case may not be considered of that magnitude to cause cruelty of such nature. Each case is dependent upon various factors; social, economic, family background, upbringing, education, etc. However, one thing which can be considered universal in all situations is that no spouse can tolerate his/her spouse having illicit relations or extra marital relations. It would be useful to refer to the judgment of the Apex Court in the case of Naveen Kohli v. Neelu Kohli, I (2006) DMC 489 (SC)=II (2006)

CLT 100 (SC)=III(2006) SLT 43=AIR 2006 SCC 1675, here where it was held that:

“To constitute cruelty, the conduct complained of should be ‘grave and weighty’ so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than ‘ordinary wear and tear of married life’. The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate

it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.”

(emphasis supplied)

14. Learned counsel of the appellant/husband has submitted that the marriage ceremony between the parties was performed in the year 1975 and since 1988 there has been no regular cohabitation between the parties. It has been submitted that there is a complete loss of trust and faith between the parties and there is no amount of love between the two. Since there is a complete breakdown of the marriage and there is no chance of it being retrieved, therefore this court may grant of decree of divorce. Reliance has been placed upon ***Vimla Balani vs. Jai Krishan Balani*** 158 (2009) DLT 75.
15. Learned counsel has further submitted that since the marriage between the parties has totally broken down, therefore, appellant-husband may not be compelled to continue with such a dead relationship. In this regard, reliance has been upon ***Rishikesh Sharma vs. Saroj Sharma*** (2007) 2 SCC 263.

4. In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with the respondent wife repeatedly filing criminal cases against the appellant which

could not be substantiated as found by the courts. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband, that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which have been repeatedly made and repeatedly found baseless by the courts.

5. In our opinion it will not be possible for the parties to live together and therefore there is no purpose in compelling both the parties to live together. Therefore, the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully for remaining part of their life.

(emphasis supplied)

16. Learned counsel has also placed reliance on **MS vs. SD**, 2019 (260) DLT 90, wherein this court has *inter alia* held that when the marriage had broken irretrievably, there was no way in which the parties could be compelled to resume life with the consort, relevant paras of which, are reproduced as under:

32. In the case of Naveen Kohli v. Neeru Kohli (2006) 4 SCC 558 the Apex Court had set aside the order of the High Court which had reversed the judgment of the Trial Court, dissolving the marriage between the parties. The Apex Court, relying on the judgment of V. Bhagat (supra) and certain other judgments, directed that the marriage between the parties should be dissolved. It observed that from the entire evidence it was clear that the wife had resolved to live in agony only to make life a miserable hell for the husband as well. The marriage had broken down irretrievably and there was no way in which the parties

could be compelled to resume life with the consort. The Apex Court further observed that it was the obligation of the court and all concerned, that marriage status should as far as possible be maintained, but when the marriage is totally dead, nothing would be gained by trying to keep the parties tied forever to such a marriage. The court found that there was a total disappearance of emotional substratum in the marriage. The parties had lived separately for more than 10 years with large number of litigations against each other and the matrimonial bond was beyond repair. The marriage was only for name sake and was beyond salvage. The relevant portions of the judgment are as under:

“83. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

84. The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

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. In the instant case, there has been total disappearance of

emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

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. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

88. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

89. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the trial court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision

which would ultimately be conducive in the interest of both the parties.

90. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955.”

*33. In yet another case, a coordinate Bench of this Court has upheld the judgment of the Family Court granting divorce, by observing that the parties were living separately since the year 2009 and considering their conduct there was no possibility of their joining together. To insist on retaining the matrimonial bond would be putting the party under intensified mental cruelty. The Division Bench in this case titled *Rajiv Chikara (supra)* placed reliance on the judgments in the case of *Ramesh Dudani v. Ramesh K. Dudani* and *Shrikumar V. Unnithan v. Manju Nair* to hold that the concept of cruelty can be blended with irretrievable breakdown of marriage and the marriage can be dissolved. Reliance was also placed on another Division Bench judgment of this Court in *MAT. APP.(FC) 36/2014* titled *Sandhya Kumari v. Manish Kumar*, wherein it was held that if it is not possible for the husband and wife to live together, except by indulgence in mutual bickering, targeting each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide the issue of cruelty, for the reason that the obvious intention of the said spouse to continue with the marriage is not to enjoy the bliss thereof, but to torment and traumatize each other.*

34. We thus find merit in the present appeal, which is hereby allowed. The impugned judgment of the Family Court is set aside. Marriage between the appellant and the respondent is dissolved by a decree of divorce. Let a decree sheet be drawn up accordingly.

(emphasis supplied)

17. Reliance has also been placed upon ***Ritesh Babbar vs. Kiran Babbar*** 2022 (288) DLT 649, wherein also in view of the breakdown of the

marriage between the parties, a decree of divorce was granted.

18. Be that as it may, the point to be considered is that the parties in the present case were married in the year 1975. The plea of the appellant/husband is that respondent No.1/wife left the matrimonial home in the year 1985 after three children were born. During the course of submissions, learned counsel for the petitioner has fairly conceded to the learned Trial Court's findings on adultery. It is pertinent to note that the petition for dissolution of marriage was filed in the year 2001 and the petition was dismissed by the learned Trial Court in January 2008. The present appeal was filed in February, 2008. It is also a matter of record that the respondents have not come forward to contest the appeal at the time of the final hearing. The facts of this case make it clear that the marriage between the parties has totally broken down. Even if it has to be considered that respondent No.1/wife was not living separately since 1985 but certainly she was also not living in the matrimonial home since 1985 continuously. In any case, after the divorce petition was filed, the parties are living separately. It is not the case of respondent No.1/wife at any point in time that she was ready and willing to join the matrimonial home. The children of the parties have grown and settled in their life. Any further continuance of marriage would only be flogging a dead horse. The continuous period of separation in the present case sufficiently indicates that the matrimonial bond is beyond repair. In fact, now this relationship is unnecessarily being tied through legal provisions. Otherwise, it seems to have finished. The pleadings between the parties show that there is a complete loss of trust and faith and there is no love and affection

between them. The marriage certainly seems to have broken down and there seems to be no possibility of the parties living together. This Court considers that in such cases it is better to dissolve the marriage so that both the parties and their children can live peacefully for the remaining part of their lives.

19. In the present case, as noted above, the parties have been in litigation since 2001 during which serious and counter allegations against each other were made. The appellant/husband has alleged adulterous relation of respondent No.1/wife with his brother – respondent No.2. Respondent no. 1/wife has also alleged adulterous relation of her husband with the wife of his elder brother. The appellant/husband has even alleged that the wife instigated her children and entered into a conspiracy to kill him. Even a criminal case was registered by respondent No.1/wife against her son, born out of wedlock. I consider that in factual matrix of the case, the facts taken in the totality amounts to cruelty. This court considers that since the parties are living separately for more than 20 years, and there is no chance of resumption of marriage. The facts taken as a whole makes it a good case to set aside the order of learned Trial Court.
20. The present appeal is, accordingly, allowed and a decree of divorce is granted.

DINESH KUMAR SHARMA, J

OCTOBER 19, 2022
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