



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 31st July, 2023

Pronounced on: 05th September, 2023

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MAT.APP.(F.C)14/2023 & CM APPL. 1899/2023

PREETI

..... Appellant

Through: Mr. Rajinder Singh, Ms. Deepali Dasgupta and Ms. Muskan Tandon, Advocates.

versus

VIKAS

..... Respondent

Through: Mr. Mujeeb Khan and Mr. Amjad Khan, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present Appeal has been filed under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'the Act, 1955'*) for setting aside the Decree and Judgment dated 09.12.2022 vide which the marriage between the parties has been dissolved by a decree of divorce under Section 13(1)(ia) of the Act, 1955 by the Learned Principal Judge.



2. The admitted **facts in brief** are that the appellant/wife (*respondent in the divorce petition hereinafter referred to as 'appellant'*) got married to the respondent/husband (*petitioner in the divorce petition hereinafter referred to as 'respondent'*) according to the Hindu Rites and Customs on 22.11.2015 at Ashok Farms, Chhattarpur, New Delhi. The marriage was duly consummated, though, no child was born from the said wedlock. After marriage, the appellant and her husband used to live at the second floor of the matrimonial home, whereas her in-laws used to reside at the ground floor. However, the marriage came under strain and the appellant went to her parental home in the month of February 2019 and lodged a complaint dated 21.2.2019 alleging dowry harassment at the Police Station, Sector 31, Faridabad against her husband and his family members. The matter was settled vide a Settlement Deed dated 11.03.2019 wherein it was agreed:-

- "i) That both the parties shall not reside in the house of the Father-in-law and mother-in-law of the girl and would reside outside Ambedkar Nagar.*
- ii) That all the articles given in dowry and the jewellery article given in dowry and the jewellery given by the In-Laws and husband. would be in possession of Preeti.*
- iii) That the husband-Vikas was frequent in giving threat of Divorce to Preeti, he shall not extend any further threat of Divorce*
- iv) That the In-laws of wife would not raise demand of dowry.*
- v) That the family member from both the sides would not interfere with the affairs of husband and wife.*
- vi) That the husband would spend his income on him and his wife and the residual would be saved in his account after taking care of the household expenses."*



3. Pursuant to the settlement, the respondent and the appellant took a separate house bearing No. A-42, Krishna Park, Devli, Delhi on rent, where they stayed together for three months from 1.3.2019 to 30.5.2019. However, since 31.05.2019 the parties have been living separately and the appellant has been staying with her parents. She also took up a job of Teacher in a school, which continued only for one month.

4. A complaint dated 7.6.2019 was filed by the appellant to Police Station Sector-16A, Faridabad praying for taking legal action against the respondent and his family members pursuant to which FIR under Section 323/34, 354A, 406, 498A, 506 IPC was registered at PS Women Police Station, Faridabad on 9.7.2019.

5. **The respondent filed the petition for divorce** on the ground of cruelty on 06.06.2019 wherein he claimed that from the inception of marriage, the appellant used to pick quarrels without any rhyme or reason and would also become violent when he would try to pacify. Further, the appellant refused to do household chores and used to often visit her parents and stay with them. She did not want to live in her matrimonial home and whenever the respondent asked her to stay with him, she insisted upon living separately from his parents or else threatened to implicate the family in criminal cases. The respondent and his family hoped that such behaviour of the appellant would change; however, such hope always crashed. The respondent, for the sake of married life, tried to please the appellant and provided her all comforts, necessities as well as love and respect.

6. In the month of March 2016, the father of appellant demanded a loan of Rs.1 Lac from the father of respondent, but when the father of



respondent refused to pay the same, the appellant picked up quarrel with the respondent and abused and tortured him and his family. Thereafter, the father of the respondent took the loan from a friend and gave it to the father of the appellant but the appellant and her family kept demanding more money from them. Upon their inability to fulfil the same, the respondent and her family threatened to implicate them in false cases.

7. In the month of February 2019, the appellant went to her paternal home and when the respondent came to know that she was ill, he and his mother went to her paternal home to meet her. However, the family of the appellant not only assaulted, abused and threatened them but also threw them out of the house. Thereafter, they also lodged a false complaint at PS Sec-31, Faridabad but their allegations were found false and baseless consequent to which the matter was compromised on 1.03.2019. As per the settlement, the respondent and the appellant started living separately in a rent house at A-42, Krishna Park, Ground Floor, Left Side Flat, Devli, New Devli, but even after this, there was no change in the behaviour and conduct of the appellant. She would pick quarrels, refuse to perform marital duties and when he returned from office, she would deliberately not open the gate for him for hours. He also lodged a complaint with P.S. Neb Sarai and other Authorities on 21.5.2019 but no action has been taken by the police. It is due to the acts of the appellant which caused mental torture to the respondent, he filed petition for divorce on ground of cruelty.

8. **The appellant/wife in her Reply/Written Statement to the petition for divorce** claimed that the respondent had not come to the court with clean hands and had concealed material facts. She denied the



allegations of the respondent and asserted that she was harassed on account of dowry and had undergone immense physical and mental torture at the hands of the respondent and his family. Her parents had spent huge amount of around Rs 60-65 lacs in their marriage as per the demand of the respondent and his family members. However, the mother of the respondent was not satisfied and harassed the appellant after marriage for bringing less dowry. Her mother-in-law, after marriage, also asked her to bring the cash amount of Rs 20 lacs from her parents and when she refused to do so, she abused the appellant.

9. The appellant asserted that she used to perform her marital obligations and do all the household work and it was she who made efforts to save her marriage. She denied that her father had demanded 1 Rs. Lac from the father of the respondent but in fact, it was her father who had given Rs. 10,00,000/- to the respondent and his family.

10. It was claimed that by their cruel acts, the respondent and his family turned the appellant out of her matrimonial home in February 2019. Subsequently, a complaint dated 21.02.2019 was moved against the respondent and his family after which they tendered an apology to her and a compromise was arrived at. She denied that they lived separately as per the compromise. She submitted that the behaviour of the respondent and his family remained normal for about two months after which they shifted to a separate new house. She contended that she was told that the house was purchased by them but she later came to know that it was a rented house, which was a scheme devised by the respondent and his family to wriggle out of paying her maintenance. She had further claimed that it was the respondent who had left her at her parents' house. She filed a case



under Domestic Violence Act, against the respondent and his family before JMIC, Faridabad. She also filed a petition under section 125 CrPC against the respondent which is pending before the Hon'ble Court of District Judge, Family Court, Faridabad. Further, another case FIR bearing No. 97 dated 09.07.2019 U/s 323, 34, 354-A, 406, 498-A, 506 IPC registered at P.S. Women Police Station, Faridabad was also lodged against the respondent and his family members by the appellant.

11. It was claimed that the respondent had no cause of action to file the divorce petition, which was based on false and frivolous allegations and was liable to be rejected, however, the Family Court failed to do so.

12. The parties examined themselves in support of their respective assertion. **The Respondent appeared as PW-1** and tendered his evidence by way of affidavit which is Ex. PW1/1. In his evidence he has reiterated his assertions made in the appeal. He admitted that during his marriage he was given a Honda Amaze Care vehicle which is with him. He denied having received any jewellery from the appellant and her family apart from one gold ring. He further explained that the reason that he took her to Cloud 9, Hospital, Gurugram and got her operated due to menstrual issues and that the parents of the appellant were also present at that time. He denied the allegations made by the appellant that his mother took her to a tantrik for issues of conceiving or that he had thrown her out of the matrimonial home.

13. The **appellant appeared as RW1** and tendered her evidence by way of affidavit is Ex. RW1/A. She reiterated her assertions made in her reply and further deposed that she was abused by her mother-in-law due to her issues in conceiving a child. She was taken to a “tantric” for



“*jhadphoonk*” by her mother-in-law where she was abused and beaten. She was also taken to Cloud 9 Hospital where she was operated. She further asserted that about one year ago, her brother-in-law Ashish came to her room and upon finding her alone, caught hold of her hand and tried to molest her. When she told the incident to her mother-in-law she was asked not to disclose this to anyone and also reassured that such acts would not be repeated in the future.

14. She deposed that after she and the respondent had started living separately, the respondent left her. On 01.05.2019, the grandmother of the respondent had expired and so she went to stay with the respondent and his family for 15-20 days. On one day, with the intention to kill her, the respondent and his family removed the pipe of the Gas *Chulah* and left open the gas burner and sent her to make the food. If she had not exercised caution, they would have been successful in their attempt to kill her. She also claimed that on 31.05.2019, the respondent left her at the main gate of Sector 31, Faridabad after telling her that she would not be allowed back into her matrimonial house if she did bring money from her parents. Thereafter, she made the complaint dated 07.06.2019 to Women Police Station, Faridabad.

15. **The learned Principal Judge, Family Court observed** in the impugned judgement dated 09.12.2022 that incidents have been specified which lead to the conclusion that the appellant was of a quarrelsome nature and frequently picked quarrels with her husband which spoils the entire life of the respondent. It was on the appellant’s insistence that she and the respondent started living separately from her in-laws. However even after that, her conduct did not change and it was due to this reason



that the respondent had left her at her parents' house. Such acts of the appellant were held to be cruel and consequently, the marriage between the parties was dissolved by a decree of divorce under Section 13(1)(ia) of The Hindu Marriage Act 1955.

16. In exercise of powers under Section 27 of the Hindu Marriage Act, 1955 the respondent was directed to deliver the Car No. DL9CAE-6391 to father of the appellant and *Stridhan* including jewellery to the appellant within ten days. He was also directed to make payment of Rs.3 lacs to appellant's father towards user of the car and Rs.3 lacs towards use of *Stridhan* Jewellery etc. to the appellant.

17. Aggrieved by the said judgment, the appellant wife has filed the present appeal.

18. **The main grounds agitated in the present appeal** are that the impugned Judgment and Decree has been passed on an erroneous application of fact, evidence and in contravention of well settled principle of law. The Respondent had failed to bring on record any evidence proving the cruelty by the Appellant and that the impugned judgement was passed merely on the statements of the respondent and on assumptions and presumptions. Mere accusations of cruelty by one spouse against the other, cannot be regarded as cruelty thereby entitling the respondent to a decree of divorce against the appellant. The Learned Principal Judge, Family Court has wrongly interpreted the terms of the Settlement Deed dated 11.03.2019 from where it is evident that it was she who was harassed and abused for dowry by the respondent and his family. She has claimed that it was due to the bad behaviour and cruelty of the respondent's family that she had insisted upon them living separately.



Further, the Ld. Trial Court has failed to appreciate that it was the respondent who had left the appellant outside the colony where her father resides and never returned thereafter to take her back to the matrimonial home. The petition of the respondent was liable to be dismissed on this ground alone as such act of the respondent constitutes desertion and he cannot take advantage of his own wrong. It is therefore, argued that the decree of divorce is liable to be set aside.

19. Submissions heard.

20. It is an admitted fact that the parties got married on 22.11.2015 and that no child has been born from the said wedlock. It is admitted by appellant in her cross examination that after marriage, she and her husband used to live on the second floor, whereas her in-laws used to reside at the ground floor. It is further admitted that the appellant left the respondent for the first time on 21.02.2019 to her matrimonial home. It is also not disputed that a complaint against the respondent and his family members was filed by her on 21.02.2019 in the Police Station. However, a settlement was arrived at between the parties on 11.03.2019 pursuant to which they lived separately from the family of the respondent. However, their differences could not be resolved and the parties finally separated on 30.05.2019 and since then the appellant has been staying with her parents. The petition for divorce on ground of cruelty was filed by the respondent on 06.06.2019 and on 7.6.2019 the appellant filed a complaint to Police Station Sector-16A, Faridabad praying for taking legal action against the petitioner and his family members and finally on 9.7.2019 an FIR under Section 323/34, 354A, 406, 498A, 506 IPC was registered at PS Women Police Station, Faridabad.



21. The divorce had been sought on the ground of cruelty. While "*physical cruelty*" is visible and easy to comprehend and determine, the more challenging aspect is "*mental agony*" which has been recognized as part of "*cruelty*" which once established, is a valid ground of divorce.

22. The contours of "mental cruelty" were defined in case of *Dastane vs Dastane* AIR 1975 SC 1534. It was observed by the Apex Court that in cases of mental cruelty the inquiry has to be whether the conduct charged as cruelty is of such a character that it causes in the mind of a spouse a reasonable apprehension that it will be harmful or injurious for him to live with his/her partner. It was explained that under Section 10(1)(b), such injury such as harm or injury to health, reputation, the working-career or the like, would also be an important consideration in determining whether the conduct of the respondent amounts to cruelty.

23. In case of *V. Bhagat v. D. Bhagat* (1994) 1 SCC 337, the Hon'ble Supreme Court held that mental cruelty in Section 13(1)(ia) of the Act, 1956 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 party. 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.

Allegations of cruelty against the respondent:



24. In this backdrop of definition of cruelty, the facts of this case are required to be considered. The appellant has claimed that at the time of marriage, her father had spent huge amount of around Rs 60-65 lacs in the marriage and further a car and jewellery was also gifted to the respondent and his family as demanded by them. Thereafter, the respondent and his family members started harassing her and making demands for money and when she could not fulfil such demands, she was subjected to cruelty. The father of the respondent had demanded a loan of Rs 10 lacs from her father which was given to him. The Learned Principal Judge has rightly observed that the appellant has not produced any evidence to prove that her father had given Rs 10 lacs to the father of the respondent. Apart from mere assertions, there is no mention of such a payment being made to the respondent's family.

25. She has also claimed that in February 2019, she was forced to leave the matrimonial home due to dowry demands pursuant to which she filed a complaint dated 21.02.2019 before Police station, Sector-31, Faridabad wherein she stated that the husband and the in-laws used to beat her and ask her to bring more dowry. However, the matter was settled and on 11.03.2019, a compromise was arrived at wherein it was stated that the in-laws of the wife would not raise demand of dowry pursuant to which she went back to live with the respondent. The Learned Judge has interpreted the clause in the "Settlement Deed" to simply mean that *'the in-laws of respondent neither made any dowry demand in past nor they will make such a demand in future'*.

26. In this regard one may refer to the testimony of the appellant. While she claimed that she was forced to leave her matrimonial home,



however, during her cross-examination, she has stated that she had left the matrimonial house in February 2019 '*because of her bad health*'. Such a contradiction goes against the case of the appellant and the allegation of her being ousted from her matrimonial home cannot be believed.

27. Though the appellant had claimed harassment on account of dowry and also asserted that she was abused by respondent and his family members, but as rightly observed by the learned Principle Judge, none of these acts could be proved by evidence. In this context, it may be observed that the term has been inserted in the Settlement Deed as a mere precaution and in light of lack of any evidence, the same cannot be relied on to prove harassment on account of dowry.

28. **The appellant has claimed that** one day upon finding her alone, her brother-in-law Ashish caught hold of her hand and molested her. However, no evidence has been provided by the appellant in this regard. It is also observed that no complaint whatsoever was filed by the appellant. Mere bald assertions are not enough to establish any case of molestation against her and the observations of the Learned Principle Judge do not warrant any interference in this regard.

29. **The appellant had also** stated that on 01.05.2019, she went to stay with the respondent and his family as the respondent's grandmother had expired. One day, the respondent and his family had attempted to kill her by leaving the pipe of the gas Chula open. It was deposed by her that they had asked her to make tea and it is only because of her caution, that she was saved. It may be observed that it is unlikely that the respondents would attempt to kill her in her matrimonial home where everyone else were also residing. Further, there is no evidence except her bald assertion



of this allegation. Pertinently, the incident is of 01.05.2019 while the appellant as per her own admission had continued to reside in matrimonial home till 31.05.2019. It is indeed not believable that if in fact an attempt on her life was made, she continued to reside peacefully without reporting the incident to anyone. The evidence of the appellant does not inspire confidence in this regard that has been provided by the appellant.

30. **Further, it has been claimed by the appellant** that she was constantly abused by her mother-in-law for not being able to bear a child. It is alleged that she was taken to a “*tantrik*” for “*jhad phoonk*” and was beaten. However, no evidence is provided to support her allegations. It has also been stated that she was taken to Cloud 9 hospital for an operation regarding such issues. However, she has not alleged anywhere that the same was done without her consent or that she was forced to get herself operated. Further, the respondent has stated that the parents of the appellant were also present during this operation. Thus, the observations of the Learned Principal Judge in this respect also do not warrant any interference.

31. It is pertinent to note that the appellant had filed a complaint dated 21.2.2019 against the respondent and his family members in the Police Station Sec-31, Faridabad. However, in light of the Settlement Deed no action was taken on the said complaint. Further, a Complaint dated 7.6.2019 was also filed by the appellant to Police Station Sector-16A, Faridabad praying for taking legal action against the respondent and his family members pursuant to which FIR under Section 323/34, 354A, 406, 498A, 506 IPC was registered at PS Women Police Station, Faridabad on 9.7.2019. However, mere filing of FIR is not sufficient to prove the



allegations of cruelty and dowry harassment without being proved by cogent evidence which the appellant has unfortunately not been able to produce.

32. It is also pertinent to note that the complaint has been filed on 07.06.2019, i.e. one day after the respondent has filed the divorce petition. Thus, it appears that such complaints were merely a counter-blast to the said petition for divorce and is being used as a weapon against the respondent and his family.

33. To conclude, not only criminal case under Section 498-A has been filed against the respondent and his family members on the ground of dowry demand, but also allegations of molestation have been made against the brother-in-law Ashish, which have not been substantiated in the present case.

34. While the term '*cruelty*' as used in Section 13(1)(ia) of the Act, 1955 cannot be defined in given parameters, there cannot be a comprehensive definition of '*cruelty*' within which all kinds of cases of cruelty can be covered and each case has to be considered depending upon its own unique factual circumstances. In the case of K. Srinivas Vs. K. Sunita X (2014) SLT 126. the Hon'ble Supreme Court held that filing of the false complaint against the husband and his family members also constitutes mental cruelty for the purpose of Section 13 (1) (ia) of the Hindu Marriage Act.

35. Similarly, it has been held by the Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, that an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposed them to criminal litigation. Ultimately, if it is



found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground.

36. This Court in the case of Nishi Vs. Jagdish Ram 233 (2016) DLT 50 held that the filing of false complaint against the husband and his family members constitutes mental cruelty. Similar observations were made by a coordinate bench of this court in the case of Rita v. Jai Solanki 2017 SCC OnLine Del 9078.

37. Thus, such complaints which are not substantiated by evidence, and remain unproved are acts of cruelty against the respondent.

38. The Learned Family Judge has relied on the evidence of the parties and observed that from the overall conduct of the respondent it is proved that she had treated him with cruelty after marriage.

39. The Supreme Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Hindu Marriage Act and observed that while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty. Further, the court should review the married life as a whole in order to see whether the conduct of the spouse amounts to cruelty 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. A few isolated instances over a period of years will not amount to cruelty.



40. Similar observations were made by the Apex Court in the case of Gurbux Singh vs Harminder Kaur (2010) 14 SCC 301.

41. **Thus, while looking at acts of mental cruelty, the court must look at the married life as a whole and not merely a few isolated incidents.**

42. It was asserted by the respondent that the appellant is of a quarrelsome nature and that she would pick quarrels with him without any reason. Further, she refused to perform all matrimonial obligations and kept going to her matrimonial home frequently. He stated that even after they started living separately as per the Settlement Deed, the appellant did not change her ways and would deliberately not open the gate for him for hours. He also stated that she would threaten to implicate him and his family in false criminal cases if any steps were taken against her. However, the appellant denied all allegations made by the respondent.

43. While it is true that mere assertions made by the respondent would not entitle him to a decree for divorce however, it is an admitted fact that the parents of the respondent used to live in a house in Ambedkar Nagar and that the Settlement Deed dated 11.03.2019 contained clauses wherein it was stated that the parties shall reside separately from her in-laws and also that the income of the respondent shall only be spent on her. The clauses read as under-

“i) That both the parties shall not reside in the house of the Father-in-law and mother-in-law of the girl and would reside outside Ambedkar Nagar

v) That the family member from both the sides would not interfere with the affairs of husband and wife.

vi) That the husband would spend his income on him and his wife and the residual would be saved in his account after



taking care of the household expenses.”

44. It is also admitted that pursuant to the settlement arrived at between the parties, the appellant and the respondent shifted to A-42, Krishna Park, Ground Floor, Left Side Flat, Devli, New Delhi.

45. **The appellant has further alleged that** on 30.05.2019, the respondent had left her on the gate of the Colony of her parents' house and deserted her. Hence, he cannot take advantage of his own wrong and the decree granting him divorce is liable to be set aside on this ground.

46. On this aspect we note that while there is a dispute as to whether the Respondent-wife left her on her own volition, or was thrown out of the matrimonial home on 30.5.2019, it is established that since then the parties have been living separately. The Learned Principal Judge, Family Court has observed that it was due to the conduct of the appellant that the '*petitioner was left with no choice but to leave the respondent at her parent's house*'.

47. Even if it is believed that it was the respondent who had left the appellant at the gates of her parents' house, from the above discussion it is clear that the appellant was cruel to the respondent to the extent that because of the acts of the appellant, he found it extremely difficult to live with her. Thus, there exists a cause for such abandonment and consequently, the respondent cannot be held guilty of desertion.

48. We concur with the conclusion of the Principal Judge, Family Court and do not find any ground to interfere in the divorce decree granted in favour of respondent under Section 13(1)(ia) of the Hindu Marriage Act, 1955.



49. We hereby dismiss the appeal along with the pending applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 05, 2023
va/nk