



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Reserved on: 02nd August, 2023**
Pronounced on: 06th September, 2023

+ **MAT.APP.(F.C.) 13/2022 & CM APPL. 35921/2023**

SMT. KAVITA TYAGI Appellant
 Through: Mr. Ashok Kumar Mishra, Mr.
 Manoj Kumar Dubey & Ms.
 Shivani Luthra, Advocates with
 appellant in person.

versus

SH. SUNIL KUMAR TYAGI Respondent
 Through: Ms. Gita Dhingra, Advocate with
 respondent in person.

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

CM APPL. 6472/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The present application is disposed of.

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3. The present Appeal **under Section 19 of the Family Court Act r/w Section 28 of the Hindu Marriage Act, 1955** (*hereinafter referred to as 'the Act, 1955'*) has been filed by the appellant-wife challenging the Judgment dated 20.11.2021 *vide* which the respondent-husband's petition for divorce on the grounds of cruelty under Section 13(1)(ia) the Act,

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1955 has been allowed thereby dissolving the marriage of the parties.

4. **The facts in brief** are that the parties to the proceedings got married on 28.11.2004 at U.P., according to Hindu customs and rites, and only one child namely Summer @Avi was born from the said wedlock on 19.01.2006. The parties resided together till 19.08.2007, after which the appellant-wife (*respondent in the divorce petition hereinafter referred to as 'appellant-wife'*) was served with the Notice for divorce in August 2007 by the respondent-husband (*petitioner in the divorce petition hereinafter referred to as 'respondent-husband'*). Thereafter, the divorce petition was filed by the respondent-husband before the Learned Family Court on 22.08.2007.

5. **The respondent-husband** claimed that he was subjected to various acts of cruelty by the appellant-wife which are as under:-

- 5.1. The appellant-wife and her family members had concealed the fact that the appellant-wife was suffering from mental disease prior to the marriage and she was under treatment of GTB Hospital and IHBAS Dilshad Garden, Delhi .
- 5.2. On 22.04.2007, 01.06.2007 and 17.06.2007 the appellant-wife has attempted to commit suicide allegedly as a consequence of her mental disorder.
- 5.3. On 06.01.2006 the appellant-wife called her parents at her matrimonial home and they demanded Rs. 2 lakhs for the marriage of younger sister of the appellant-wife and on his refusal, she left the matrimonial home after collecting all her jewellery. She was brought back by the respondent-husband on 09.01.2006. On 27.01.2006, the parents of the appellant-wife



misbehaved with the respondent husband for not heeding to their unjust demands of financial assistance. The respondent-husband gave Rs. 80,000/- to the mother of the appellant-wife to fulfil her demands. Appellant-wife forced the respondent-husband to arrange a separate accommodation on rent to which they shifted on 15.04.2007.

- 5.4. The in-laws of the respondent-husband entered his house and attempted to snatch the child forcibly from him. The appellant-wife and her family members again forcibly entered the house of the respondent-husband on 18.04.2007 and 21.04.2007 and ultimately the matter was reported to SHO, PS Dabri, New Delhi.
- 5.5. The appellant-wife left the matrimonial home on 27.01.2006 and refused to join the society of the respondent-husband despite his repeated efforts to bring her back in the month of February, 2006, 13.04.2006, 25.05.2006 and September 2006. The appellant-wife refused to discharge her household responsibilities by not cooking any meal for the respondent-husband since 02.12.2006 and did not allow the respondent-husband for sexual intercourse.
- 5.6. The appellant-wife threatened to initiate false proceedings against the respondent-husband and his family members in CAW Cell.
6. The respondent-husband thus claimed that he had suffered cruelty due to the aforesaid various acts of the appellant-wife and her family



members and sought divorce on the ground of cruelty under Section 13(1)(ia) of the Act, 1955.

7. **The appellant-wife in her written statement** denied all the allegations made against her. She denied that any kind of cruelty was inflicted on the respondent-husband. On the other hand, she alleged that the husband and his family members were not satisfied with the dowry and gifts given to them in the marriage and on several occasions. The family members of the husband started harassing, torturing, taunting and beating the appellant-wife that she has not brought Maruti Car or Rs. 2 Lakh for the car. Even though the parents of the appellant-wife arranged the demanded amount, however, the behaviour of the husband and his family did not change. The appellant-wife was also asked for Rs. 10 Lakhs to purchase a new house at Delhi and when the appellant-wife refused for the same on the ground of inability of her parents, her husband and his family members mentally and physically tortured the appellant-wife. She was given merciless beatings with fist and blow and kicks in stomach which resulted in 15 days abortion of the appellant-wife. It was further claimed that the husband tried to kill the appellant-wife by giving poison to her and by pouring kerosene oil upon her. Also, in the month of August 2007, the respondent-husband deserted her with her minor child in the rented accommodation and went away.

8. The appellant-wife denied that she is suffering from any mental disorder; rather she alleged that her husband had fabricated false documents to prove her mental disease. Further, it was also alleged that the husband had made false complaints to the police against appellant and



her family members to make grounds for divorce. It was thus claimed by the appellant-wife that the divorce petition was liable to be dismissed.

9. **The issues** were framed by the Learned Principal Judge, Family Court on the pleadings on **12.08.2008** as under: -

“(i) Whether the respondent has treated the petitioner with cruelty after solemnization of the marriage, as stated in the petition? (OPP).”

10. **The evidence** was led by both the parties by way of affidavits. The respondent-husband tendered his evidence by way of affidavit as PW-1 which is Ex. PW1/1 and the appellant-wife tendered her evidence by way of affidavit as RW-1 which is Ex. RW1/1.

11. The Learned Principal Judge, after considering the incidents, as deposed by the respondent-husband, concluded that the allegations of cruelty were duly proved by the respondent-husband. On the other hand, the appellant-wife had failed to prove her allegations which in fact aided in proving the case of the respondent-husband. The divorce petition was accordingly allowed and the divorce was granted on the ground of cruelty under Section 13(1)(ia) the Act, 1955.

12. Aggrieved by the Judgment, the present appeal has been preferred by the appellant-wife.

13. **Submissions heard.**

14. The respondent-husband has sought divorce from the appellant-wife on the ground of ‘cruelty’. The respondent-husband had claimed that the family of the appellant-wife had been making demands of Rs.2 lakhs for the marriage of younger sister of the appellant and had twice come to their house to make such demands. The respondent-husband had given



Rs.80,000/- towards their demands. The respondent-husband had further deposed that the appellant-wife's parents entered their house in an attempt to snatch the child forcibly from him for which he was compelled to give a complaint to the Police on 18.04.2007 and 21.04.2007 at Police Station Dabri, New Delhi. There is no serious contest to this testimony of the respondent-husband.

15. Further, the appellant-wife had forced him to arrange separate accommodation on rented residence to which they shifted on 15.04.2007. Though setting up of a residence separate from the parents or the family may not *per-se* amount to cruelty but the testimony of the respondent-husband that he was forced to set up a separate residence, corroborates his testimony that things were not well while they were residing in the matrimonial home and because of the various instances as narrated above, he was compelled to set up a separate residence.

16. The respondent has further deposed that the appellant-wife since 02.12.2006 refused to discharge her matrimonial obligations and failed to take responsibility for the household work and failed to give meals to the respondent-husband. It was further deposed by him that she even refused to cohabit with the respondent. She also threatened to falsely implicate the respondent-husband in false criminal cases. It was thus deposed that he had been made to suffer mental agony which entitled him to divorce on the ground of cruelty.

17. Much emphasis has been laid by the respondent-husband that the appellant-wife was suffering from mental disease prior to the marriage and she was under treatment at GTB Hospital and IHBAS, Dilshad Garden, Delhi and because of her mental condition, had even attempted



suicide on 22.04.2007, 01.06.2007 and 17.06.2007. Though the appellant-wife had denied suffering from any kind of mental ailment but the medical documents Ex.PW1/F1 and Ex.PW1/F2 proved that she had been undergoing mental treatment. According to the respondent-husband, the mental condition of the appellant-wife which invoked suicidal tendencies in her, created uncertainty of relationship between the parties.

18. Though ‘cruelty’ is recognized as one of the grounds for divorce under Section 13(1)(ia) of the Act, 1955 but there is no definition given of the term ‘cruelty’.

19. Cruelty, which may be a ground for divorce, may be “*physical*” or “*mental*”. The “*physical cruelty*” is easy to comprehend as it involves causing physical harm to a person. In the present case, the respondent-husband had not claimed any relief on grounds of physical cruelty. The appellant-wife, though deposed that she was being physically abused, beaten regularly and she suffered a miscarriage due to the same, however, no evidence has been placed on record to support the same and no medical document or complaints corroborate the assertions as rightly observed by the Learned Family Court. There being no corroborative evidence or document to support the allegations of physical cruelty it cannot be said that either party was responsible or was instrumental in causing any physical cruelty.

20. However, the more challenging aspect is of “mental agony” which has also been recognized as part of “*cruelty*”, and once established is also a valid ground for divorce. The contours of “mental cruelty” were defined in case of V. Bhagat vs. D. Bhagat (1994) 1 SCC 337, wherein the



Hon'ble Supreme Court held that mental cruelty in Section 13(1)(ia) of the Act, 1955 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 petitioner/appellant. 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.

21. The question of determination of mental cruelty was answered in the case of Shobha Rani vs. Madhukar Reddi (1998) 1 SCC 105. The Apex Court observed that the enquiry of mental cruelty must begin with the nature of the cruel treatment and subsequently, the impact of such treatment on the spouse must be examined. It must be seen whether such actions caused reasonable apprehension that it would be harmful or injurious to live with the other spouse. It was further observed that the same is a matter of inference to be drawn from the facts and the circumstances of the case.

22. The marriage is a union of two persons with co-habitation and conjugation relationship being its essence. It is a relationship in which the parties enjoy the happiness and also face the adversity together. It is the sharing of joys and sorrows of life together while travelling on this path of matrimonial life which defines this relationship of extreme trust, faith and



companionship. From the testimony of the parties as discussed above, it is proved that their marriage suffered on account of routine compatibility issues and also issues *inter-se* the families which even compelled the respondent-husband and appellant-wife to set up a separate residence. These instances when considered individually, may be trivial, however when considered collectively, over a period of time, they would amount to mental cruelty.

23. The Supreme Court in the case of Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Act, 1955 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.

24. Similar observations were made by the Apex Court in the case of Gurbux Singh Vs. Harinder Kaur (2010) 14 SCC 301.

25. In addition to these trivial issues, it is not in dispute that the parties are separated since August, 2007 and despite a lapse of 16 years, there has been no reconciliation and the parties have not been able to sort out their differences to live together.



26. Recently, the Apex Court in the case of Rakesh Raman Vs. Kavita 2023 SCC OnLine SC 497, after relying upon the observations in Samar Ghosh (supra), looking at the facts of the said case where parties were residing separately for almost 25 years, had no co-habitation during this period and repeated efforts for reconciliation for settlement resulted in failure, concluded as under:

“21.The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”

27. It may also be observed that after the decree of divorce was granted by the Principal Judge, Family Courts, the respondent has already married which further reinforces a complete breakdown of marriage and there is no possibility of reconciliation in the given circumstances.

28. In view of above, we, therefore, find that the parties’ journey in their about two and half years of matrimonial life has not only been bumpy but also got derailed completely and no reconciliatory efforts could bring it back on track. The acts of appellant-wife made it difficult for the parties to stay together and their 16 years of separation and deprivation of conjugal relationship further adds to mental agony which



cannot be permitted to perpetrate further. Accordingly, we concur with the findings of learned Principal Judge, Family Courts that the respondent had proved “cruelty” to entitle him to divorce.

29. We find no merit in the appeal which is hereby dismissed.

30. The pending application, if any is also dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

SEPTEMBER 06, 2023

S.Sharma/akb