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

% ***Date of decision: 12th October, 2023***

+ **MAT. APP.(F.C.) 21/2019 & CM APPL. 2787/2019 (Stay)**

JASBIR KAUR SOHAL Appellant

Through: Mr. Vijay Joshi and Mr. Gurjas Singh
Narula, Advocates.

versus

GURCHARAN SINGH SOHAL Respondent

Through: Mr. Om Prakash & Mr. Gaurav
Vardhan Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

Superiority complex, greed for control and domination, even without ill-intentions, can suffocate any relationship because forced conformity breeds only rebellion and resistance, as has happened in the present matrimonial relationship between the parties, which spanned over a period of about 30 years.

1. An Appeal under Section 19 of Family Court Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/wife (*Respondent in the Divorce Petition*) against the Judgment dated 03.05.2018 of the learned Principal Judge, Family Court, granting divorce on the ground of cruelty in a petition filed by the respondent/husband (*Petitioner in the Divorce Petition*) under Sections 13(1)(ia) of HMA, 1955.

2. The **facts in** brief as narrated in the pleadings are that the parties got



married according to Sikh customs and rites on 24.02.1974. Two sons namely, Amarpreet Singh and Satnam Singh were born from the wed lock on 15.08.1976 and 17.07.1978. The parties adopted one daughter, who was aged about 15 years at the time of filing of divorce petition in December, 2005.

3. The respondent/husband was commissioned as a Pilot Officer in the year 1966 and performed outstandingly. He took his retirement subsequently, on compassionate grounds, to take care of his aged parents and differently abled sister.

4. The basic grievance of the respondent/ husband was that there was a status disparity between him and his wife, as she belonged to a rich family. She had the vanity of living in a big city and was rude, inhuman and demonstrated an insensitive behaviour. The respondent on the other hand, belonged to a family of comparatively lower status, even though they were similarly placed in financial terms.

5. The respondent had alleged that on the first night itself, after sexual intercourse, the appellant had humiliated him by claiming that because of his small penis, she was not able to derive complete pleasure. The respondent/ husband had told the appellant/ wife that in their matrimonial relationship they would live together, where he would be the earning hand and the appellant may take care of the household and the children. This irritated the appellant, who retorted by saying that instead of marrying her he should have married an *aaya*. She also alleged that he did not have any love for her as he had fallen in love with her cousin sister.

6. It is further claimed that the appellant was not respectful towards his fellow officers and his friends and did not miss an opportunity to retort or



humiliate them and she behaved in a rude manner. She also had difficulty in adjusting with the parents of the respondent. The relations *inter-se* them were not cordial and to resolve these domestic issues, when the respondent/husband approached her father, the appellant gave him beatings with sandals, which was witnessed by her parents. After this incident, she was taken back to her parental home by her father and it was after about one month that the sister of the appellant/ wife persuaded her to return to the matrimonial home.

7. The respondent has claimed that due to pressure and persuasion by his father-in-law and wife who were unhappy with his job, he took his retirement on compassionate grounds in mid 1976 and joined the Company *M/s Aero Shoes* of his father-in-law in which he was offered 20% shares aside from the monthly family package. He, however, did not feel happy to be working in the Company of his father-in-law and conveyed the sentiment to the appellant. However, instead of understanding him, she insisted that he should continue to work and also insulted him in the social circles.

8. The respondent asserted that for some time, he worked as Director in the Company but was not satisfied and happy. He, therefore, decided to set up his own fishing business in partnership for which he required to buy trawlers. He visited Mumbai from time to time, but he dropped the idea since the appellant was not happy with his decision and threw tantrums as well as threatened him with dire consequences if he quit the family business. He, therefore, was forced to continue.

9. The father of the appellant opened a shoe shop in *NDSE, Part II* under the name of *M/s Wings Shoes* and he was involved by the appellant/wife in the same business. A huge order was received for complete shoes from



Canada and USA for which they wanted the respondent to set up a factory. He accordingly tried to complete the orders, but this export business had to be closed down as no orders were forthcoming from the buyers. He was blamed by the appellant for the failure and closure of the business.

10. Likewise, in March 1978 he along with his mother, had bought a *shop No. 22 at Archana Arcade, Greater Kailash New Delhi*, wherein he started the business of shoes under the name and style of *M/s Lords and Ladies*. He also bought another *Shop No.6, Archana Arcade, Greater Kailash New Delhi* and though the business flourished, the appellant was not proud of his achievement.

11. The respondent further asserted that he took another shop at *D-39 (Annexe), NDSE, Part-II, New Delhi* on rent, close to the shop of the father of the appellant (*M/s Wings Shoes*), but she perceived it as a threat to the business of her father and because of her hostilities, he was forced to close down the shop.

12. In February, 1980 when he fell sick as he suffered from Jaundice, the appellant instead of taking care of him, maintained hostilities which compelled him to leave the matrimonial home and he shifted to rented accommodation in Sainik Farms, New Delhi. In September, 1980 his father died but the appellant did not join the last rites of his father.

13. After the demise of his father, the respondent was persuaded to shift to their matrimonial home at 55, Uday Park, New Delhi on the assurance that the appellant would maintain cordial relations and would desist from her hostile attitude. He in order to buy peace and on insistence of his father-in-law, permitted the appellant to also run a Saree shop from the *shop D-39, NDSE, New Delhi* but this gesture did not yield any desired result of



promoting cordiality between them. So much so that one day when he came back in the evening after shutting the shop at *Archna Arcade, G.K-I*, the appellant told him bluntly that the house did belong to him and that he had no right to enter or reside in the same house. He was shocked and left with no option but to shift his mother's house in Masjid Moth Colony. Disturbed by such incidents, on the very next day he closed his shop in Archna Arcade, G.K.-I and left for the Holy City of Amritsar to find some solace. He asserted that he served the Lord for continuous 40 days and when he was spiritually reformed, he was persuaded to join back the matrimonial home by his in-laws. However, the atrocities of the appellant continued unabated.

14. He further claimed that the appellant brought a doctor to their home claiming the husband was "mad" and compelled him to undergo medical investigation. Though the doctor concluded that there were no physical or psychological issues with the respondent, she forced him to suffer electric shocks which were not necessary.

15. The respondent further asserted that in December, 1984 when the appellant found four new stitched safari suits lying in the dicky of his car, she became furious and broke the wind screen as she suspected that respondent was going to marry again. When the father of the respondent came to know about this incident, he apologized for her acts.

16. The appellant also had doubts about his fidelity whenever he talked to any lady or even the near and dear relatives. The appellant used to tell all the relatives and friends that respondent is a characterless person and a bad man. The respondent aside from maligning his character and reputation even alienated the children by feeding them with negative inputs about the respondent.



17. The respondent further submitted that after the unfortunate demise of father-in-law in the year 1986, atrocities of the appellant became limitless in inflicting verbal abuses. He, however, endured this conduct for the sake of children and their well being. In the year 1999 he started keeping ill health. In the month of May, 2000 he was admitted in Apollo Hospital, where he was battling for his life but he managed to survive and lost 50 KG of weight. Despite being hospitalized, the appellant did not bother about his health or take care of him. He also wanted to bring his mother to 55, Uday Park after his illness, but she fell and broke her hip bone. He got his mother admitted in the Nursing Home and requested the appellant to return Rs.81,000/- which she had taken as loan from the mother, but she refused to give the money or to take care of the mother-in-law.

18. The respondent also asserted that in the month of September, 2000 the Income Tax Returns of his mother came under scrutiny. All the original documents were handed over to him by the Chartered Accountant which he had kept under the mattress of bed, but were clandestinely removed by the appellant.

19. The respondent asserted that because of the attitude of the appellant he was compelled to shift along with his mother to rented accommodation on the third floor at S-285, G.K-I, but the misconduct of the appellant did not stop. The appellant trespassed illegally and unauthorizedly into his *shop at 22, Archana Arcade, G.K-I*, where he was running a boutique under the name and style of *M/s Thousand Plus* and she also prevented him from touching the sale proceeds of the shop. He was driven to file a Civil Suit against her for Injunction and Rendition of Accounts which is subjudice in this Court. This conduct of the appellant was followed by her making a



complaint against him at various Forums including CAW Cell on false grounds of harassment on account of dowry. The respondent asserted that he has been living separately since 17.10.2000 and there is no possibility of resumption of their ties. He claimed to have been treated with cruelty by the appellant and thus, sought divorce.

20. **The appellant/wife in her Written Statement** denied all the averments made in the petition. She claimed that the respondent always lived beyond his means, spent huge amounts on liquor, parties and hotels and always tried to impress upon his friends by creating a false image that he was a rich man. So much so that after two years of marriage, he sold the Fiat Car that was given to her by her father at the time of marriage. He even willingly left his job in Indian Air Force in 1976, after which he was provided a job by his father, but he was not satisfied. When she got pregnant, the respondent stated that he was not interested in children and when he did not get his way, he took to heavy drinking and in extra marital flings. Whenever she objected, she was given severe beatings even though she was pregnant.

21. The appellant also alleged that respondent/ husband was unable to run the shoe factory which had to be closed in the year 1978. In order to maintain peace in the matrimonial life, her father helped them by giving Rs.1,50,000/- in 1979 on a pre-condition that the shop may be bought in the joint name. However, the respondent cheated her by buying the *shop No.22, Archna Arcade* in his individual name and subsequently added his mother as a partner in the Firm only to save some taxes. The appellant further claimed that the respondent/ husband changed one business after the other as he was unsuccessful and had suffered huge losses. During all this time the



respondent neither supported her nor the children and it was her mother who was giving Rs.7,500/- per month to her for the maintenance.

22. The appellant further claimed that her father bought a plot of land bearing *No.55, Uday Park* in 1979 and also borne the expenses of the construction on the said plot so that she could live happily with the respondent. However, the respondent was not satisfied and started demanding money and ultimately he was given Rs.8 lakhs to buy another shop, with the clear understanding that it shall be bought in the name of the appellant. The respondent again purchased the *Shop No.6 in Archna Arcade* by giving an impression that he was buying it in the name of wife, but again purchased it in his own name. When she protested, the respondent /husband threw her and the children out of the home. With the intervention of the parents and the friends, the respondent apologized for his misconduct and assured that he would behave properly and also assured that he would include her name in the *shop No.6 purchased in Archna Arcade, G.K-I*, however, he failed to do so.

23. The appellant further asserted that since respondent was acquiring one property after the other in a clandestine manner and was not supporting her and the children, therefore, in the year 1980 with the assistance of her father she opened a *Saree shop at D-39, NDSE, Part-II, New Delhi*, where after back breaking hard work for 5-6 years, she was able to manage the household expenses and the growing requirements of her children. The respondent despite having a rental income of Rs.60,000 to Rs.80,000/- from the second shop in Archna Arcade, failed to give any monetary support. Rather, on one day he decided to take over *Shop No.D-39, NDSE, Part-I*, to start his business afresh and therefore, threw her out of the shop. Since then



she was living at the God's mercy. Her woes increased when in the year 1986 her father expired and she was left with no means to support herself and the children.

24. In the year 1990 with great difficulty she was able to convince the respondent/husband to let her open a boutique at *Shop No.22, Archna Arcade* which was lying unused, but the respondent agreed to let her use the shop only on payment of rent, which kept escalating and was pegged at Rs.17,500/- in October, 2005.

25. The appellant further asserted that the respondent used to threatened her to transfer *House No.55, Uday Park* in his name or else he would shift out of the matrimonial home to live in his own flat at S-285, G.K.-I. The respondent also threatened to divorce her. Because of the frustration of not being successful, he openly indulged in extra marital flings. She asserted that the respondent/husband got attracted to the maid servant of about 25 years and had started living with her about which she got to know in the year 2004 when the respondent/husband was planning to get married to the maid.

26. In the month of November, 2003 she along with her elder son Amarpreet Singh, went to his house where she was introduced by the respondent to some property dealers and was directed to sell the Uday Park property. She after consulting her son, refused to do so. When she returned back home after one hour, she found her house to be ransacked and all her valuables missing. Next day, she approached the respondent to reason out with him and to persuade him to return to the matrimonial home, but she was physically assaulted and removed from the premises.

27. The appellant claimed that the respondent had no money or property in the year 1974, but after his marriage to her, he has amassed about nine



properties some of which are residential and other commercial in nature. She lastly claimed that the respondent had failed to meet his obligation towards her and the daughter with whom she is residing alone in the Barsati Floor in 55, Uday Park, New Delhi. The appellant, therefore, claimed that it is she who has been subjected to cruelty by the respondent/ husband.

28. **Issues on the pleadings were framed** on 03.05.2007 as under:

- “ (i) *Whether the respondent treated the petitioner husband with cruelty after solemnization of the marriage?*
(ii) *Relief.*”

29. The respondent/ husband appeared as PW1. He also examined PW2 Senior Judicial Assistant from this Court to prove the original record of litigation between the parties *vide* CS(OS) No.857/2004 titled as *Flt. Gurcharan Singh Sohal (Retd.) vs. Jasbir Kaur* and the certified copy of the documents was exhibited as PW-2/1 to PW-2/6. The appellant appeared in support of her assertions as RW1.

30. **The learned Principal Judge, Family Court** concluded from the evidence of the parties, that the appellant suffered from superiority complex and always blamed the respondent for his failures in business. She also made allegations of his extravagant life styles, drinking habits and promiscuous nature. Furthermore, the appellant indulged in mindless character assassination without an iota of proof. The parties have been living separately since 17.10.2000 with no possibility of reunion even though the appellant had been claiming that they got separated in November, 2003. The reckless allegations in regard to promiscuous nature and also in the complaint of dowry harassment filed before CAW Cell, amount to acts of cruelty. It was concluded that the respondent suffered mental cruelty at the hands of the appellant and therefore, granted divorce on the ground of



cruelty under Section 13(1)(ia) of the Act.

31. Submissions heard and the record perused.

32. Admittedly, the parties got married on 24.02.1974 and were blessed with two sons in the year 1976 and 1978. Thereafter, they also adopted one daughter who was about 15 years on the date of institution of the petition on 17.12.2005. It has emerged from the pleadings and the evidence led by the parties that he was a Commissioned Pilot Officer in the Air Force at the time of his marriage, but he took voluntary retirement in the year 1976. While he had asserted that he took his resignation in order to take care of his aged parents and disabled sister, there is overwhelming evidence on record to show that he left the job in order to join the business of appellants family.

33. The appellant belonged to an affluent family and they had multiple businesses. This is born out from the admitted fact that the respondent was offered to take up the business of export of shoes to Canada and USA and to run the factory, though it ultimately did not work out. The respondent also ventured into setting up a fishing business, though as per his own admissions he eventually gave it up to pursue the shoe business. It is also on record that respondent purchased two shops namely *Shop No.22 and Shop No.6 in Archna Arcade*. He had set up his own business initially in the name of *M/s Lords and Ladies* and thereafter in the name of *M/s Thousand Plus*. It is also not challenged that the respondent took a shop on rent at *D-39, NDSE, Part-II, New Delhi* to set up his shoe business.

34. Furthermore, there are categorical admissions of the appellant in her cross-examination conducted on 16.02.2008 that she had been insisting for transfer of the properties by him in her name and on refusal of the respondent it resulted in constant marital bickering. Though she asserted that



she had contributed her own funds for the purchase of these two shops, but was unable to substantiate her case. It is evident that she wanted share and control over the properties, which became a core issue of marital discord between them.

35. Further, it is significant to refer to the documents and writings Ex.PW2/3 and Ex.PW2/4 both dated 15.09.1981, written by the appellant to the respondent/husband, where she categorically stated that property No.55-A, Uday Park does not belong to him and that she wanted a divorce from him. Clearly, the appellant had adjustment issues and had a roller coaster relationship with the respondent since beginning, as has been rightly observed by the learned Principal Judge, Family Courts.

36. It can be easily concluded that there was a huge financial disparity between the respondent and the appellant, as the appellant belonged to a business family. The respondent after taking retirement from the Air Force also ventured into various businesses as discussed in detail in the evidence.

37. The first major aspect which has emerged from the respective evidence of the parties, is that the appellant, who came from an affluent background, had a superiority complex and found it difficult to adjust in the family of the respondent. She also made irresponsible allegations of the respondent having an extravagant lifestyle, drinking habits and promiscuous nature, though she has not been able to substantiate any of her allegations. She even claimed that after the parties separated in 2003, he got into a relationship with a maid Anjali, with whom he resided in S-285, *Greater Kailash* and was subsequently intending to marry her as well.

38. It is well settled that levelling disgusting accusations of unchastity and infidelity or allegations of extra-marital relationship, is a grave assault on



the character, honour, reputation, status as well as the health of the spouse and such unsubstantiated allegations made in the Written Statement or suggested in the course of examination and by way of cross-examination are nothing but an act of extreme cruelty, as held in the case of Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate, (2003) 3 SCR 607.

39. It is also pertinent to note that after about 30 years of married life, the appellant, on their separation in the year 2003, made complaints of dowry harassment in CAW Cell in which the respondent was made to appear on 07.07.2004 and 04.08.2005. Neither the complaint has been proved nor had the allegations of dowry harassment been substantiated by the appellant. Making such reckless complaints with unsubstantiated allegations and that too after almost 30 years of their married life, is clearly an act of cruelty as has been held by the Apex Court in the case of Mangayakarasi vs. M.Yuvaraj (2020) 3 SCC 786 and K.Srinivas vs. K.Sunita X (2014) SLT 126. Similar observations were made by the Coordinate Bench of this Court in the case of Rita Vs. Jai Solanki (2017) SCC OnLine Del 9078 and Nishi Vs. Jagdish Ram 233 (2016) DLT 50.

40. Lastly, we may also observe that the parties are separated since 2000 according to the respondent and since 2003 according to the appellant. However, the fact remains that the appellant has not been able to show any guilt or wrongful conduct of the respondent to have justified their separation. The parties are separated since then and there is no evidence to show that the appellant ever made any effort for reconciliation or for reunion. Rather, she has made frivolous complaints in CAW Cell. Her conduct leads to only one conclusion that she had repudiated her about 30 year old matrimonial relationship and wanted to exit from her marriage.



Such long separation has led to deprivation of conjugal relationship and matrimonial conjugality which in itself is an act of cruelty, as has been held in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511.

41. To sum up, the evidence on record has proved that the appellant suffered from superiority complex on account of her affluent status and wealth, as compared to the respondent/husband. She has made unsubstantiated allegations of dowry harassment against the respondent after thirty years of their married life in which the respondent was compelled to appear on two dates. Moreover, she has not desisted from making allegations of promiscuity and fidelity against the respondent. Though the marriage survived for about 30 years till 2000/2003, but as already discussed in detail, there was always turbulence in their relationship and no trust, faith and respect could be fostered in their relationship.

42. We, hereby conclude that the respondent had been able to prove that he had been subjected to mental cruelty during his entire matrimonial life when they were together. **Learned Principal Judge, Family Courts has rightly concluded that the respondent was subjected to cruelty and granted divorce.**

43. The appeal is without merit and is hereby dismissed, along with pending application(s), if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 12, 2023
JN/ Va