



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

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Reserved on: August 18, 2023

Pronounced on: December 12, 2023

+ MAT.APP.(F.C.) 34/2021 & CM APPL.9374-75/2021

NITIN VIJ

..... Appellant

Through: In person with Mr. Bhavneet Singh,
Advocate

Versus

POOJA

.....Respondent

Through: In person with Mr. R.S. Dakha &
Ms. Meena, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal has been preferred by the appellant-husband under Section 19 of Family Court Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 against the judgment dated 30.09.2020 passed by learned Family Court, Delhi in HMA No.374/2018 whereby appellant's petition under Section 13 (1)(ia) and (ib) of the Act seeking dissolution of marriage on the ground of cruelty and desertion has been dismissed. Also, the appellant has been directed to pay *pendent lite* maintenance @ Rs.15,000/- per month from the date of application under Section 24 read with Section 26 of the Act and in addition to pay litigation expenses of MAT.APP.(F.C.) 34/2021

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Rs.15,000/-.

2. The facts of the present case are that the marriage between the parties was solemnised on 18.09.2010. Out of the said wedlock, a child was born on 24.08.2011. The appellant claiming irreconcilable matrimonial disputes with respondent, preferred a petition seeking divorce before the learned Family Court in July, 2015 on the ground that:-

- I. Since the date of marriage, the respondent was unable to cope up with the responsibilities and clearly told the appellant that she would not be able to do household chores.
- II. Respondent's behaviour towards appellant's mother was very rude and disrespectful.
- III. After 15 days of their marriage, the appellant went to his in-laws' house where despite being Tuesday, he was insisted to eat non-veg and on his refusal, he was misbehaved and insulted.
- IV. Once the appellant's mother stopped the respondent to read Bhagwat Geeta while sitting on bed and on this, the respondent threw the holy book on her face, shouted and locked herself in a room. The appellant who was not at home then received a call that respondent had locked herself in a room and is threatening to commit the suicide and shouting loudly. Appellant had to make an effort to cool her down and on opening the door, the respondent abused his mother and his brother.
- V. Appellant who claims to be a Mechanic by profession pleaded that whenever he goes to his workshop, in his absence his wife abused his mother and brother.
- VI. Appellant pleaded that during pregnancy, the respondent took some wrong medicine due to which an abnormal child was born to the parties on 24.08.2011 and all the expenses related to treatment and pregnancy were borne by the appellant.
- VII. In the year 2011, the respondent misbehaved with the

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appellant in the market and upon returning home, she threw a bag on his mother and when after parking the vehicle, he reached home, he found that the respondent along with the child had left the home.

- VIII. In November, 2011, on the occasion of *sagan* ceremony of appellant's brother, the respondent misbehaved with him in front of all the relatives and she refused to attend the marriage of his brother. To the contrary, respondent's brother came to appellant's house and insulted him in front of relatives and friends a day prior to the marriage ceremony.
- IX. After three days of appellant brother's marriage the respondent abused appellant's sister on phone and respondent also abused appellant's younger brother and his wife. Thereafter, she packed her bag and went to her sister's house, who also stays in Delhi. The appellant claimed to have made a number of calls to the respondent but she never picked up the phone and went to Gwalior to her parental house. Thereafter, appellant along with his cousin brother went to Gwalior to take the respondent back but her family members misbehaved with him and he was told to take a separate house and only then, they will send the respondent and that they will also stay with her daughter otherwise they will implicate the appellant in false cases.
- X. The appellant claimed to have shifted to Delhi at T-81, Gali No.3, Shukkar Bazar, Utam Nagar, New Delhi after a few months. After shifting, the respondent with all her family members reached the appellant's house and threatened that she will commit suicide and implicate all the family members of his family and will sent them to jail.
- XI. On 28.07.2012, respondent's brother filed a complaint that their daughter had tried to commit suicide by implicating the appellant in a false case whereas the fact remains that the respondent had deserted the appellant on 27.11.2011.
- XII. The appellant averred before the learned Family Court that the respondent had left the matrimonial home out of her free



will, however, she had preferred petitioner under Section 125 Cr.P.C. to set aside her personal grudge.

- XIII. Appellant claimed that all his efforts to bring the respondent back to the matrimonial home failed as she had withdrawn from the society of the appellant and is enjoying her life separately and her only intention is to extort money from him.
- XIV. Appellant claimed that respondent on numerous occasions threatened him and his family members of implicating in false and frivolous cases.
- XV. Appellant claimed that 3½ years prior to deserting him, the respondent had refused to maintain physical relations with her which also amounted to cruelty.
- XVI. By causing mental cruelty upon the appellant, the respondent had deteriorated her relations with the appellant and so he cannot be expected to live with her and so, he was entitled to a decree of divorce.

3. In her written statement filed before the learned Family Court, the respondent averred that the appellant had ruined her life while she was living her life as per her choice. She pleaded that appellant is a man of arrogant behaviour and had no respect for respondent or her family members. She pleaded that after birth of the handicap child, the appellant avoided taking care of her as well as of the special child. The respondent further pleaded that at the time of the marriage between the parties, the appellant had proclaimed of earning of Rs.2 lakhs per month and he and his family wanted to solemnise the marriage in a Five Star Hotel which was beyond the capacity of respondent's parents. Moreover, cash of Rs.20 lakhs was demanded by the appellant to meet the marriage expenses besides his family also demanded *milni* of 21 people with *shagun* of Rs.500/- each and



also 21 boxes of sweets, which were beyond the capacity of her parents. Respondent also pleaded that on the night of the marriage, she was shocked to know that the appellant used to heavily drink and he had a problem in his arm due to some accident and he could not do much work from his hand, which fact was never disclosed at the time of marriage.

4. The respondent pleaded that after their marriage, family members of appellant taunted her for wearing spectacles as well as for not bringing dowry to their expectation. The respondent pleaded that during subsistence of their marriage, appellant did not take care of her and gave her merciless beatings and was involved in very heavy consumption of alcohol and also taunted her for bringing less dowry. Similarly, her mother-in-law also used vulgar language and took all the jewellery forcibly and kept the same in the locker of her brother's daughter, namely, Alka. The respondent pleaded before the learned Family Court that the appellant or his family members never took her to a doctor while she was pregnant.

5. Respondent also pleaded that she gave birth to a male child who is not normal and due to brain haemorrhage, his brain could not develop and the doctor told respondent that the child will not survive. When one day she asked her mother-in-law for *momjama*, she refused the same and told if child survived then they will bring the *momjama* and asked the respondent to demand from her mother for anything she wants, then respondent telephoned her mother who brought cloths and *jhula* for the child. After that respondent's mother-in-law told her to ask her mother to bring cloths for all family members and also to bring envelope containing money for Tai and Chachi. Appellant and his family members did not do any customs related to child birth and always waited for child's death. Whenever respondent asked



the appellant or his family members for money for medical treatment of child, they refused the same by using vulgar language and they never gave money for emergency treatment or for vaccination of the child and when respondent asked the appellant in alone to give money for child's treatment he replied that the child belongs to her completely and she should ask her parents for that.

6. The respondent pleaded that after the marriage of her brother-in-law was fixed, she was asked to sleep in the drawing room and if she does not want she can go to her parents' house. She further pleaded that her brother-in-law also supported the appellant and she was forced to leave her matrimonial home and compelled to go back to her parents' house. Even though she frequently called the appellant to bring her back, however, he did not turn up to take her and that is how two months elapsed. She was then informed by one of their relatives that her husband had gone to China but she got suspicious and later came to know that the appellant did not get *visa*. Respondent averred before the learned Family Court that her parents sought forgiveness of appellant and his family and requested them to take her back to her matrimonial home, but her mother-in-law blamed her for all the wrong and even the appellant had refused to take her back to the house.

7. On the pleading of the parties, the following issues were framed:

“i. Whether the petitioner is entitled for decree of divorce on the ground of cruelty and desertion as alleged?

ii. Relief”

8. In order to prove his case, the appellant got examined himself as PW1



and his brother- Mr. Amit Vij as PW-2. In defence, the respondent got herself examined as RW1, Mr. Ram Singh Dhanka, Record Clerk, Indian Bank, Janakpuri, SFS, Delhi as RW2; Mr. Lalu Yada, BDR of HDFC Bank, K-3, Janakpuri, New Delhi as RW3 and Mr. Satpal, Tax Assistant, Income Tax department, H.Q. C.R. Building, Delhi as RW4.

9. Learned trial Court after adducing the evidence of the parties, decided the aforesaid issues by observing as under:-

“15.3 From the evidence that has come on record and the overall facts and circumstances of this case, it appears that though both the parties were having differences on certain trivial issues, the real dispute arose after the birth of the differently abled child with severe health complication and the petitioner avoided the care of the said child. Soon thereafter, the respondent had to leave the matrimonial house. There has been no complaint by the parties against each other till the time they got separated. There is no contemporaneous evidence of the allegations leveled by the petitioner. It is considered that in view of the peculiar facts of the case, the judgment cited by the petitioner are not applicable. In view of the aforesaid discussion, it cannot be held that the respondent had treated the petitioner with cruelty or that she had deserted him. It is well settled that irretrievable breakdown of marriage, by itself, is not a ground for divorce under the Act. Thus, it is held that the petitioner is not entitled to a decree of divorce on the ground of cruelty and desertion. Accordingly, issue no.(i) is decided in favour of the respondent and against the petitioner.

Relief

16.1 In view of the aforesaid discussion and finding, it is held that the petitioner is not entitled to the relief prayed for. Therefore, the petition for



dissolution of marriage on the ground of cruelty and desertion under Section 13 (1) (ia) and (ib) of the Act is dismissed.”

10. The appellant by filing the present appeal has challenged the aforesaid judgment passed by learned Family Court on the ground that learned trial Court has passed the impugned order without appreciation of the facts and circumstances of the case and documents placed on record. Learned Family Court has failed to consider that the respondent had treated the appellant with cruelty and deserted him, which fact has been admitted by her in her own cross-examination conducted on 27.11.2018. The appellant has pleaded that the learned Family Court has ignored the fact that the respondent was not happy with the marriage and she was under depression, because of which disabled child was born which clearly amounts to cruelty upon him.

11. Appellant has further pleaded that learned Family Court has also ignored the fact that the respondent had taken no interest in restitution of conjugal rights by coming back to her matrimonial home and rather she deserted him on 27.11.2011.

12. According to the appellant, the learned Family Court has directed him to pay maintenance of Rs.15,000/- per month ignoring the fact that he is an AC Mechanic with seasonal work; suffering from disability in his right hand and has wrongly taken his income as Rs.19,473/- per month out of which after giving Rs.15,000/- per month to respondent, he is left with Rs.4,473/- only for his own expenses. Thus, he is seeking setting aside of the impugned judgment dated 30.09.2020.

13. When the present appeal came up for hearing, vide order dated 17.12.2021 this Court took serious note of the fact that appellant was not

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paying interim maintenance of Rs.15,000/- per month to the respondent and his special child with 100% disability and directed him to clear the arrears. Vide order dated 13.04.2023, the matter was referred to Delhi High Court Mediation and Conciliation Centre for parties to explore possibility of amicable settlement, however, as per Mediation Report dated 23.05.2023 efforts for settlement failed. On 13.07.2023 when this appeal came up for hearing before this Bench, the parties were substantially heard in chamber as well as in Court to arrive the parties at amicable settlement, wherein the respondent-wife submitted that she has to spend Rs.25,000/- per month towards treatment of 100% disabled child of the parties and demanded Rs.30,00,000/- towards full and final settlement of her claims as well as that of 100% disabled child. Since the parties could not come into an agreement, the appeal was heard on merits.

14. The arguments advanced by learned counsel representing both the sides were substantially heard and the impugned judgment passed by the learned Family Court as well as other material placed on trial court record, was perused.

15. In order to substantiate their case, the appellant before the learned Family Court examined himself PW-1 and his brother as PW-2. The respondent-wife got herself examined as RW-1 and also got examined Sh. Ram Singh Dhanka, Record Clerk, Indian Bank, Janakpuri, SFS, Delhi as RW-2; Sh. Lalu Yada, BDR of HDFC Bank as RW-3 and Mr. Satpal, Tax Assistant, Income Tax department as RW-4.

16. Upon going through the testimony of witnesses recorded before the learned Family Court, this Court finds that it is undisputed that the parties got married on 18.09.2010 and out of this wedlock a child was born on

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24.08.2011, who is 100% incapacitated. Due to matrimonial differences, parties have been living separately 27.11.2011. In the year 2012, the respondent filed a petition under Section 125 Cr.P.C. seeking maintenance from appellant-husband. In the year 2015, the appellant herein preferred petition under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 seeking divorce from respondent on the ground of cruelty and desertion and the same was dismissed, which is under challenge before this Court.

17. In his examination, appellant (PW-1) has stated that he is a Car Mechanic by profession and that he drinks only occasionally and also that he had never told the respondent's family that he owned two shops and AC car business and rents out LCD. The appellant denied ever having pressurized respondent's family to perform marriage functions in a Five Star Hotel or that any demand for cash of Rs.2,00,000/- was ever made. He also denied having concealed the factum of problem in his right hand or that his mother or any other member ever taunted the respondent about her wearing spectacles or any other matter. He also denied the allegation that he did not support the respondent while she was on family way or never paid the expenses for her treatment. Rather, he pleaded that out of respondent's *istridhan* only sets were kept in locker by his mother, which too were taken by the respondent and when respondent left the matrimonial home, she took three bags, including jewellery with her. However, during his cross-examination, the appellant (PW-1) admitted that he had never filed a petition seeking custody of his child. Appellant also admitted having visited China and Hongkong for business trips.

18. In appellant's support, his brother (PW-2) deposed before the Family Court that soon after their marriage, the respondent used to fight with

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appellant on petty issues. He mentioned a few incidents like throwing away of Bhagwad Geeta by respondent and respondent's misbehaviour with his mother and also on his *Sagan Ceremony* to pressurize the appellant to live separately. However, this witness during his cross-examination admitted that the appellant was having two shops on rent for working as mechanic and also that he had a shop on rent from his sister. This witness admitted that the marriage arrangements were made at Delhi and father of respondent had paid Rs.2,00,000/- for marriage expenditure, though he stated it was voluntarily given. This witness denied the allegations of the respondent that she was ever taunted for bringing less dowry or for wearing spectacles or that his mother or any other member ever misbehaved with her. PW-2 deposed that the child of the parties was born differently abled and admitted that their family did not want to keep the child and the respondent in their house and they wanted parties to divorce.

19. The respondent/wife (RW-1) in her evidence denied before the learned Family Court that in February, 2012 appellant had come to her to take her back to the matrimonial home, rather alleged that appellant had come to threaten her father, however, admitted during cross-examination that no complaint in this respect was made. She denied having attempted to commit suicide on 20.07.2012. She admitted having not worked after the year 2012. She denied all the allegations raised by the appellant before the learned Family Court with regard to her forcing appellant to have separate kitchen or having frequent quarrels with appellant's mother or she had ever attempted to commit suicide. The respondent admitted that even when she became pregnant, she was not happy with the appellant, however, no document was placed on record to show that she was under depression. The
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respondent deposed that appellant never took care of her during her pregnancy but admitted that his mother and sister did take care of her. She denied that due to her suicidal tendency, the child was born with disability or that appellant was paying towards child's treatment. The respondent deposed that she had not told her father or any other relative about appellant's habit of drinking or his disabled hand and admitted that she was not happy with it and was under depression because of these facts which she got to know after marriage, however, she admitted that she had physical relations with appellant. She admitted that appellant never gave her any beatings nor did she lodge any complaint to the police regarding dowry demand. She deposed that her jewellery was never forcibly taken by appellant's mother but it was kept in locker of appellant's cousin at the time of marriage of her brother-in-law but she did not get it back. The respondent admitted that her father had sought apology from appellant and his family, however, denied that she had willingly left her matrimonial home or that she had ever demanded any diamond ring at the time of marriage of appellant's brother and when her demand was not fulfilled, she left her matrimonial home. The other witnesses being RW-2, RW-3 and RW-4 were official witnesses, who were not cross examined by the appellant.

20. After going through the testimony of the parties recorded before the learned Family Court and the witnesses examined, this Court finds that to bring a marital dispute within the ambit of Section 13(1)(ia) of the Act for dissolution of marriage, cruelty has to be proved. The pertinent observations of the Hon'ble Supreme Court on the aspect of cruelty in ***Parveen Mehta Vs. Inderjit Mehta*** (2002) 5 SCC 706 are as under:-

"21.A feeling of anguish, disappointment and

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frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

21. Further, the Hon’ble Supreme Court in **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511, has observed as under:-

“99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, MAT.APP.(F.C.) 146/2022 Page 13 of 19 customs, traditions, religious beliefs, human values and their value system. 100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now



may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.”

22. In a recent decision in **Rakesh Raman Vs. Kavita** (2023) SCC Online SC 497, the Hon’ble Supreme Court, in an appeal preferred by the husband, challenging the order passed by the High Court whereby his petition granting decree of divorce by the learned trial court was dismissed; observed that:-

“16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of “cruelty” or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration.”

23. In the case in hand, it stands substantially proved that appellant was in the habit of drinking and prior to his marriage with the respondent, he had disability in his hand and was unable to work with it. The appellant has admitted that these facts were not disclosed to her prior to their marriage and respondent was unhappy to know about it. With regard to allegations of dowry demand, appellant’s witness (PW-2) in his cross-examination has admitted that the marriage arrangements were made at Delhi and father of



respondent had paid Rs.2,00,000/- for it. It is not disputed that though respondent's jewellery was never forcibly taken by appellant's mother but it was kept in locker of appellant's cousin at the time of marriage of her brother-in-law, which was never returned to her. Furthermore, respondent's father had sought apology from appellant and his family to save their married life but to no avail. In view of these facts, in our considered opinion, the learned Family Court has rightly held that appellant has not been able to prove that respondent treated him with cruelty.

24. What has caught attention of this Court is that even though learned Family Court has taken elaborative note of the facts and circumstances but has not taken note of the fact that parties to the present appeal got married in September, 2010; their specially abled child was born in August, 2011 and respondent had left the matrimonial home in November, 2011. In the year 2012, the respondent filed a petition under Section 125 Cr.P.C. seeking maintenance from appellant-husband. Relevantly, respondent did not prefer petition under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights. It seems that the respondent, who claims to be financially distressed, is only interested in claiming maintenance from appellant-husband to enable her to maintain herself and the child of the parties. This also shows her reluctance to join company of appellant-husband and it would not be misplaced to presume here that she had deliberately withdrawn herself from the company of her husband and there is denial of cohabitation and conjugal relationship.

25. On this aspect, the pertinent observations of the Hon'ble Supreme Court in *Bipinchandra Jaisinghbhai Shah Vs. Prabhavati* 1956 SCC OnLine SC 15 are as under:-

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“Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.”

26. The Hon’ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah*** has further observed that *once it is found that one of the spouses has been in desertion, the presumption is that the desertion has continued and that is not necessary for the deserted spouse actually to take steps to bring the deserting spouse back to the matrimonial home.*

27. In our considered opinion, the learned Family Court has failed to take note of the fact that the respondent left company of appellant in the year 2011 and did not make any efforts to come back to her matrimonial home to resume her relationship with appellant and since then, parties have been living separately. Thereby, it stands proved that the respondent had left appellant’s company of her own free will and intentionally deserted him and thus, appellant is entitled to get decree of divorce under Section 13 (ib) of the Hindu Marriage Act, 1955.



28. So far as the quantum of *pendent lite* maintenance @ Rs.15,000/- per month to the respondent is concerned, the appellant claims to be a car mechanic but his brother (PW-2) during his cross-examination admitted that the appellant was having two shops on rent for working as mechanic and also that he had a shop on rent from his sister.

29. The Hon'ble Supreme Court in **Rajnesh Vs. Neha** (2021) 2 SCC 324, has observed as under:-

“63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.”

30. In the present case, it is undisputed that respondent is non-working and the disabled child of the parties is also in her custody. PW-2 in his examination and cross-examination has deposed that appellant is not interested in seeking custody of the child. Even appellant has refused that he is unable to maintain the child. In such circumstances, it is only the respondent, who being a mother is taking care of the 100% incapacitated child of the parties. In our considered opinion, the learned Family Court has rightly taken note of the fact that appellant has no other liability than the respondent and their child and the quantum of Rs.15,000/- per month as



maintenance is just and proper in the facts of the present case.

31. Finding no fault with the impugned judgment, the present appeal is dismissed, with direction to the appellant to clear the arrears of maintenance, if any, within two months, failing which it shall bear interest @6% till the date of realisation.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 12, 2023

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