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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 21st September, 2023

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MAT.APP. (F.C.) 69/2019 & CM APPL. 10444/2019**SHASHI**

..... Appellant

Through: Ms. Sindhu & Mr. Hitender
Sakkarwal, Advocates.

versus

KISHORE KUMAR

..... Respondent

Through: Mr. Astander Kumar, 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 (oral)****CM APPL. 10443/2019 (Condonation of delay)**

1. The present Application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the applicant/appellant seeking condonation of 44 days' delay in re-filing the present Appeal.
2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 44 days in re-filing the present Appeal is hereby condoned.
3. Accordingly, the present application is disposed of.

CM APPL. 10442/2019 (Condonation of delay)

4. The present Application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the applicant/appellant seeking condonation of 8 days' delay in re-filing the present Appeal.
5. For the reasons and grounds stated in the present application, the application is allowed, the delay of 8 days in re-filing the present Appeal is hereby condoned.



6. Accordingly, the present application is disposed of.

MAT.APP. (F.C.) 69/2019

7. The present Appeal under Section 19 of the Family Courts 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 against the impugned Judgment dated 03.10.2018 passed by the learned Principal Judge, Family Court, West, Tis Hazari Courts, Delhi, whereby the divorce was granted to the respondent/husband on the ground of cruelty.

8. The parties got married on 30.04.2002 according to the Hindu customs and rites. One daughter, namely, Himanshi and one son, namely, Udit were born on 01.07.2003 and 30.06.2008 respectively.

9. The parties lived happily for two to three months and thereafter, the appellant/wife started demanding from the respondent/husband to take up a job instead of doing business, to which the respondent/husband did not agree and this infuriated the appellant/wife who left the matrimonial home and went to her parents' house.

10. It was further asserted that the appellant/wife insisted on setting up of a separate residence from the parents of the respondent/husband. They went to live in a separate rented accommodation in Karawal Nagar, Delhi, but again shifted back to the house in Tank Road, Delhi.

11. The respondent/husband had also claimed that the appellant/wife failed to maintain marital relationship and did not allow him physical intimacy. The appellant/wife had no love and affection for the respondent/husband.

12. On 01.03.2011, the family members of the appellant came to the house of the respondent/husband and thrashed the respondent and conveyed



to him that the appellant was not interested to live with him and demanded Rs. 10,00,000/- and a house. The appellant also threatened the respondent and his family members to implicate them in false cases.

13. It is further asserted that the appellant was residing separately at WE-37, Uttam Nagar, New Delhi. When the Respondent and his parents went to the house, they found it locked from inside and received no response from the Appellant, due to which they tried to open the door forcibly. However, the Appellant called 100 number and made a false complaint against the respondent and his family on 28.03.2011, stating that they tried to burn her alive by opening a LPG gas cylinder.

14. On 31.03.2011, the Appellant poured the kerosene oil on herself and called number 100 claiming that the Respondent and his parents wanted to burn her alive and further stated that she was saved with the intervention of the police. Because of such conduct of the appellant/wife, the parents of the respondent disowned him on 04.04.2011.

15. It was further submitted that the respondent was implicated in a criminal case under Section 302 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) and he was sentenced to life imprisonment. The respondent remained in jail from 01.10.2007 to 16.09.2010. However, the respondent again got implicated in a criminal case under Section 307 of IPC, 1860 and remained in jail from 13.04.2011 to 10.10.2011.

16. The respondent/husband had asserted that on 21.04.2011, the appellant/wife made a false complaint against his brother and other family members only to harass him.

17. The respondent further asserted that while he was in jail, the appellant never came to visit him. The respondent also came to know that the



appellant developed intimacy when the appellant used to visit the jail ostensibly for meeting the respondent with one police official Mr. Anil Kumar Akarnia who was posted as the Deputy Commandant, ITBP at jail boundary. To facilitate the appellant's visits, Mr. Anil Kumar Akarnia, Deputy Commandant, ITBP even got issued the Identification Certificate dated 06.05.2011. Though the appellant was regularly visiting the jail as has been corroborated by their daughter, Ms. Himanshi who appeared as PW2 and deposed that they used to regularly go to the jail for meeting the father, but she never met her father.

18. The respondent thus, sought the divorce on the ground of cruelty and desertion under Sections 13(1)(ia) and 13(1)(ib) respectively of the HMA, 1955.

19. The appellant denied all the allegations made against her. She asserted that it is the respondent and his parents who misbehaved and had beaten her on 28.03.2011 which led to her hospitalization.

20. The appellant had also asserted that on 01.04.2011, the respondent tried to burn her alive by pouring kerosene oil. It was claimed that it is the respondent who refused to discharge his matrimonial obligations.

21. The issues on the basis of pleadings were framed on 02.04.2013 which read as under: -

“1. Whether the petitioner has subjected the respondent to cruelty after the solemnization of marriage? OPP

2. Whether the respondent has deserted the petitioner, as alleged in the petition? OPP

3. Whether the petitioner is entitled to decree of divorce on the ground of cruelty under Section 13(1)(ia) of HMA? OPP

4. Whether the petitioner is entitled to decree of divorce on the



*ground of desertion under Section 13(1)(ib) of HMA? OPP
5. Relief.”*

22. The respondent appeared as a witness by himself and also examined his daughter, Ms. Himanshi as PW2.

23. The appellant appeared as RW1.

24. The **learned Principal Judge, Family Court** observed that while the respondent/husband was in jail, it was established on record that the appellant developed extramarital affair with Mr. Anil Kumar Akarnia, Deputy Commandant, ITBP which was a grave act of cruelty. It was further observed that the appellant/wife had made false complaints and allegations against the respondent/husband, which again amounted to cruelty. The learned Principal Judge, Family Court concluded as under:-

“20. The petitioner on the preponderance of probabilities proved that the respondent developed an extra marital affair and relationship with Anil Kumar Akarnia and also made unfounded and unproved allegations regarding attempts to burn alive the respondent by the petitioner and his family members which amount to mental cruelty to the petitioner caused by the respondent. The respondent has subjected the petitioner with cruelty.”

25. The learned Principal Judge, Family Court further observed that the respondent had remained in jail from 11.10.2007 to 16.09.2010 and thereafter, the respondent again remained in judicial custody from 13.04.2011 to 10.10.2011 and when he himself was in jail, there could not have been any denial of sexual relationship by the appellant/wife.

26. The learned Principal Judge thus, concluded that the respondent failed



to establish withdrawal of the appellant from her matrimonial obligations since 18.10.2007 and the divorce on the ground of desertion under Section 13(1)(ib) of the HMA, 1955 was denied.

27. Aggrieved by the impugned Judgment dated 03.10.2018 granting divorce to the respondent on the ground of cruelty under Section 13(1)(ia) of the HMA, 1955, the present Appeal has been preferred by the appellant/wife.

28. **The submissions heard from the counsels for the parties and the documents on record perused.**

29. The parties got married on 30.04.2002 and had two children, namely, Ms. Himanshi and Mr. Udit who were born on 01.07.2003 and 30.06.2008 respectively. Admittedly, the respondent was implicated in a criminal case under Section 302 of IPC, 1860 and he was sentenced to life imprisonment. The respondent remained in jail from 11.10.2007 to 16.09.2010 and thereafter, again he remained in judicial custody from 13.04.2011 to 10.10.2011, in a criminal case u/s 307 IPC. It was proved that during this period, the appellant/wife regularly visited the jail for meeting the respondent/husband, but she developed intimacy with Mr. Anil Kumar Akarnia who was posted as the Deputy Commandant, ITBP in the jail boundary. It has been proved that though the appellant was visiting the jail regularly, but she did not go to meet the respondent/husband, a fact which has not only been corroborated by the Identification Certificate dated 06.05.2011 issued by Mr. Anil Kumar Akarnia, Deputy Commandant, ITBP, but also by the testimony of their daughter, PW2/Himanshi who has also deposed that she used to regularly go with the mother to the jail but she never met her father.



30. The learned Principal Judge, Family Court has thus, rightly concluded that though the evidence on record may not be sufficient to prove adultery, but it necessarily proved the extramarital relationship between the appellant and Mr. Anil Kumar Akarnia, and such act was of utmost cruelty.

31. Not only this, the appellant had made the false allegations that the respondent/husband had tried to kill her by opening LPG gas cylinder on 28.03.2011 and again by pouring kerosene oil on her to burn her alive on 01.04.2011. These allegations were found to be totally false and it was held by the learned Principal Judge, Family Court that making of such false allegations which are neither proved nor corroborated in the evidence, amounts to mental cruelty as held in the case of Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate (2003) 6 SCC 334, Narendra vs. K. Meena AIR 2016 SC 4599 and Raj Talreja vs. Kavita Talreja AIR 2017 SC 2138.

32. The learned Principal Judge, Family Court has thus, rightly granted divorce to the respondent/husband on the ground of cruelty under Section 13(1)(ia) of HMA, 1955.

33. Accordingly, we find no infirmity in the impugned Judgment dated 03.10.2018. The present Appeal along with pending application is hereby dismissed as being without merit.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 21, 2023/s.Sharma