



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 05th September, 2023

Pronounced on: 20th December, 2023

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MAT.APP.(F.C.) 96/2023

PALLAVI SHARMA

..... Appellant

Through: Mr. Prosenjeet Banerjee, Mr. Vikrant Kumar, Ms. Sudeshna and Mr. Sarthak, Advocates.

versus

RAJEEV SHARMA

..... Respondent

Through: Mr. Ankit Gupta and Ms. Samiksha Garg, Advocates 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. 18738/2023 (Condonation of delay)

1. *Vide* the present application, the appellant seeks condonation of 14 days' delay in filing the present Appeal.
2. For the grounds and reasons stated in the present application, the application is allowed, the delay of 14 days in filing the present Appeal is condoned.
3. Accordingly, the present application is disposed of.

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4. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/wife against the Order dated 18.01.2023 passed by the Principal Judge, Family Court vide which divorce has been granted on the ground of cruelty in the petition filed by the respondent/husband under 13(1) (ia) of the Hindu Marriage Act, 1955 (*hereinafter to be referred to as "HMA"*).

5. Briefly stating, the parties got married on 30.04.2006 at Sanatan Dharam Mandir, Punjabi Bagh, New Delhi and one son namely, Vaibhav Sharma was born from the wedlock on 24.03.2007.

6. The respondent/husband (*petitioner in the divorce petition hereinafter referred to as the 'respondent'*) in his divorce petition had asserted that the appellant/wife (*respondent in the divorce petition hereinafter referred to as the 'appellant'*) was a quarrelsome, lazy, dull, irresponsible and adamant lady, who had serious objections to the respondent even talking with his parents. She insisted on a separate residence from the respondent's parents and was unable to adjust in the family of the respondent. She also demanded transfer of shop which was purchased by his father, in her name.

7. On the insistence of the appellant/wife, the parties stated living separately, though in the same house, since 05.10.2007. She even then was unable to handle all her household responsibilities and eventually, they again started living with the parents of the respondent after 08.11.2007.

8. The appellant ignored the advice of the respondent to take care of her health during the pregnancy and at the time of delivery as well. The appellant created a ruckus in the Hospital as she had complaints about the doctors and the hospital not being of good standard. She insisted on having surgery for Gall Bladder in July 2007 at Sir Ganga Ram hospital though it



was very expensive.

9. The respondent had further asserted that the appellant had suicidal tendency. On 17.08.2007, the appellant attempted to commit suicide by cutting the vein of her wrist and wrote a suicide note. While undergoing treatment for the same, she threatened to implicate respondent and his family members in false cases.

10. It was further asserted by the respondent that before marriage, the appellant was working as a school teacher and in consultation with the respondent, she left her job. On her insistence that a business be started, the respondent took a loan of Rs. 2,00,000/- and also took a shop on rent, on 01.09.2007. He started the business of cosmetics. However, the appellant failed to devote her time to the business and after some time she told the respondent that she was unable to continue the same. The responsibility of running the shop fell on the respondent's mother and, eventually, the shop was closed in July, 2009.

11. The respondent further asserted that on 30.12.2008 the appellant/wife went to the market to purchase vegetables, but she did not return back home. Therefore, the respondent approached the police who refused to take the complaint and then he made a call to the PCR at around 1:20 PM. Eventually, at around 05:00 PM, the respondent received a call on his mobile phone that the appellant was present at her parental home in Karol Bagh. The respondent thus went to the house of the parents of the appellant at around 08:30 PM, where he found the appellant lying on the bed and she did not show any inclination to take care of the child who was with the respondent since morning. The respondent left the child with her and on the next day, he gave a complaint to the police.



12. The respondent further asserted that the appellant returned with her parents to the matrimonial home after two days and they started residing together. Even after that, the appellant failed to give any reason for her having left the matrimonial home on 23.12.2008.

13. The respondent further claimed that looking at the threats extended by the appellant of falsely implicating the respondent and his family members in false cases and her neglect towards the child and the family members, the respondent, despite his reluctance, separated from his parents and shifted to A-I-226 A, Paschim Vihar, New Delhi-110041 on 20-21. 05.2009. It was claimed that the appellant used to fight with him over purchasing various articles such as TV, Fridge etc. in the house. The brother and the parents of the appellant gave a gift of LG TV on the occasion of Bhai Duj, and subsequently one mobile phone without telling the respondent. When the respondent objected to her taking such gifts, she used abusive language.

14. On 06.07.2009, the respondent was called to the parental home of the appellant where he was given threats by her father that he should sever all the relation from his parents and also leave the job which he was doing on the shop with his father.

15. It is further asserted by the respondent that on 20.07.2009, she locked herself in the room and did not open it for over one and a half hour. Likewise, the respondent narrated various instance to assert that the appellant/wife was being abusive and threatened the respondent/husband to abide by her dictates and also failed to take care of the minor son. He claimed that he was finally thrown out of the matrimonial home on 11.01.2009 after which the present Petition has been filed seeking Divorce on the ground of cruelty.



16. **The appellant/wife in her Written Statement** refuted all the allegations of showing disrespect towards the respondent's parents or having adjustment issues or differences with her in-laws. The appellant claimed that she was being harassed for bringing less dowry. Despite performing all the duties at her matrimonial home, she was never shown any respect but was subjected to humiliation and taunts regularly.

17. The appellant denied having attempted suicide on 17.08.2007 but claimed that her wrist was caught by the mother-in-law who twisted her hand and the bangles broke, cutting her hand and causing injury to her. It was claimed that she was made to write the suicide note by the respondent, who otherwise refused to take her to the hospital.

18. The appellant denied that they ever lived separately in the matrimonial home from 05.10.2007. She denied that she every time told the respondent to start a business for her and explained that in fact, the respondent got an Agency/distributorship of Navneet Publications, Ahmedabad and the shop was taken by the respondent to expand his own business and not at her insistence.

19. The appellant admitted that they started living separately at Paschim Vihar, Delhi from 21.05.2019 but claimed that it was done to help the sister of the respondent who had admitted her child in DAV School, Pushpanjali Enclave. The appellant denied that she left the home on 23.12.2008 at 07:30 AM and claimed that she has been forcibly thrown out of the matrimonial home by the parents of the respondent who had taken away the child from her. She kept on waiting for two hours but no one opened the door. Being helpless and penniless, she walked to her parental home where she reached at about 05:00 PM in depressed condition. The respondent came in the



evening to her paternal home with the child falsely claiming that he was crying and missing her. She further denied that after two days, she along with her parents returned to matrimonial home. She asserted that respondent never objected to the gifts that were given by her parents and her brother from time to time.

20. The appellant further asserted that she had been deserted in the rented accommodation by the respondent on 11.11.2009 who left her and the child alone and without informing them that he was filing a Divorce Petition. The appellant claimed that since the respondent failed to return to the rented accommodation and she had no rent to pay, the appellant left the rented accommodation on 03.12.2009 and went to reside with her parents.

21. The appellant/wife returned to the matrimonial home on coming to know about the Divorce, but she was humiliated and harassed. The respondent has failed to take care of the minor child and did not even come to attend to the child when he was unwell. She denied that she had committed any act of cruelty and asserted that the Petition was liable to be dismissed.

22. **Issues were framed** on the pleadings on 21.04.2016 which are as under: -

“1. Whether the petitioner has been treated with cruelty after solemnization of the marriage on 30.04.2006, as detailed in the petition/ (OPP)

2. Whether the petition is not maintainable in view of the objections of the respondent in her written statement? (OPR)

3. Relief.”

23. **The respondent/husband has appeared as PW-1**, while the **appellant/wife appeared as RW-1** in support of their respective assertions.



24. **The learned Principal Judge, Family Court** considered the claim of the appellant that she was thrown out of the matrimonial home on 23.12.2008 and left with no choice was compelled to go to her parental home and **held** that it was not believable as she failed to give any cause for the dispute of any reason to be thrown out of the matrimonial home. In the absence of any specific reasons or cogent reason, it was difficult to conclude that she had been thrown out of the matrimonial home on 23.12.2008.

25. **The learned Principal Judge, Family Court** also disbelieved the appellant that she, being penniless and helpless, walked back to her parental home from Paschim Vihar and reached there at 05:00 PM. By observing that no explanation has been given as to why no Auto, Taxi or Bus could be taken by her or why she failed to call her parents when, in fact, she had been doing so on every small issue.

26. Likewise, **learned Principal Judge, Family Court** held that the claim of the appellant that the respondent had abandoned her in the rented accommodation on 11.11.2009, was not believable. Her assertion that she had been sending text messages from her mobile phone to the respondent was also held to be not believable since no text messages had been produced in the evidence by her to prove her stance.

27. It was concluded by **learned Principal Judge, Family Court** that the attempt to commit suicide was an act of cruelty. It was observed that the various incidents as detailed by the respondent of there being neglect towards the household chores by the appellant, her acts of leaving house without intimation, may in the first instance appear to be normal wear and tear but when they persist over a long period of time, they amount to acts of cruelty. **Ld. Principal Judge, Family Court** thus, held that the appellant/wife



had subject the respondent/husband to cruelty and divorce was granted under Section 13(1)(ia) of the HMA.

28. Aggrieved by the Order dated 18.01.2023 granting divorce, the appellant/wife has filed the present Appeal.

29. **Submissions heard from the learned counsels for the parties and the documents as well as the evidence perused.**

30. The marriage between the parties has subsisted for about three and a half years from 30.04.2006 to 11.11.2009 and since then the parties are admittedly, living separately. However, as brought forth from the respective evidence of the parties, their matrimonial life was full of travails and turbulations and despite all efforts made by the respondent, appellant was unable to adjust in the matrimonial home.

31. The respondent in his testimony not only deposed that the appellant was abusive, quarrelsome and there was continuous bickering but also that the appellant found it difficult to adjust in matrimonial home and insisted on a separate residence. This led to a constant stress and tension in the mind of the respondent which never let trust and faith to blossom in the heart of the appellant.

32. The claim of the respondent that appellant had difficulty in adjustment in matrimonial home and insisted on separate residence is corroborated by the testimony of the respondent who asserted that on account of constant bickering and insistence of separate residence, they started residing separately though in the same house from 05.07.2007. However, the appellant was unable to bear the responsibility of running the household and therefore, they shifted back with the parents of the respondent/husband since 08.11.2007 i.e. after four months.



33. In this context, it would also be significant to refer to the attempted suicide and the suicide note admittedly written by the appellant. While the appellant tried to play it down by giving a feeble explanation of having suffered injury from a broken bangle as the mother-in-law twisted her wrist but the injury caused by broken bangle is not the same as slitting of wrist. Further, the suicide letter is the biggest give away of the circumstance and cannot be trashed by claiming it to be written under coercion.

34. Admittedly, after some time, the respondent again tried to adjust and again separated from his parents and shifted to a rented accommodation in Paschim Vihar from 20-21.05.2009, where they resided for about six months till November, 2009 after which they separated. The very fact that separate residence was taken by the parties fully corroborates the testimony of the respondent of their being constant bickering and fights *inter se* the parties and also that the appellant failed to take care of the household chores and adjust with his parents in the matrimonial home.

35. The respondent has also deposed about the incident of 23.12.2008 when the appellant left the matrimonial home without informing anybody and even left the child behind. It was the respondent who made desperate search for her and even called the police. When he finally got the information of the appellant having gone to her parental home, he then took the child and left him with the mother as he was crying and missing her.

36. On the other hand, the appellant has asserted that she had been thrown out of the matrimonial home, but from the tenor of the evidence it is quite evident that she herself left the matrimonial home without any explanation. Such abandonment of the respondent without there being any explanation, is clearly an indication that she had no interest in the conjugal relationship.



37. The Apex Court examined the concept of mental cruelty in the case of N.G. Dastane vs. S. Dastane (1975) 2 SCC 326. It was observed that the enquiry in a case of mental cruelty has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

38. In A. Jayachandra vs. Aneel Kaur, (2005) 2 SCC 22, the Supreme Court observed as under: -

“10...If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case..... Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other.

*13.However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity..... Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. **Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.**”*

39. Thus, the constant bickering and the fights along with the threats to commit suicide and the appellant's neglect towards her household chores



caused continuous stress in the mind of the respondent. The various incidents narrated by the respondent hint towards the overall conduct of the appellant which caused a grave apprehension in the mind of the respondent, thereby leading him to first shift to a rented accommodation and then finally, leave the company of the appellant. In light of the legal principles discussed above, we concur with the Ld. Principal Judge, Family Court that such conduct of the appellant amounted to cruelty.

40. Further, we find that the respondent has been denied of the marital bliss as the parties have admittedly been living separately since 11.11.2011. There is no evidence that appellant ever made any endeavour for re-union especially when she has not been able to give any satisfactory explanation of separation. The respondent has been deprived of conjugal relationship and conjugal love and affection and the bliss of matrimonial life. Such deprivation of conjugal rights over a long period of time is nothing but an act of cruelty towards the respondent as observed by the Apex Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 that in a marriage where there has been a long period of continuous separation as it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties and can be termed as mental cruelty.

41. Therefore, we are in concurrence with the findings of the Learned Principal Judge that the respondent/husband had been subjected to cruelty by the appellant/wife, and the respondent/husband has rightly been granted divorce under Section 13(1)(ia) of the HMA.



42. Accordingly, the Appeal is dismissed as being without any merit.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 20, 2023
S.Sharma/nk