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

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Date of decision: 20th July, 2023

+ **MAT.APP.(F.C.) 127/2019**

SANJEET KHARB

..... Appellant

Through: Mr. Nishant Solanki, Advocate
with appellant in person.

versus

REKHA

..... Respondent

Through: Mr. Praveen Narayan,
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)

1. The present appeal under Section 19 of the Hindu Marriage Act, 1955 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the appellant to set aside the impugned Order dated 24.12.2018 passed by the learned Principal Judge, South-West District, Family Court, Dwarka, New Delhi, wherein the Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking decree of divorce, was dismissed. *Vide* the same impugned Order dated 24.12.2018, HMA No. 1496/2017 titled Smt. Rekha vs. Sh. Sanjeet Kharb under Section 9 of the Hindu Marriage Act, 1955 preferred by the respondent/wife seeking restitution of conjugal rights, was allowed.

2. The **facts in brief** are that the parties got married on 28.04.2009 according to Hindu rites and customs at Village Malikpur, New Delhi, however, no child was born from the said wedlock.



3. The appellant is working with Sashastra Seema Bal (SSB) as Head Constable and he used to remain at his place of postings. It is claimed by the appellant that he requested the respondent to accompany him to his place of posting, but the respondent refused to accompany him.

4. It is submitted that when the appellant came to his house from his posting on holidays, the respondent used to pick quarrel with the appellant and misbehaved with him. In addition, the respondent also threatened the appellant to implicate him and his family members in a false case. Consequently, the parties got separated on 08.01.2011.

5. The respondent lodged an **FIR bearing No. 04/2012 under Sections 498A, 406 and 34 of the Indian Penal Code, 1973** at Police Station Jafarpur Kalan against the appellant and his family members. The respondent also filed a false case bearing CC No. 4998946/2016 of Domestic Violence under Section 12 of the Protection of Women from Domestic Violence Act, 2005. However, the said case was dismissed by the *vide* Judgment dated 20.12.2018 by the Metropolitan Magistrate, Mahila Court, Dwarka, New Delhi.

6. It is asserted that the respondent used to misbehave with the appellant and his family members and she herself deserted the matrimonial home on 08.11.2011. On 24.09.2018, while the two petitions were pending, an endeavour was made to reconcile the differences, the respondent accompanied the appellant from the Court to live together, but apparently while on their way back to home, they got separated. Thereafter, all future efforts made to reconcile the differences did not materialise, and they have been living separately since 2011.

7. The said divorce petition was dismissed *vide* Judgment dated



24.12.2018. The learned Judge, Family Court, on appreciation of the evidence, concluded that there was no evidence of respondent having left the matrimonial home on 08.01.2011. Reliance was placed on the proceedings under the Domestic Violence Act and the FIR bearing No. 04/2012 under Sections 498A, 406 and 34 of the Indian Penal Code, 1973 at Police Station Jafarpur Kalan to observe that the respondent was subjected to cruelty.

8. It was further held that there was no evidence to show that the respondent had refused to join the appellant at his place of posting. Thus, it was concluded that no ground of cruelty was proved and accordingly, the divorce petition was dismissed, while HMA No. 1496/2017 titled Smt. Rekha vs. Sh. Sanjeet Kharb under Section 9 of the Hindu Marriage Act, 1955 preferred by the respondent/wife seeking restitution of conjugal rights was allowed by observing that there was no reasonable excuse for the appellant/husband to have withdrawn from the company of the respondent/wife.

9. Being aggrieved, the appellant has filed the present appeal.

10. During the course of appeal, the appellant has submitted that no child was born from the wedlock. However, the appellant claimed that the respondent has got married with one, Mr. Rakesh Singh, and has a daughter from the said wedlock. The Station House Officer (SHO) Police Station Sadar Thana, District Rohtak, Haryana was directed to ascertain whether the respondent/Rekha is residing at the furnished address i.e., RZ-44, Dharam Pura, Najafargarh, Delhi-110043, and the person with whom she is residing.

11. Accordingly, Assistant Sub-Inspector (ASI) Kuldeep Singh from the Police Station Sadar, District Rohtak, Haryana filed an Inquiry Report confirming that respondent/Rekha was admitted in the hospital on



20.02.2023 and she has delivered a child. In the records, her name is shown as Rekha wife of Mr. Rakesh Singh.

12. Today, during the course of hearing, the respondent has admitted having delivered a daughter from her relationship with Mr. Rakesh Singh, but she denied that she has got married to him. The respondent has herself conceded that she is in an adulterous relationship with Mr. Rakesh Singh during the subsistence of her marriage with the petitioner. She has further submitted that she has no objection, if the divorce is granted to the appellant.

13. **Submissions heard.**

14. From the evidence on record, it is established that the respondent, since the day of her marriage in 2009, has failed to join the appellant at his place of postings. The respondent has further admitted that during her marriage on 28.04.2009 till January, 2011, she had stayed for a total period of five to six months in her matrimonial home. It has also been admitted by the respondent that she used to stay in her parental home and used to come to the matrimonial home as and when the appellant used to return from his place of posting on vacations/holidays. The respondent has failed to give any reason as to why she did not join the appellant at his place of posting thereby breaching the most significant characteristic of mutuality and conjugal relationship that sustains the marriage.

15. Furthermore, it has come on record that the respondent had filed a case bearing CC No. 4998946/2016 of Domestic Violence under Section 12 of the Protection of Women from Domestic Violence Act, 2005, but it was dismissed by the *vide* Judgment dated 20.12.2018 by the Metropolitan Magistrate, Mahila Court, Dwarka, New Delhi. The respondent also filed an FIR bearing No. 04/2012 under Sections 498A, 406 and 34 of the Indian



Penal Code, 1973 at Police Station Jafarpur Kalan against the appellant. Making false allegations of cruelty which have not been sustained or proved by the respondent in the present case establishes the cruelty towards the appellant. These acts of cruelty have been further compounded by the admissions of the respondent herself that she is in an adulterous relationship with a man and she has even got a daughter from the said relationship.

16. The evidence and the subsequent conduct of the respondent proves the acts of cruelty towards the appellant entitling him to divorce on the ground of cruelty.

17. Accordingly, we hereby set aside the impugned Judgment dated 24.12.2018. The present appeal is allowed and divorce under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 is hereby granted dissolving the marriage between the appellant and the respondent.

18. For the aforesaid same reasons, we also set aside the impugned Order dated 24.12.2018 passed in HMA No. 1496/2017 under Section 9 of the Hindu Marriage Act, 1955 preferred by the respondent/wife seeking restitution of conjugal rights.

19. The Decree Sheet be prepared accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 20, 2023/s.sharma