



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

% **Reserved on: August 24, 2023**

Pronounced on: December 14, 2023

+ **MAT.APP.(F.C.) 155/2023**

URMILA DEVI

..... Appellant

Through: In person with Mr. Aseem
Bhardwaj, Mr. Rajnish Mann
& Mr. Aayush Gupta,
Advocates

Versus

UMA SHANKAR

.....Respondent

Through: In person with Mr. N.S. Dalal,
Mr. Devesh Pratap Singh,
Mr. Anshuman Nayak,
Mr. Alok Kumar &
Ms. Rachana Dalal,
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 filed under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') seeking setting aside of the Decree and Judgment dated 02.06.2008 whereby the learned Family Court has allowed the petition filed by respondent/husband under the provisions of Section 13(1)(ia) & (ib) of the Act, 1955 and dissolved his marriage with appellant on the grounds of cruelty and desertion.

MAT.APP.(F.C.) 155/2023

Page 1 of 11



2. The appellant/wife (*respondent in the divorce petition hereinafter referred to as 'appellant'*) got married to the respondent/husband (*petitioner in the divorce petition hereinafter referred to as 'respondent'*) according to the Hindu Rites and Customs on 03.03.1995 at Jaipur.

3. The respondent-husband averred before the learned Family Court that after his marriage with appellant-wife, she came to her matrimonial home on 05.03.1995 and her brother took her back for *Vida* and brought her back to the matrimonial home on the same night.

4. The respondent before the learned Family Court asserted that the marriage between the parties was not consummated and thus, there is no issue from this wedlock. According to the respondent, behaviour of the appellant towards him and his family members was cruel from the date of their marriage itself. The appellant did not permit cohabitation to happen and upon respondent trying the same, appellant quarrelled, fought, and misbehaved with him. The appellant deprived the respondent of conjugal rights and threatened him to get him beaten by her brother and also to get his parents involved in false dowry case.

5. The respondent further averred before the learned Family Court that despite his persuasion, appellant failed to perform her marital duties and denied staying with him and therefore, on being repeatedly threatened, he had no choice but to take her to her brother's house at Jaipur on 09.05.1995. However, after efforts for reconciliation made by the families of both the sides, she came back to her matrimonial home on 08.06.1995 but her behaviour towards the respondent and his family members did not improve and the appellant continued to misbehave with them. The respondent pleaded that on 11.06.1995, brothers of the appellant took her with them



with all ornaments and clothes without his consent with an intention to bring an end to their marriage and despite best efforts, appellant did not return to her matrimonial home; rather threatened him to face dire consequences and also filed a complaint before the police. The appellant did not even join company of respondent on the wedding of his brother and sister despite invitation and did not come on the demise of his uncle on 21.01.1997. The respondent pleaded that the conduct of appellant caused great mental pain and agony to him. The respondent claimed that the appellant had deserted him since 11.06.1995 and not fulfilled her matrimonial duties and, therefore, he sought divorce on the ground of cruelty and desertion.

6. The appellant in her written statement filed before the learned Family Court not only denied the allegations of the respondent but also raised a number of objections. She asserted that after the marriage, they lived together as husband and wife at the matrimonial home at Distt. Dausa, Rajasthan and their marriage was duly consummated on the very first night, however, no child was born out of the said wedlock. She further claimed that after their marriage, the respondent and his family members started taunting and abusing her for not bringing sufficient dowry, cash, jewellery and other items for the family of respondent. The appellant claimed that on 11.07.1995, her brothers had come to her matrimonial home to implore the respondent to let go of the demand of cash as they were unable to arrange money, however, they were told by the respondent that they should take her back in case they are not able to fulfil their demands and that if she does not leave, she will be thrown out of her matrimonial house. In such circumstances, the appellant was forced to leave her matrimonial home and she did not intentionally desert the respondent.



7. The learned Family Court, on the pleading of the parties, framed the following issues-

“(i) Whether the petitioner was treated with cruelty by the respondent since solemnization of their marriage? (OPP)”

“(ii) Relief.”

8. Vide order dated 03.04.2008, the learned Family Court framed additional issue, which is as under:-

“(1-A) Whether the respondent/wife has deserted the petitioner/husband for a continuous period of more than two years prior to the filing of the present petition? (OPP)”

9. Before the learned Family Court, the respondent got himself examined as PW-1 and two other witnesses, namely, Dalvishwer as PW-2 and Chaggan Lal Matha as PW-3. The appellant examined herself as RW-1 and her elder brother- Om Prakash as RW-2. The learned Family Court vide impugned judgment allowed the petition filed by the respondent and granted decree of divorce holding as under:-

“In view of my finding with respect to issues no.1 and 2, I conclude that respondent has treated the petitioner with cruelty. The respondent has taken false allegation of dowry demands in the present case which also amounts to cruelty towards the petitioner. It is already observed that respondent has caused cruelty to the petitioner by depriving him of the material bliss as she did not allow the marriage to consummate. It is also established that respondent as wilfully deserted the petitioner with a view to end this marriage. I conclude that petitioner



is entitled to decree of dissolution. Accordingly, the present petition under Section 13(1) (ia) & (ib) of the Hindu Marriage Act 1955 is allowed and the marriage between the petitioner Mr. Uma Shankar and the respondent Ms. Urmila Devi is hereby dissolved by a decree of divorce under Section 13(1) (ia) & (ib) of the Hindu Marriage Act, 1955. Decree sheet be prepared.”

10. This Court has gone through the impugned Judgment and the testimony of witnesses recorded before the learned Family Court.

11. The learned Family Court on the first issue has held that the allegation of cruelty levelled against the appellant stood proved. The learned Family Court has taken note of the fact that appellant did not put any substantial question or suggestion on the allegation of non-consummation of marriage and only a simple suggestion was put to the respondent that he was making false allegation with respect to cohabitation between the parties.

12. Relevantly, the marriage between the parties was solemnized on 03.03.1995 at Jaipur and after her *vidai*, her brother took her back to her parents house on 05.03.1995 but she came back to her matrimonial home on the same night. The respondent has alleged that marriage between the parties was not consummated. On perusal of the testimony of parties, this Court finds that the respondent in his affidavit has made specific and categorical allegation that his marriage with appellant was not consummated, however, during his cross-examination, he was not confronted or rebutted on this point and also no specific suggestion was given by the appellant that marriage was not consummated on the intervening nights between 03.03.1995 and 05.03.1995, as has been claimed by her in her written



statement. The respondent has alleged that he tried to convince the appellant of marital obligations but she denied cohabitation with him and rather quarrelled and fought with him. On this count, the learned Family Court has held that the appellant miserably failed to prove that her marriage with respondent was consummated and she had failed to discharge her obligations as a wife.

13. In ***Shakuntala Kumari Vs. Om Prakash Ghai*** 1980 SCC OnLine Del 268 , this Court has observed as under:-

“25. A normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. If this is not possible due to ill health on the part of one of the spouses, if may or may not amount to cruelty depending on the circumstances of the case. But wilful denial of sexual relationship by a spouse when the other spouse is anxious for it, would amount to mental cruelty, especially when the parties are young and newly married.”

14. The Hon’ble Supreme Court in ***Samar Ghosh Vs. Jaya Ghosh*** (2007) 4 SCC 511, has laid down various acts which may amount to mental cruelty and one such illustration was unilateral decision of refusal to have intercourse for considerable period of time without there being no physical incapacity or valid reason.

15. In the considered opinion of this Court, the appellant has not been able to establish before the learned Family Court that there was no wilful denial of cohabitation with respondent on her part. In addition, the allegations of the respondent regarding conduct and behaviour of the appellant after the marriage at her matrimonial home were also not



addressed during the cross-examination leading to the conclusion that appellant did not dispute these allegations.

16. On the allegation of alleged dowry demand and in respect of incident dated 09.05.1995, when appellant's brother was told to either pay the demanded amount or to take appellant back to her parental home; no substantial questions were put to the respondent to prove that any kind of dowry demand was made.

17. The Hon'ble Supreme Court in *Mangayakarasi Vs. M. Yuvaraj* (2020) 3 SCC 786 has held that an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposed them to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground. Similar observations have been made by the Hon'ble Supreme Court in *K. Srinivas Vs. K. Sunita* (2014) 16 SCC 34.

18. Also, this Court in *Nishi Vs. Jagdish Ram* (2016) 233 DLT 50 has held that filing of false complaint against the husband and his family members constitutes mental cruelty.

19. Even though no complaint was made by the appellant against the respondent or his family members against any dowry demand raised by them, however, such allegations have been raised by the appellant in her written statement, which she could not prove before the learned Family Court. Thus, respondent has been able to prove that he and his Family members have been subjected to cruelty by the appellant.

20. On the aspect of desertion, the learned Family Court in the impugned judgment has observed that the respondent had proved that in August 1995



he had visited her in Jaipur; at Delhi in January, 1996; November, 1996 and January, 2000 but she did not join his company. Also appellant failed to join respondent on the occasion of marriage of his brother in November, 1996 and sister's marriage in 2000. The learned Family Court observed that PW-2 and PW-3 have proved that despite efforts of respondent, the appellant chose not to come back to her matrimonial home and thus, deserted him. The appellant before this Court has alleged that since demands of dowry could not be fulfilled, she was made to leave the matrimonial home.

21. Having examined the testimony of witnesses recorded before the learned Family Court, this Court finds that parties got married on 03.03.1995, however, due to marital discords, the appellant left the matrimonial home on 11.06.1995. It is only a period of about three months that the parties lived together. The appellant has raised allegation of dowry demand and stated that since her family was unable to meet their demands, she was made to leave her matrimonial home on 11.06.1995. The respondent on the other hand has alleged that since appellant was of quarrelsome nature and was not ready to reconcile the matrimonial issues, he had no option but to take her to her brother's house at Jaipur on 09.05.1995. However, he went to bridge the gaps and brought her back to her matrimonial home on 08.06.1995. The factum of respondent visiting the appellant stands proved by deposition of PW-2. But even thereafter, their differences continued and on 11.06.1995, she left her matrimonial home with her brother. Since then parties have been living separately.

22. PW-2, Shri Dalvishwer, who was a friend of respondent's cousin and accompanied them to make effort for reconciliation in January, 1996; supported the case of the respondent by categorically stating that they had



visited to the place of the appellant in Delhi on three occasions, one in January 1996, second in November 1996 and third in January, 2000 but each time, the appellant refused to go back to her matrimonial home with the respondent.

23. Another witness, Chaggan Ji Matha (PW-3), who happens to be a friend of respondent's father; in his cross-examination has admitted that efforts for reconciliation were made by only respondent and also that he had himself visited the house of appellant in January, 1997 to bring her back to her matrimonial home on the death of respondent's Uncle.

24. From the testimony of these witnesses, it is clear that appellant had deliberately withdrawn herself from the company of her husband and deserted him.

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

“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 (Supra)*** has also 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. The Hon’ble Supreme Court in ***Sanat Kumar Agarwal Vs. Nandini Agarwal*** (1990) 1 SCC 475 considering a case under Section 13(1)(ib) of the Act, has held that *it is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both anterior and subsequent to the actual act of separation.*

28. Coming to the case in hand, this Court finds that the learned Family Court has taken note of the fact that appellant in her written statement stated that she had not visited her matrimonial home during the period 09.05.1995, however, contradicted her own stand by asking a suggestion to respondent that she had come back to her matrimonial home after reconciliation. The learned Family Court has further observed in the impugned judgment that even on the allegation of the respondent that wedding invitation for his brother’s marriage was delivered to her in November 1996 and subsequently an invitation for his sister’s marriage was also delivered in February 2000; no specific suggestion was put to the respondent regarding non delivery of wedding invitations to the appellant.



29. Having considered the conduct of the parties, this Court is of the opinion that even though parties were living separately, however, the respondent by sending news of his Uncle's demise as well as invitation of wedding of his brother and sister made attempt to come together, which miserably failed due to unwillingness of appellant. Hence, the learned Family Court has rightly held that the appellant has wilfully deserted the respondent.

30. In view of aforesaid observations, we find no infirmity in the impugned judgment passed by the learned Family Court.

31. The present appeal and pending application, if any, are accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 14, 2023

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