



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Reserved on: 02nd August, 2023**  
**Pronounced on: 17th August, 2023**  
+ **MAT.APP.(F.C.) 156/2019 & CM APPLs. 26366/2019,**  
**26367/2019, 26369/2019**

**ALKA** ..... Appellant  
Through: Mr. Dinesh Kumar, Advocate with  
appellant in person.  
versus  
**MUKESH SHARMA** ..... Respondent  
Through: Ms. Geetika Dhawan & Mr. A.P.S.  
Chauhan, 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. 26366/2019 (Condonation of delay)**

1. *Vide* the present application, the applicant/appellant seeks condonation of 50 days' delay in filing the present appeal.
2. For the reasons and grounds stated in the present application, the application is allowed. The delay of 50 days in filing the present appeal is condoned.
3. Accordingly, the present application is disposed of.

**MAT.APP.(F.C.) 156/2019**

4. The present Appeal under **Section 19 of the Family Courts Act, 1984** has been filed on behalf of the appellant/wife (*who was the Respondent in the divorce petition and is hereinafter referred to as the 'appellant'*) against the **Judgment and Decree dated 29.01.2019** passed



by the learned Principal Judge, Family Court, South District, Saket Courts, Delhi, wherein the marriage between the appellant and the respondent was dissolved by decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

5. **The facts in brief**, are that the parties to the present appeal got married on 15.01.2004 according to the Hindu rites and customs and were blessed with two children, namely, Bhakti Sharma and Agam Sharma on 16.02.2006 and 25.01.2007 respectively.

6. The respondent (*who was the petitioner in the divorce petition and is hereinafter referred to as the "respondent"*) has claimed that the appellant's brother, namely, Shri Ajay, who is a close friend of the respondent since 2003, trapped him into the marriage with the appellant by misrepresentation. The appellant was Polio stricken, but this fact was concealed from the respondent. When the respondent/husband expressed his concerns about the physical deformity of the appellant, it was glossed over by the appellant's brother, namely, Shri Ajay who gave false assurances. It is only after the marriage that the respondent/husband came to know about the true facts about the appellant.

7. The grounds on which the divorce was sought was that the appellant threatened to commit suicide and to implicate the respondent and his family members in false criminal cases which compelled the respondent to maintain silence.

8. The respondent has further asserted that he paid various sums of money in cash on various occasions to the family members of the appellant/wife. The respondent purchased a plot of land measuring 100 sq. Yards for a consideration of Rs. 2,00,000/- in the name of appellant on



28.08.2008. Another plot of land was purchased by the respondent on 12.11.2019 measuring 100 sq. yards, and the same was also in the name of appellant. The respondent also gave Rs. 50,000/- to Shri Ajay for his marriage in the year 2009 and Rs. 3,00,000/- was also given for purchasing an Alto Car. In all, the respondent paid Rs. 7,00,000/- to Rs. 8,00,000/- to Shri Ajay.

9. The respondent purchased a motorcycle for his daily routine, but the same was also taken away by Shri Ajay and was never returned to the respondent. When the respondent objected to his economic exploitation by the brothers of the appellant, he was mercilessly beaten by the appellant with the crutches.

10. The respondent has further claimed that the appellant never prepared or served food for him, whenever he returned from work. The appellant used to address him in a sarcastic manner and even called him “dog”. She used to give iron butt blows to the respondent and threatened to administer poison to him through her brother who was a Doctor. The brother of the appellant begged forgiveness for the misbehaviour of the appellant and made a request to the respondent to purchase a Wagon R Car. In the expectation of improving the relations, the respondent started paying the instalments of the said car which was in his name but was in the possession of brother of the appellant.

11. The respondent asserted that in June, 2010, the son and the daughter of the respondent’s sister came to the matrimonial home, but the appellant misbehaved with him and caused humiliation and mental harassment in front of his relatives.

12. In September, 2014, the appellant’s brother, who had completed his



degree of Bachelor of Ayurvedic Medicine and Surgery (BAMS), started a hospital under the name and style “*New Guru Dayal Hospital & Maternity Center*” at Gautam Budh Nagar, Uttar Pradesh. The entire money for setting up of the Hospital was paid by the respondent.

13. In February, 2015, the respondent’s mother came to live with him for her treatment, but the appellant misbehaved with her and she had to return to her native place.

14. On 01.06.2015, the appellant quarrelled with the respondent as he had stopped extending financial assistance to her brothers for which the appellant gave beatings to the respondent and thereafter, the respondent called the PCR. The said PCR took the respondent to Jai Prakash Narayan Hospital for Medico-Legal Examination. The appellant gave her statement to the police that she shall not physically assault the respondent and would not threaten him any further and would not commit suicide. Despite the said undertaking given to the police, the appellant and her brothers continued to harass and beat the respondent.

15. The appellant left the petitioner and went to her matrimonial home. The respondent received a Notice from the CAW Cell on 15.06.2015. Thereafter, the respondent was called by appellant’s brothers to his native village, where the respondent was tied to a tree and severely beaten. The respondent’s signatures were obtained on some papers but with the intervention of police and relatives, the respondent got himself freed from the clutches of the brothers of the appellant.

16. Thereafter, the respondent filed a complaint before the Delhi Women Council against the appellant and her brothers. The respondent also made the Complaint dated 06.07.2015 to the police.



17. The respondent thus claimed that he has been subjected to immense cruelty and sought the divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 by way of HMA Petition No. 758/2015.

18. The petition was contested by the appellant herein who took a preliminary objection that the respondent was taking advantage of his own wrongs. It was claimed that the marriage had lasted for more than ten years and now the respondent is seeking divorce. It was also claimed that the respondent was involved with one girl, Preeti, who was a Nurse in the hospital of her brother. The illicit relationship was discovered by the appellant's brother, who immediately terminated the services of Ms. Preeti. Thereafter, the respondent/husband refused to work in the Clinic of the brother and started threatening the brother of the appellant.

19. Moreover, on 01.06.2015, the respondent/husband caused injuries to himself and called the PCR to falsely implicate the appellant. The appellant was compelled to give a written note that she would not pick up quarrel with the respondent.

20. It is asserted that the appellant had been humiliated in the matrimonial home and was addressed as "*langri*" and "*mental*".

21. The appellant also claimed that the two plots of land were purchased by her brothers, but the title documents were retained by the respondent in his bank locker. The respondent had demanded a Duster Car and a sum of Rs. 10,00,000/-. Thus, the respondent/husband got an FIR under Sections 498-A/406 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*).

22. It was further asserted that the respondent himself deserted the appellant in June, 2015. He even refused to return the jewellery to the



appellant. It was denied by the appellant that she and her brothers had exploited the respondent financially or treated him with cruelty.

23. The issues on the pleadings were framed by the learned Principal Judge, Family Court *vide* Order dated 27.05.2017 which reads as under: -

- “1. Whether the respondent after the solemnization of the marriage has treated the petitioner with cruelty within the meaning of Sec-13 (1) (i-a) of the Hindu Marriage Act? OPP*
- 2. Whether the petitioner is entitled to decree of divorce, as prayed for? OPP*
- 3. Relief.”*

24. The evidences were led by both the parties.

25. The learned Principal Judge considered the entire evidence and concluded that the evidence established that the assertions of the respondent that he was mislead by misrepresentation by Shri Ajay into the marriage and that he was financially exploited, had a ring of truth. It was held that there was a cloud over the manner in which the two plots of land and other assets had been acquired. The other acts of the appellant of not attending to the relatives of respondent or physically assaulting him were believed. It was observed that the undertaking given by the appellant before the police corroborated the assertions of the respondent that the acts of appellant proved cruelty towards the respondent.

26. It was further held that though the appellant had claimed the illicit relationship between Ms. Preeti and the respondent, but the appellant failed to produce any credible evidence, and the allegations of illicit relationship remained unsubstantiated. The unsubstantiated allegations of extramarital relationship on the character of the respondent in itself amounts to cruelty, and is sufficient for granting divorce.



27. It was thus held that the respondent had been subjected to cruelty by the appellant and divorce was granted under Section 13(1)(ia) of the Hindu Marriage Act, 1955 *vide* Judgment dated 29.01.2019.

28. Being aggrieved by the impugned Judgment dated 29.01.2019, the appellant has preferred the present appeal.

29. **The main grounds of challenge** are that the impugned Judgment dated 29.01.2019 has been passed on conjectures and not on the facts as pleaded and the evidence so adduced by the parties.

30. The learned Principal Judge, Family Court took note of the incident dated 01.06.2015 to hold that the respondent was assaulted and had even received injuries, but the learned Family Judge, failed to appreciate that a counter criminal complaint was filed against the respondent and his family members before CAW Cell on 15.06.2015 and later on an FIR No. 2163/2015 under Sections 498-A/406/34 of IPC was registered at Police Station Malviya Nagar, which is still pending trial.

31. Moreover, the Complaint dated 06.07.2015 was made only after the respondent was served with the summons to appear before the CAW Cell, Malviya Nagar.

32. While the learned Principal Judge, Family Court rightly observed that the parties had resided together for about 11 years and had started litigating for the first time by way of a PCR call by the respondent on 01.06.2015, but the learned Principal Judge, Family Court failed to appreciate the fact that even before, there was a complaint made by the respondent against the conduct and behaviour of the appellant and her family members. The Divorce petition has been filed within two months of the incident of 01.06.2015 which raises the serious doubt about the



genuineness of the allegations made in the divorce petition.

33. It is asserted that when Ms. Preeti, who was at that time working as a nurse in the clinic of appellant's brother, where the respondent was also working as a Superintendent, were caught having illicit relationship. The brother of the appellant terminated the services of Ms. Preeti, to which, an objection was taken by the respondent, but the brother of the appellant refused to continue with her services. In retaliation to it, the respondent also refused to continue to work in the clinic of the brother of the appellant. The respondent started threatening appellant's brother that he would ruin him and also of the appellant. Since January and February, 2015, the respondent started beating and harassing the appellant.

34. The respondent was caught in the company of Ms. Preeti with whom he has already solemnized the second marriage and has one son from the said wedlock. The respondent himself is illegally living with his second wife and has filed the divorce petition on frivolous grounds, which have not been appreciated by the learned Principal Judge, Family Court in the right perspective.

35. He also filed the divorce petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 despite being in the wrong, the appellant who has been subjected to cruelty and the impugned Judgment and Decree dated 29.01.2019 is liable to be set aside.

36. **Submissions heard.**

37. The respondent had sought a Decree of Divorce before the learned Family Court, Saket, New Delhi on the ground that the appellant, after the solemnization of the marriage, has treated him with cruelty within the meaning of Section 13 (1) (i-a) of the Hindu Marriage Act, 1955.



38. The respondent had pleaded various acts of cruelty. It was deposed by him that he had been financially exploited and had been compelled to give money to the brothers of the appellant from time to time. He helped Shri Ajay, brother of the appellant, set up his clinic. The appellant had tried to explain in her testimony that her brother himself had arranged Rs. 5,00,000/- for setting up his clinic but nowhere, was she able to explain from where this alleged amount of Rs. 5,00,000/- was arranged. It was also not denied that a Wagon R Car, which was in the name of the respondent herein, was in the possession of her brother. The appellant tried to claim that the money had been paid by her brother for the purchase of said Wagon R Car in the name of respondent. It is difficult to comprehend that why would the brother of the appellant purchase the car which he intended to use in the name of the respondent? No cogent explanation has been given by the appellant to explain this. These facts have been corroborated by the suggestions given by the respondent to the appellant in his cross-examination suggesting that he had given Rs. 50,000/- and Rs. 20,000/- to the family of the appellant and her brother, Shri Ajay.

39. It was also not denied that the two plots of land had been purchased by the respondent in the name of the appellant. The appellant had asserted that these two plots of land were purchased by her brother, though the Sale Deeds were in possession of the respondent herein. However, the appellant was unable to explain from where the funds were made available by her brother for payment of sale consideration.

40. Furthermore, it is not denied that the respondent suffered injuries on 01.06.2015 for which he lodged an FIR against the appellant. The



incident has not been denied wherein the respondent had deposed that he had been beaten up by the appellant. The only explanation given was that this FIR was a counter-blast to the complaint made by the appellant in CAW Cell on 05.06.2015 and the injuries were self-inflicted. It is not denied by the appellant that she had given a written undertaking to the police that she would not assault the respondent. Though it was claimed that the undertaking was taken from her under threat and pressure, but this explanation does not appeal for the simple reason that she had already filed a complaint in CAW Cell and she has full support of her brothers, and merely by claiming that she was under threat that does not seem reasonable or acceptable in the given circumstances. The parties had been living together for about 11 years and the disputes started getting reported for the first time on 01.06.2015 when the PCR was called, the respondent's assertions that he was assaulted and he suffered injuries at the hands of the appellant stand fully corroborated by the MLC Ex. PW-1/6 which records abrasions over upper limbs and the forearm and also a minor injury on the head. The PCR was called and admittedly appellant had given a written undertaking that she would not assault the respondent.

41. The respondent has also relied upon the Summoning Order dated 20.09.2018 Ex. P-X passed by the learned Metropolitan Magistrate, South, Saket, New Delhi which supports another incidence of assault on the respondent on 08.05.2016 by the brothers of the appellant which was recorded *vide* DD No. 32/B, Police Station Malviya Nagar, New Delhi. The three brothers of the appellant, namely, Shri Ajay, Shri Sanjay and Shri Vijay were summoned for the offences punishable under Sections 323/34 of IPC.



42. The appellant has claimed that this complaint was a counter-blast but indisputably, the appellant had given a Complaint in CAW Cell on 05.06.2015, then Complaint to DCW Ex. PW-1/7 on 01.07.2015 and lodged an FIR No. 2163/2015 dated 15.11.2015.

43. ***It is thus proved on record that it is the complaints of the appellant which were a counter-blast and not the incident of assault on the respondent on 01.06.2015.***

44. The respective testimony of the appellant and respondent establishes that since the day of marriage, the respondent had been supporting the appellant and her brother and family members financially and had given money to them on several occasions. So much so, the Wagon R Car purchased in respondent's name was being used by the brother of the appellant. Though the appellant had claimed that the money for the purchase of Wagon R Car had been given by his brother, but conspicuously no evidence whatsoever has been led on behalf of the appellant to prove that the instalments for the car were paid by her brother. All the evidences prove that the respondent was being financially exploited by the appellant and her family members.

45. It has been rightly observed by the learned Principal Judge, Family Court that all these proven facts establish that there were financial dealings between the appellant, her brother and the respondent herein. The financial exploitation of the respondent by the appellant her brothers and family members is proved on record.

46. Further, having made allegations of extramarital relationship, the onus was on the appellant to prove her allegation which she has not been able to prove. The allegations on character of a man blaming him of



having extramarital relationship have been held to be an act of cruelty which in itself sufficient for divorce. Making of such serious allegations of extramarital relationship has been held to be an extreme act of cruelty by the Co-ordinate Bench of this Court in Jayanti vs. Rakesh Mediratta bearing MAT.APP.(F.C.) 129/2016 decided on 27.10.2016 and also by the Hon'ble Apex Court in Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar AIR 2003 SC 2462.

47. Interestingly, while these allegations were made in the written statement, the same were withdrawn in the amended written statement which again points to the falsity of the allegations.

48. Accordingly, the various incidents of assault, financial exploitation and false allegations of illicit relationship are sufficient to bring home cruelty by the appellant against the respondent.

49. In view of above, we find that the learned Principal Judge, Family Court has rightly concluded that the respondent was subjected to cruelty and thereby granting the Decree of Divorce dated 29.01.2019 under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

50. We find no infirmity in the findings of Judgment and Decree dated 29.01.2019 passed by the learned Principal Judge, Family Court and, therefore, the present appeal is hereby dismissed along with pending applications.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**(SURESH KUMAR KAIT)  
JUDGE**

**AUGUST 17, 2023/S.Sharma**

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