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

% ***Date of decision: 21st September, 2023***

+ **MAT.APP. (F.C.) 198/2023**

VANDANA DHAKA

..... Appellant

Through: Mr. N. D. Pancholi, Advocate with
appellant in person.

versus

ANIL DHAKA

..... Respondent

Through: Mr. Saroj Kumar Pandey, 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 28 of the Hindu Marriage Act, 1955** (*hereinafter referred to as "HMA, 1955"*) read with **Section 13(1)(ia) of the HMA, 1955** has been filed on behalf of the appellant/wife (*respondent in the Divorce Petition*) against the Judgment and Decree dated 24.07.2007 passed by the learned Additional District Judge, Tis Hazari Courts, Delhi, wherein the divorce under Section 13(1)(ia) of HMA, 1955 was granted to the respondent/husband (*petitioner in the Divorce Petition*).
2. The parties got married on 26.03.1995 according to the Hindu rites and customs and one son was born from the wedlock on 23.05.1996.
3. **The respondent/husband had asserted** that just after the marriage, the appellant/wife started manifesting her high expectation from married



life. On their honeymoon trip, she displayed her arrogant mood and claimed that her father had spent Rs. 5,00,000/- on the marriage. The appellant/wife after returning from their honeymoon trip on 10.04.1995, she was asked by her mother-in-law to open the crockery set brought by her, but she refused to open the same on the ground that first kitchen must be repaired and the wood work be done by spending Rs. 1,00,000/-. The appellant also started claiming a separate residence and insisted on sale of agricultural ancestral land and their flat at Rohini to purchase a flat in South Delhi. The appellant also refused to fulfil her household obligations.

4. It was asserted that the child was born in St. Stephan Hospital, Delhi which she claimed to be a third-class Hospital and she also asserted that expenses for the birth of child were borne by her father.

5. The respondent/husband also asserted that soon after the birth of the child, the appellant/wife did not permit his family members to hold the baby. Eventually, the situation reached to an impasse, when she left the matrimonial home, with her brother without informing anyone, on 17.07.1996.

6. A Panchayat was organized on 30.03.1997 at house of Mr. Thomas in the morning at 10:00 A.M., but the father of the appellant along with 10-12 person came to their house armed with sticks, etc. and threatened the respondent/husband and his family members. Eventually, the Panchayat was held on the same day at about 05:00 P.M. where Shri Jaipal Singh, the relative of the respondent/husband intervened, but the appellant/wife showed her same arrogant and hostile attitude during the Panchayat meeting. The appellant refused to live with the respondent/husband if he continued to reside with his parents in their house. The respondent thus, claimed that the



conduct of the appellant/wife was cruel and claimed divorce under Section 13(1)(ia) of HMA, 1955.

7. **The appellant/wife, however, asserted in her written statement** that it was her father who gave Rs. 8,000/- to the respondent for the honeymoon trip. The parents of the respondent started harassing the appellant by making demands for AC, car, cash and jewellery etc. The appellant asserted that the parents of the respondent made her to work like a slave and removed domestic servant who had been engaged by them.

8. The appellant claimed that the child after the birth, was also not treated well and she was also not given food. The appellant further claimed that when the child was barely 20 days old, he was slapped multiple times by the mother-in-law.

9. On 06/07.07.1996, when the appellant made a request to go to her parental home, the respondent threatened her that he would break her legs if she left the matrimonial home. The appellant claimed that on 13.07.1996 at about 10:15 P.M. she was asked to make tea for the family members, which she found very odd, as they never had tea at that time. When the appellant entered into the kitchen, she found smell of gas leakage and, she refused to make tea and informed her in-laws about the leakage. However, she was beaten by the family members as the gas leakage was perceived as an excuse for not making tea. Therefore, because of the prevailing situation, the appellant had no option but to leave the matrimonial home on 14.07.1996. Subsequently, efforts for conciliation *inter se* the appellant and the respondent were made along with the Panchayat, but the same did not yield any fruitful results.

10. The appellant had claimed that she never refused to live in the



matrimonial home, but she admitted that she filed the Petition under Section 7 of the Guardians and Wards Act, 1890 and she also filed the Suit for Recovery of Damages.

11. **The issues** on the basis of pleadings were framed on 14.12.1999 which read as under: -

“1. Whether the respondent has treated the petitioner with cruelty after the solemnization of the marriage?

2. Relief.”

12. **The respondent appeared as PW2**, while his relative Shri Jaipal Singh appeared as PW3, his uncle Shri Tilak Ram Dhaka appeared as PW4 , Shri Kirat Ram Dhaka, father of the respondent, appeared as PW5 and the LDC record room from Tis Hazari Courts, Sh. Baharat Bhushan appeared as PW1.

13. The appellant wife examined herself as RW1. Shri Virender Pal, the father of the appellant was examined as RW2.

14. **The learned Additional District Judge**, after due consideration of the entire case, concluded that the demands of the appellant to dispose of the ancestral agricultural land as well as flat at Rohini for purchase of a flat in an area of South Delhi, leaving the matrimonial home in less than two months from the birth of the child, making unsubstantiated allegations that the respondent/husband was an alcoholic and committed cruel acts which caused mental cruelty to her; initiating a number of litigations after filing of the divorce petition and living separately since 1996, collectively constituted acts of cruelty on part of the appellant/wife. Hence, *the divorce on the ground of cruelty under Section 13(1)(ia) of HMA, 1955 was granted to the respondent/husband against the appellant/wife.*



15. **Aggrieved by the Judgment and Decree dated 24.07.2007**, the present Appeal has been preferred by the appellant/wife.

16. **Submissions heard from the learned counsels for the parties and the documents and evidence perused.**

17. Essentially, the allegations against the appellant were that she had difficulty in adjusting in the matrimonial home. Soon after the marriage, she wanted a bigger house to be purchased in a posh locality like South Delhi, after selling their matrimonial flat at Rohini as well as the ancestral agricultural land of the respondent/husband.

18. The parties were married on 26.03.1995. The marriage lasted for merely about one year and four months approximately. After delivery of child, the appellant lived in the matrimonial home for less than two months.

19. In this short span of time, the appellant had insisted the respondent to dispose of the ancestral agricultural land which the respondent was not entitled to or selling the flat owned by the mother of the respondent and on which the respondent had no direct control. The learned Additional District Judge also noted this to be an act of cruelty as there are sentiments attached with the agricultural land by the people of village background.

20. Then the complaint and constant bickering by the wife that the facility provided to her during delivery were not good and not up to her expected standards. These together would show that the appellant was neither satisfied with the location of the matrimonial home where she was residing with the respondent and had high expectation from the respondent which he could not meet on account of the circumstances mentioned above.

21. The testimony of the respondent coupled with those of other witnesses examined by him proved that the appellant had several adjustment issues as



she was not keen to do the household work and wanted a better standard of living.

22. The appellant had also claimed that the St. Stephan Hospital, Delhi, where the delivery of the child was done, was a third-class Hospital. It is a known fact that St. Stephan Hospital, Delhi is one of the established and reputed Hospital and her grievance and dissatisfaction for that Hospital also corroborate her higher expectations and discontent with the living standards enjoyed by the family of the respondent. It is evident from the evidence that the appellant had difficulty in adjusting herself to the living standard of the respondent.

23. The appellant had claimed that a servant who was a full-time servant who had been engaged by the family of the respondent, was removed immediately after the marriage, but it has been clarified by the respondent in his testimony that the full-time servant, in fact, was employed by the sister and he had come to their house only for 10 to 15 days immediately after their wedding. Evidently, no regular servant had been employed and the household was being done by the family members of the respondent. These incidents, in fact, reflect the inability of the appellant/wife to adjust herself in the matrimonial home as she was being unhappy with their standard of living. In such circumstances, leaving the matrimonial home without informing was sufficient ground to cause mental cruelty to husband, as has been rightly concluded by the learned Additional District Judge.

24. We also find that these instances when coupled with unsubstantiated allegations levelled by the appellant against the respondent that he was alcoholic and used to beat her after consuming alcohol and the respondent as well as his parents are dowry seekers, establish that the cruel acts on behalf



of the appellant caused mental harassment to the respondent. The overall evidence does not establish any act of cruelty on the part of the respondent/husband. Rather, it is the appellant who found it difficult to settle in the matrimonial home.

25. Further, the parties had been living separately since 1996 and the number of litigations between them, initiated by the appellant/wife post filing of the divorce petition, would show that the appellant had no real intention to live with the respondent but cause mental cruelty to him. The appellant had no doubt visited the house of the respondent despite injunction against her on the pretext of living with the respondent but the respondent was living separately due to fear and to save his parents from harassment.

26. The appellant had narrated an incident of gas leakage, as an attempt by the respondent and his family members, to harm her. However, as observed by the learned Additional District Judge that there was no cogent evidence produced to show that this was any intentional act by the family members of the respondent. It has emerged in the evidence of the respondent/husband that the knob of the gas was not open and there were incidents when there was a minor leakage of gas from the pipeline. The appellant after this gas incident, left the matrimonial home on 14.07.1996. Instead of addressing the issue of there being any gas leakage, if any, from the pipeline the appellant has in her own imagination believed to be an act to cause her harm. Moreover, no complaint of any kind was ever made by the appellant with respect to such attempt by the family of the respondent to harm her.

27. A Panchayat was called in the house of Mr. Thomas on 30.03.1997, but that also turned out to be futile. The appellant did not join back the



matrimonial home.

28. The appellant, in fact, filed the complaint in CAW Cell after filing of the Divorce petition which is apparently nothing but a counter-blast. The meetings were held in the CAW Cell and there she had accepted that she had 60 grams of gold. It has also emerged in the testimony of PW3/Jaipal Singh that, after the appellant/wife left the matrimonial home, he had been asked to take the jewellery and her clothes from the almirah of matrimonial home and to hand over the same to the appellant which was done by him. Her endeavour to take away all her belongings from the matrimonial home, leads to one conclusion that she had no intention to continue to reside in the matrimonial home.

29. The CAW Cell complaint was closed on 24.10.1997, but the same was again revived in 2002, which eventually led to the registration of FIR No. 299/2002 under Section 498A/406 of the Indian Penal Code, 1860, not only against the respondent, but also the father of the respondent as well as the two married sisters. The respondent remained in jail for two days, while the father and the two married sisters were eventually discharged. Not only this, the appellant also filed the Suit for Recovery of Damages and the same was ultimately dismissed.

30. While the term '*cruelty*' as used in Section 13(1)(ia) of the Act, 1955 cannot be defined in given parameters and there cannot be a comprehensive definition of '*cruelty*' within which all kinds of cases of cruelty can be covered and each case has to be considered depending upon its own unique factual circumstances. In the case of K. Srinivas v. K. Sunita X (2014) SLT 126. the Hon'ble Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for



the purpose of Section 13 (1) (ia) of the HMA, 1955.

31. The Supreme Court in the case of Ravi Kumar v. Julmidevi (2010) 4 SCC 476, has categorically held that “reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society” and it amounts to cruelty. Similarly, it has been held by the Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, 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.

32. Therefore, it established from evidence that the conduct of the appellant was not only vindictive but also reflective of her intentions of not returning to the matrimonial home. It is the appellant who found it difficult to adjust herself in the matrimonial home. The appellant has been living separately since 1996 and all the conciliatory efforts as discussed have not met any success.

33. The Apex Court in the case of Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and observed that in a marriage where there has been a long period of continuous separation it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though 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.

34. Every marriage rests on mutual trust, affection, compatibility, congeniality and consanguinity. Such were the differences between the parties that they were led to the inevitable separation since 1996 and despite 26 years having elapsed, there is no possibility of reconciliation. The very fact that the parties were able to live together barely for one year, after marriage and since July, 1996, they have been living separately proves that the parties were unable to sustain their matrimonial relationship. The gravamen of any marriage is the succour and the peace that the couple derive from the company of each other. Such long separation and deprivation of conjugal relationship, with almost an impossible chance of reconciliation, is the extreme kind of cruelty.

35. For the foregoing discussions, we find no infirmity in the impugned Judgment and Decree dated 24.07.2007 and thus, the learned Additional District Judge has rightly concluded that the conduct of the appellant/wife clearly amounted to cruelty towards the respondent which entitled him to divorce on ground of 'Cruelty' under Section 13(1)(ia) of HMA, 1955.

36. Accordingly, the present Appeal is without merit which is hereby dismissed, along with pending application(s), if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 21, 2023
S.Sharma/ janhvi