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

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

+ **MAT.APP. (F.C.) 116/2020 & CM APPL. 41786/2023**

DEEPAK KUMAR

..... Appellant

Through: Mr. Brijesh Yadav, Ms. Nikita & Mr.
Chirag Dedha, Advocates with
appellant in person.

versus

PREETI RANI

..... Respondent

Through: Mr. Shailesh Chandra Jha, 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 appellant/husband, aggrieved by the *ex-parte* Judgment and Decree dated 18.08.2020 whereby the learned Principal Judge, Family Court has declined to dissolve the marriage between the parties on the ground of Cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "the Act, 1955"*), **has filed the present Appeal under Section 19 of the Family Courts Act, 1984.**

2. **Brief facts are that** the parties got married on 07.12.2009 as per Hindu rites and customs and the two sons were born on 02.04.2012 and 03.06.2014 respectively from their wedlock. The appellant/husband has claimed that because of the conduct and ill-treatment of the respondent/wife,



his father expired on 03.06.2013 i.e. after about four years of their marriage. He asserted that he was employed in a Private Firm but his services got terminated because of the complications created by the respondent/wife and he is unemployed. He further asserted that the respondent/wife never had any love and affection for him and his family and she used to visit her parental home frequently without any reason. On 25.08.2016, he left the wife at her parental home on the occasion of *Janmashtmi*. Thereafter, he along with his sister, went to her parental home to bring her back but father of the respondent, her brother and friends of her brother assaulted him and his sister. He made a Police Complaint but no action was taken.

3. Soon thereafter, he received a call from Police Station, Panipat on 05.09.2016 where he was made to sit for the entire day and was allowed to leave after signing an Undertaking. Thereafter, the appellant also preferred a complaint dated 05.09.2016 to the Senior Superintendent of Police, District Panipat, Haryana, DCP (West), Janakpuri and SHO, P.S.Uttam Nagar against the respondent/wife and her family members, but no action was taken.

4. Because of the cruel acts of the respondent, he filed a Divorce Petition being HMA No. 875/2017 (old No. 697/2016) but eventually, the matter was compromised in terms of the Memorandum of Understanding (MoU) dated 13.03.2018. The respondent/wife joined the matrimonial home but her conduct did not improve. After about three months i.e. 11.06.2018, she again quarreled with the appellant and left the matrimonial home. The appellant's mother became apprehensive of the false implications and thereby served a legal notice upon the appellant/husband, to vacate the house of the mother of the Appellant, who was then compelled to take



separate accommodation on rent.

5. It was asserted that the respondent/wife had left the two small sons, who are in the exclusive custody of the appellant/father and who is taking care of all their needs from cooking to sending them to school. Hence, the divorce was sought by the appellant/husband on the ground of Cruelty.

6. **The respondent/wife was duly served with the Divorce Petition** but despite that, she failed to appear before the Court and was proceeded *ex-parte* vide Order dated 22.02.2019. Significantly, a petition was also filed by her under Protection of Women from Domestic Violence Act, 2005 (D.V.Act).

7. **The appellant tendered his ex-parte evidence by way of affidavit Ex.PW1/A.**

8. The learned Principal Judge, Family Court observed that the allegations of cruelty made by the appellant/husband were essentially vague and there was no specific incident narrated from where it could be inferred that the respondent/wife had behaved in a cruel manner toward the appellant/husband. The Divorce Petition was therefore, dismissed vide the impugned Judgment dated 18.08.2020.

9. **Aggrieved by the dismissal of the Divorce Petition, the present Appeal has been preferred by the appellant/husband.**

10. **The respondent/wife filed her reply** to the present Appeal explaining that she suffered Typhoid after one year of marriage but the appellant/husband instead of getting her treated, left her at her parental home. Her family members got her admitted in the hospital at Panipat and her treatment done. During the treatment, the appellant/husband failed to even enquire about her well-being and all the expenses of the treatment were



borne by the parents of the respondent.

11. It is further asserted that on her request, the maternal uncle of the appellant/husband intervened to counsel him to not treat the respondent in a cruel manner. Thereafter, the appellant, his sister and other family members came to the parental home of the respondent and quarrelled with her. She made a complaint in CAW Cell, Panipat against the appellant and his family members. It was asserted that during the investigations, the appellant/husband realized his fault and assured that he would take the respondent to the matrimonial home but intentionally, despite the assurances, failed to come to take back the respondent/wife. Instead, he made a complaint to the Police Station Model Town, Panipat on false and frivolous grounds.

12. The respondent/wife further asserted that the behaviour of the appellant was so cruel towards her that in the month of August, 2016 on the occasion of *Janmashtmi*, the mother and sister of the appellant again taunted the respondent on account of dowry demand and quarrelled with her. The mother of the appellant also abused her without any reason. In the month of June, 2017, the mother-in-law of the respondent expelled her out from her matrimonial home and then she along with her husband, shifted at a rented accommodation in Uttam Nagar, New Delhi. However, the appellant/husband along with the children continued to reside in the house of the mother which was well equipped with all the facilities. The appellant neither gave her any money for day to day requirements nor provided even the basic facilities like ceiling fan in their rented accommodation.

13. The respondent was thus, compelled to take up a job in a Private School namely Good Will Kinder Garten, Kiran Garden, Uttam Nagar, New



Delhi but the appellant created such a situation that she had to leave her job. It was asserted that the appellant/husband used to hack her phone and read the messages. He threatened the respondent that he would commit suicide and implicate the respondent/wife and her family members in false accusations of criminal cases. The appellant who was serving as a Manager in Pharma Company at Okhla, Delhi in order to secure the promotion and get the salary increased even used to threaten the Director of the Company due to which, the Company terminated his services. It was thus, asserted that there are no grounds of cruelty established against the respondent and the Appeal is liable to be dismissed.

14. Submissions heard and record perused.

15. Admittedly, the parties got married on 07.12.2009 and two sons were born from the wedlock in the year 2012 and 2014 respectively. The appellant had deposed that the respondent/wife failed to discharge her responsibilities towards the children and the appellant was left alone to take care of the day to day needs of the two children. He has also deposed that the respondent was indifferent towards him and had greater affection towards her parental family and used to frequently visit them. It is also significant to note that a criminal complaint was made by the respondent at Panipat wherein, the appellant appeared on 05.09.2016 and had to furnish an Undertaking. In his apprehension, he also gave a complaint to the Police Station at Panipat and at Delhi though it yielded no results.

16. The appellant explained that on account of such acts of the respondent/wife, he was compelled to file a Divorce Petition in the year 2016 being HMA No. 697/2016. During the pendency of the Divorce Petition, the parties arrived at a settlement dated 13.03.2018 wherein the



respondent essentially admitted and undertook to not use the filthy language, not to commit criminal assault, not to commit any mental and physical violence, not to ill-treat the two children of the parties, her mother-in-law in any manner and undertook that she would not leave the matrimonial home frequently without the permission of the husband. Both the parties also undertook not to commit any physical and mental violence towards each other. Consequent to this settlement, the Divorce Petition was withdrawn. However, the efforts for conciliation did not succeed and barely three months thereafter, the present Divorce Petition was filed.

17. From the above narration of facts, it is evident that there were adjustment issues between the parties and the respondent failed to discharge her matrimonial obligations. She not only used to frequently visit her parental home but also ignored the responsibilities towards her two minor children, especially when they were at matrimonial home. Everything was not cordial and there were mal-adjustment between the parties as is evident from the fact that even after the settlement, instead of going to the house of the mother of the appellant, they took up separate rented accommodation. There too, despite efforts, they were not able to settle their issues.

18. The appellant had deposed that the respondent/wife without any reason left the house and the children on 11.06.2018. Significantly, the respondent/wife had failed to appear before the learned Principal Judge, Family Court to set up any defence to the averments made by the appellant pertaining to allegations of cruelty. It is quite evident that there were *inter se* differences which ultimately led the appellant to file a Divorce Petition in the year 2016. The efforts by the appellant/husband to reconcile though resulted in MoU on 13.03.2018 but, again the things did not work out. The



respondent has failed to explain the circumstances in which she left the matrimonial home initially in 2016 and the reasons why despite efforts, they were unable to continue live with each other since June, 2016. The respondent also failed to explain the reasons why she could not continue in the matrimonial relationship despite making efforts for three months from March to June, 2018 and again left the company of the appellant. She had not given any explanation nor had she controverted the testimony of the appellant.

19. The unrebutted and unchallenged testimony of the appellant/husband establishes that there was complete repudiation of matrimonial obligations by the respondent for which no explanation whatsoever has been given by her. So much so, she did not even appear during the trial to explain her stand. The evidence on record proves that the respondent/wife withdrew from her the matrimonial obligations without any reasons.

20. Admittedly, the respondent has been living separately since 2016 and all the conciliatory efforts as discussed, have not met any success. It has been noted time and again in the judgments of the Supreme Court that continuous separation between the parties for a long period itself is a ground for divorce. 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 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.

21. The Apex Court in the case of Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 has held that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective, are bound to be a source of greater misery for the parties.

22. In the case of Samar Ghosh (supra), Supreme Court observed that:

“When a man and a woman get married, they do so with the intent of finding love; happiness; mental, physical and psychological satisfaction; progress; and procreation. The dream of the parties is to jointly face the challenges that life has to throw, and to grow and progress financially, socially, spiritually, etc. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither party enters into the matrimonial bond, only to break it later.

For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them. Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and



warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties.”

23. When there has been a long period of continuous separation, it may be fairly concluded that that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing the sanctity of the marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties, it may lead to mental cruelty.

24. Therefore, long separation for inexplicable reason on behalf of the Respondent with no efforts to explain why reconciliation efforts yielded no results, leads to psychological and mental trauma.

25. In such situations, continuation of the relationship between the warring spouses causes immense emotional and psychological trauma to the parties which would, in itself, tantamount to cruelty by both parties, upon the other, as held in Samar Ghosh (supra).

27. Every marriage rests on mutual trust, affection, compatibility, congeniality and consanguinity. Furthermore, such were the differences that they were led to the separation since the year 2016 and despite around eight years having elapsed, there is no possibility of reconciliation. The gravamen of any marriage is the succor and the peace that the couple derive from the company of each other. Long separation and deprivation of conjugal relationship, with almost an impossible chance of reconciliation, is extreme kind of cruelty.

28. We, for the reasons discussed above, hereby conclude that the



appellant had been treated with mental cruelty and the marriage between the parties is dissolved on the ground of Cruelty under Section 13(1)(ia) of the Act, 1955.

29. The Appeal is accordingly allowed.

30. The pending applications, if any, stand disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 21, 2023

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