



\$~11

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

%

Date of decision: 20th July, 2023

+ **MAT.APP.(F.C.) 221/2019**

MANJIT KHARB

..... Appellant

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

versus

SARITA

..... 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)

CM APPL. 37127/2019 (Condonation of delay)

1. *Vide* the present application, the applicant/appellant is seeking condonation of 74 days' delay in filing the present appeal.
2. For the reasons and grounds stated in the application, the application is allowed. The delay of 74 days in filing the present appeal is condoned.
3. Accordingly, the present application is disposed of.

MAT.APP.(F.C.) 221/2019

4. The present Appeal under Section 19 of the Family Courts Act, 1984 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 30.04.2019 passed by the learned Principal Judge, South-West District, dismissing the divorce Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

MAT.APP.(F.C.) 221/2019

Page 1 of 4

Signature Not Verified

Digitally Signed By: AHIL SHARMA

Signing Date: 28.07.2023
16:30:13



5. The parties to the Appeal got married on 28.04.2009 according to Hindu rites and customs at Village Malikpur, New Delhi, and one male child Master Namit Kharb was born from the said wedlock.
6. It is claimed by the appellant that after few days of marriage, the respondent's behaviour towards him and his parents and relatives became rude, not cordial and disrespectful. She would not provide food to them and frequently go to her parental home without informing him or his parents. She used to misbehave with the parents of the appellant in his absence. The efforts of the appellant to pacify the respondent were rebuffed by her in filthy language.
7. When the appellant took an objection to it, she threatened to implicate him and his family members in a false dowry case. The threats became a reality when respondent left the matrimonial house on 08.01.2011 and lodged an **FIR No. 04/2012 under Sections 498A, and 406 of the Indian Penal Code, 1973** at Police Station Jafarpur Kalan against the appellant and his family members on false and fabricated grounds of cruelty. The appellant requested the respondent to accompany him to the matrimonial home before CAW Cell, but she refused to accompany him.
8. Thereafter, the appellant filed a divorce Petition HMA No. 82/2017 under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty. However, the petition was dismissed *vide* Judgment dated 30.04.2019 by observing that petitioner was unable to prove any act of cruelty on the part of the respondent.
9. Aggrieved by the Judgment dated 30.04.2019, the present appeal has been filed by the appellant.
10. During the pendency of the appeal, the appellant had claimed that the



respondent is living in an adulterous relationship and in support thereof, had filed the copy of General Diary No. 0086A dated 10.12.2021, Police Station Jafrapur Kalan, District Dwarka, Delhi, wherein a complaint had been made by Shri Ajit Singh, who is father of the respondent, about his missing daughter from the house since 10.12.2021. Pursuant thereto, an inquiry was conducted by the Police. *Vide* General Diary No. 0091A dated 13.12.2021, it was recorded that the respondent was recovered from the house of her friend, namely, Shri Udham, son of Jagdish Prasad, resident of Village Fathepur Shamshoi, District Shambhal, Uttar Pradesh. She gave a statement that she has been living with Shri Udham in his house out of her free will and volition and wants to continue to live with him.

11. The aforesaid documents produced by the appellant have not been denied or challenged by the respondent. In fact, she in the Court admitted her relationship with Shri Udham and that she has no objection if the divorce is granted to the appellant.

12. **Submissions heard.**

13. Admittedly, the respondent left the matrimonial home on 08.01.2011 and had made a FIR bearing No. 04/2012 under Sections 498A, and 406 of the Indian Penal Code, 1973 at Police Station Jafarpur Kalan against the appellant and his family members on the allegations of dowry demands and severe beating. Though it has been held in various judgments that mere registration of criminal case is not cruelty, yet at the same time, the respondent has not led any cogent evidence to prove that she had any valid reason for leaving the matrimonial home on 08.01.2011 or she had been subjected to cruelty. No act of cruelty has been proved.

14. The respondent is living separately from the petitioner since



08.01.2011 and the sincere efforts made by the petitioner to bring back the respondent to join the matrimonial home in the proceedings before CAW Cell, did not yield any positive result. The respondent had left the matrimonial home on 08.01.2011 and she has failed to resume her conjugal obligations since then. Further, the respondent is admittedly in a relationship with one Shri Udham; there cannot be any more blatant act of cruelty than the admission of the respondent herself of being in an adulterous relationship during the subsistence of her marriage with the appellant.

15. In view of the above, we hereby set aside the impugned Order dated 30.04.2019 and grant divorce under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 dissolving the marriage between the appellant and the respondent. The appeal is accordingly allowed.

16. The Decree Sheet be prepared accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 20, 2023
S.Sharma