



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

% **Reserved on: August 16, 2023**
Pronounced on: December 18, 2023

+ **MAT.APP.(F.C.) 20/2020 & CM APPL. 2101/2020, 5971/2020,**
13309/2023, 25425/2023 & 26161/2023

GEETA @ REETA MISHRA Appellant

Through: Mr.Arush Khanna & Ms.Prapti
Allagh, Advocates with appellant in
person.

Versus

AJAY KUMAR MISHRA Respondent

Through: Respondent in person

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

NEENA BANSAL KRISHNA, J

CM APPL. 2101/2020 (Condonation of delay)

1. *Vide* the present application, the appellant seeks condonation of 64 days' delay in filing the present appeal.
2. For the grounds and reasons stated in the present application, the application is allowed, the delay of 64 days in filing the present appeal is

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condoned.

3. Accordingly, the present application is disposed of.

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4. The present appeal under **Section 19 of the Family Courts Act, 1984** has been filed against the judgment dated 20.09.2019 granting divorce on the ground of cruelty in the petition filed by the respondent/husband under Section 13 (1)(ia) of the Hindu Marriage Act, 1955.

5. Briefly stated, parties got married on 06.05.1996 and two children, namely, Ms. Richa Mishra and Mr. Tushar Mishra were born from the wedlock.

6. **The respondent/husband** (*petitioner in the Divorce petition hereinafter referred to as the 'respondent'*) **in his petition** had claimed that appellant/wife (*respondent in the Divorce petition hereinafter referred to as the 'appellant'*) was cruel, harsh and had no respect for the family members. She treated the respondent as a servant and refused to perform the household duties. Immediately after the birth of the daughter, Ms. Richa, on 04.04.1997, the appellant started insisting on setting up a separate residence from the parents of the respondent-husband. She also compelled him to claim a share in the property of his parents. Even the parents of the appellant joined her in insisting that the petitioner should take up a separate residence and they also used to pick quarrels with him on every occasion.

7. The respondent had further claimed that the appellant used to frequently leave the matrimonial home every day without informing him. She used to call her elder brother Anil Sharma to the matrimonial home who used to remain there from morning to evening and at times stay overnight.



She, during this period, never permitted him to join her company and at times the respondent had to sleep alone.

8. The respondent had asserted that on 26.11.2004, the parents and relatives of appellant came in the colony and picked up quarrel with the respondent while he was leaving for his work. Police was called on number 100 and the respondent was taken to the Police Station. The appellant falsely claimed that respondent had tried to kill her by throttling her, however, the complaint was found false and no action was taken.

9. Again, after about 3 days on 29.11.2004, the appellant made a complaint in Police Station Vikaspuri, Delhi against the respondent and his family members, however, the matter was compromised as the respondent conceded to the demand of taking a separate accommodation. All the dowry articles were handed over to the appellant who took them to her parental home. However, the appellant was still not satisfied and would frequently pick quarrels with him on one pretext or the other. She also took away the original papers of the property No.F-426, Vikaspuri, Delhi which belonged to his parents and also of another property situated at Kiran Garden, New Delhi. She left the matrimonial home on 06.12.2008 without assigning any reason. While leaving the matrimonial home, she took away all her jewellery, costly articles, however, left the children in the matrimonial home.

10. Faced with such belligerent conduct of the appellant, the respondent was compelled to take a rented accommodation at Moti Nagar, New Delhi. He requested the appellant to join his company but she denied to do so. Because of the unruly conduct and behaviour of the appellant, his parents



disowned him. It was claimed that it is the conduct of the appellant which not only compelled him to live separately from his parents but also to be disowned by them.

11. The respondent further alleged that appellant used to threaten him that she would involve him as well as the family members in false and frivolous cases by making police complaints.

12. The respondent had also asserted that because of the constant threats of false implication, abuse and use of filthy language by the appellant and her family members, he remained under constant mental agony and physical torture. Hence, the Divorce Petition was filed on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, which was granted vide the impugned judgment.

13. **The appellant/wife in her Written Statement** alleged that the petition does not disclose any cause of action as it was she who had been subjected to cruelty and atrocity. The respondent committed a fraud upon her because at the time of marriage, it was claimed that he is highly qualified but subsequently, it was revealed that he was not even matriculate.

14. She claimed that huge amount was spent on the dowry at the time of marriage but the respondent and his family members were not satisfied and made constant demands for dowry and harassed her. Her parents gave a sum of Rs.1.15 lakhs for purchase of a car to the respondent. She had asserted that respondent was a habitual drunkard and under the influence of liquor used to beat her mercilessly. During her pregnancy, she was not provided with proper nutrition, was maltreated, beaten and was not given even a penny for her personal needs and care.



15. The appellant further claimed that respondent with malafide intentions, levelled false allegations of her having an illicit relationship with her brother. She claimed that she was left at her parental home in February, 2008 and the respondent did not allow her to return to the matrimonial home. After intervention of the relatives, she was able to join the matrimonial home but the harassment at the hands of respondent and his family members continued. She was again thrown out in June, 2008 but she lodged a complaint with the police in July, 2008. The respondent appeared before the SHO, Police Station Vikaspuri, Delhi and apologised for his conduct after which the matter was compromised. On the assurance of the respondent, she again joined his company. However, again in December, 2008, she was kicked out of her matrimonial home as a demand of Rs.2 lakhs was made, out of which her family members were able to arrange only Rs.50,000/-. She made complaint against the respondent and his family members in December, 2008 with Nav Jyoti India Foundation, an NGO, but the respondent and his family members did not join the proceedings before the NGO.

16. On 04.03.2009, again a demand of Rs.2 lakhs was made on the pretext of a business deal by the respondent and his family members and when she declined, she was beaten mercilessly by the respondent in front of his parents. In the evening of 17.03.2009, she along with her children were left at Police Station Vikaspuri, Delhi by the respondent and his parents on the pretext that SHO had called them. However, upon returning to her matrimonial home she found that the house was locked and the respondent and his family members prevented her from entering the matrimonial home.



She called the PCR and despite the neighbours giving a complaint against the respondent and his family members regarding cruelty, harassment and violent acts, the police failed to take any action. The appellant claimed that since 17.03.2009, she along with her minor children had been compelled to live in her parental home. She also filed petition under Section 12 of the Domestic Violence Act, 2005 seeking maintenance.

17. The appellant/wife thus, asserted that it was she who was subjected to cruelty and the Divorce petition was liable to be dismissed.

18. **The issues on the pleadings were framed on 15.03.2011** as under:

“(1) Whether the respondent subjected the petitioner to cruelty after solemnization of marriage, as alleged in the petition? OPP

(2) Whether petitioner has not come to the court with clean hands. If so, to what effect? OPR

(3) Relief.”

19. **The respondent appeared as witness in support of his case as PW1 and examined his mother as PW-2 Raj Devi. The appellant examined herself as RW-1.** She also examined **RW-2 ASI Dheeraj Singh who** proved the complaint dated 18.03.2009 Ex.RW-2/A. **RW-3 Mr. Aankesh Kumar** from SBI proved the Bank Statement of the joint account of the appellant and the respondent. **RW-4 Deputy Manager**, PNB proved the Statement of Account of the appellant and of his mother.

20. **The learned Principal Judge, Family Court** duly appreciated the evidence as was led by the parties and found that insistence of the appellant for separate residence was an act of cruelty **as in an Indian household a person is expected to live with his family as a moral obligation to**



support his parents. Further, the appellant was habitual of making police complaints against the respondent and his family members which reasonably created a constant apprehension in his mind and thereby caused mental agony and physical torture. Also, it was observed that making false complaints was an act of cruelty. It was, therefore, concluded that she had subjected the respondent to cruelty and the Divorce petition was allowed.

21. Aggrieved, the appellant has filed the present appeal challenging the grant of divorce by the learned Principal Judge, Family Court vide order dated 20.09.2019.

22. Submissions heard.

23. Admittedly, the parties got married on 06.05.1996 and were blessed with two children. From the evidence of the parties, it is evident that from the very beginning, the marriage of the parties was on the rocks as there was constant bickering and acrimony which led the appellant/wife to make complaints to the police.

24. The respondent had proved the complaint dated 26.11.2004 wherein the appellant had alleged that she was being beaten and that an attempt to kill her by throttling her neck was made by the respondent. The respondent deposed that it was a false complaint and no action was taken on the same. Likewise, another complaint was made by the respondent on 29.11.2004, making allegations of cruelty. The matter was compromised and all the dowry articles were returned to the appellant which she took back to her parental home. Significantly, these facts are not controverted by the appellant. The very fact that all her dowry articles were returned which she took back clearly reflect that she had no intention to settle in the



matrimonial home.

25. In this context, the claim of the respondent/husband that appellant was always insisting to live in a separate residence from his parents and for claiming the share in the property finds support from the compromise arrived at in the complaint dated 29.11.2004. One of the terms of the compromise being that the parties would live separately from the parents. While it cannot be said that the conduct of the wife in insisting on a separate residence is *per se* cruelty as every person has a right to aspire for independence and privacy in their matrimonial relationship but the insistence has to be considered in the social backdrop and in the Indian context. Except for allegations of her being harassed by her in-laws, there is no cogent explanation forthcoming which justifies her insistence to live separately.

26. This has to be considered in the context of the testimony of the respondent that the appellant/wife used to frequently visit her parental home. It is quite evident that though the parties had been residing together since the day of their marriage in May, 1996 but were unable to have a relationship of mutual respect, love and affection. They struggled in the matrimonial relationship and efforts were made to make their marriage survive but the constant bickering, fights and frequent complaints by the appellant did not let the respondent live in peace and became a reason of mental cruelty and agony for him.

27. The misery of the parties did not end here. While the respondent had claimed that the appellant had left the matrimonial home in June, 2008, but according to the appellant she along the children had been abandoned at the



Police Station on 17.03.2009.

28. It is claimed by the respondent that a complaint in July, 2008, was made to the Police against the respondent and his family members which prompted the respondent to shift out of his parental home and reside in a separate rented accommodation. Clearly, it was his apprehension that his parents would also be roped in false cases that prompted the respondent to shift out of his parental home. Not only this, the fear and apprehension of false allegations was so acute that the parents of respondent even disowned him. The separation of the husband from his parents was largely on account of the conduct of the appellant and the frequent complaints that she made to the Police.

29. It has never been held that *per se* making of complaints is an act of cruelty. It is natural for any person who is faced with any violation of his/her right or needs protection of the Police to approach the State machinery. Thus, *per se* approaching the protective agency cannot be termed as an act of cruelty but the onus is on the complainant to prove the truthfulness of her complaints. She has miserably failed to adduce any evidence to prove that she was being harassed, beaten or tortured by her husband or that the complaints made by her were justified.

30. For the fear of false implication, the respondent even tried to set up a separate rented accommodation. The parents of the respondent out of similar apprehension, were driven to disown the respondent. Despite every effort, but still things did not work out as appellant did not join him and eventually the parties separated. The conduct of the respondent thus, proves that the apprehension of false implication of himself and his parents weighed



heavily on his mind and led to mental trauma and disruption of matrimonial relationship and created mistrust which shook the very foundation of marriage.

31. The Supreme Court in the case of Raj Talreja v. Kavita Talreja, (2017) 14 SCC 194 , while relying on Ravi Kumar v. Julmidevi (2010) 4 SCC 476, has categorically held that mere filing off complaints is not cruelty if there are justifiable reasons of filing them. *However, “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.

32. Thus, making of complaints by the Appellant which she has not been able to justify and are proven by the respondent to be false and reckless, can only be termed as acts of cruelty towards the respondent.

33. Lastly, we observe that the parties are living separately since December, 2008 or March, 2009 as is claimed by the respondent and the appellant respectively, and 14 years have gone by but there has been no reconciliation inter se the parties. The appellant has failed to disclose any efforts made by her for reconciliation. It is quite evident that she has been living away from the respondent for the last so many years and that the respondent has been deprived of conjugal relationship and conjugal love and affection and the bliss of matrimonial life. Such deprivation of conjugal rights over a long period of time is nothing but an act of cruelty towards the respondent.

34. The Apex Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 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, 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.

35. We from the above discussion, therefore, conclude that the learned Principal Judge, Family Court has rightly concluded that the respondent-husband was treated with cruelty by the appellant-wife and has granted divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.

36. We find no merit in the present appeal and the same is accordingly dismissed, along with the pending applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

DECEMBER 18 , 2023

Rk/nk