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

% *Date of decision: 16th October, 2023*

+ **MAT.APP.(F.C.) 126/2018**

DEV DATT VERMA Appellant
Through: Dr. L.S. Chaudhary, Dr. Ajay
Choudhary, Ms. Vinita, Ms. Monika,
Mr. Vishesh Kumar & Mr. Bharat
Chaudhary, Advocates.
versus

KIRAN VERMA Respondent
Through: Mr. Abhik Kumar, Mr. Rinku Mathur,
Mr. Deepak Girdhar & Mr. Rahul,
Advocates

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+ **MAT.APP.(F.C.) 127/2018**

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Through: Dr. L.S. Chaudhary, Dr. Ajay
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versus

KIRAN VERMA Respondent
Through: Mr. Abhik Kumar, Mr. Rinku Mathur,
Mr. Deepak Girdhar & Mr. Rahul,
Advocates.

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. Appeals under Section 19 of the Family Courts Act, 1984 have been



filed against the judgments dated 06.04.2018 dismissing the *Divorce Petition filed under Section 13(1)(ia) and (ib) and allowing Petition for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as “Act, 1955”)*.

2. Briefly stated, the parties got married on 15.01.2008 and no child was born from their wedlock. The appellant/ husband had claimed that they had a dowry less marriage and no demand of any kind was made. He was serving in the Indian Navy. His father had expired long time back and his old aged mother was residing with him. Within five days of the marriage, the respondent/ wife returned to her parental home. It was asserted that the parties had no physical relationship during those five days. In the month of June, 2008 appellant returned home on leave and went to the respondent’s parental home to bring her back, but he was told by the family members that *“she has not seen the appellant before marriage, therefore, she is afraid of the appellant and time will cure this problem”*. The appellant felt comforted and relieved on being disclosed the reason of reluctance of the respondent and took her to the matrimonial home at Lalpur, Mathura. She, however, on reaching Mathura started quarreling with him and insisted on being taken back to her parental home, where she was left by the appellant and thereafter he resumed his duties at his place of posting. Again, the respondent came to the matrimonial home sometime in January, 2009, but soon thereafter, the respondent’s father and brother approached the appellant to take back the respondent on the eve of marriage ceremony of their relative. On this pretext, they also took Rs.10,000/- and also the jewellery that was given in marriage to the respondent. In the month of February, 2009 he went to the parental home of the respondent to take her back, but



she refused to return without any reason. The appellant approached the respondent third time and again made a request that she be sent with him, but the father of the respondent told that the mother was suffering from severe heart disease and the respondent was taking care of her. Though the appellant had returned on leave after long time, and wanted the respondent in the matrimonial home, but was told by the family members of the respondent to first make an arrangement for a new house near them in New Delhi and to keep his mother at Mathura. The appellant with a heavy heart came back to his house alone.

3. The appellant claimed that he gave all his love and affection and kept the respondent in comfort and pleasant environment, but apparently the respondent was not happy with the marriage and never reciprocated love and affection in any manner. She did not allow him to touch her or have any physical relationship. She was also not willing to reside with his old aged widow mother and always preferred to stay at the parental home. There was no cooperation from the respondent to make the marriage successful.

4. **The appellant thus, filed a petition M.P No.557/2009 under Section 9 of the Act** at Mathura, U.P for Restitution of Conjugal Rights. However, the respondent failed to appear and she filed an application under Section 24 of the Act, 1955 to claim *pendente lite* maintenance. After six months, she also filed a petition under **Section 125 Cr.P.C on 08.12.2010** at Family Court, Rohini, New Delhi. Perceiving that the respondent did not want to join the appellant, he withdrew his petition for Restitution of Conjugal Rights on 28.08.2010.

5. The appellant had further asserted that the respondent wrote a letter dated 01.06.2010 to his Service Unit claiming that she was pregnant and



because of her ill health on the advice of the Doctor, she got the child aborted. The appellant was surprised to know that respondent had got pregnant and had got the child aborted without his knowledge.

6. Whereas, the respondent asserted that in the petition under Section 125 Cr.P.C the matter was compromised and the petition was accordingly disposed of. As per the settlement, the parties had to start residing together at the matrimonial home at District Mathura from 15.04.2011, but the respondent failed to join him and also failed to withdraw her complaint before CAW Cell. The appellant, on the other hand, withdrew his Divorce Petition as well as the Section 9 HMA petition at Mathura, but there was no compliance of the settlement by the respondent. **The appellant thus, sought dissolution of marriage on the grounds of cruelty and desertion.**

7. **The respondent contested the Divorce Petition** and claimed that she was subjected to cruelty at the hands of the appellant and his family members. Since the inception of her marriage there was no love and affection given by the appellant. He did not even care to meet or talk to her or provide her maintenance for fulfillment of her requirements. Rather, it was she and her family members who had been continuously making the efforts to reconcile and persuade the appellant and his family members to mend their ways and to keep the respondent with love and affection. She made several efforts to persuade the appellant to take her back to matrimonial home, but he continued to indulge in acts of harassment and involved her in litigations with oblique motive. It was claimed that the appellant used to harass, humiliate and maltreat her and not give her any food. She was made to do all the household chores. The appellant used to quarrel with her and made dowry demands. Ultimately, she was thrown



out of the matrimonial home on 14.09.2009, when she was unable to meet their demand for cash and a plot in Delhi.

8. She alleged that the marriage was duly consummated on the first day of their marriage itself. She also alleged that it was the appellant who was in the habit of leaving her at her parental home only in greed of money and gifts. She further alleged that the Section 9 petition in Mathura was only an eyewash and the appellant was not interested in keeping the respondent. She had expressed her intention to join the company of the appellant and had even visited his house, but he and the mother had refused to let the respondent reside in the matrimonial home. She had infact, gone to the matrimonial home pursuant to the settlement, but the mother and the appellant with malafide intention locked the house so that the respondent would not able to return to the marital home. It was claimed that in fact the appellant had withdrawn from the respondent and there has been no cohabitation since 14.09.2009. It was asserted that the appellant being at fault, he is not entitled to any divorce.

9. The respondent/wife had also filed **the HMA Petition No. 56153/2016 (Old Case No. 292/2012)** under **Section 9 of the Act, 1955 seeking Restitution of Conjugal Rights** by essentially stating the same facts as mentioned in her Written Statement. In addition, it was also submitted that FIR under Section 498/406/34 of the Indian Penal Code, 1860 at Police Station Vijay Nagar has also been registered against the appellant/husband and his family members.

10. The **appellant herein had contested the Petition for Restitution of Conjugal Rights** asserting the same defences as have been mentioned in his Petition seeking divorce. The appellant/husband reiterated that it is the



respondent/wife who has withdrawn from his company and has no inclination to join him.

11. The issues on the pleadings in **HMA No. 561532/2016 (Old No. 292/2012)** were framed on 04.02.2013 which read as under: -

- “1. Whether the respondent has withdrawn from the society of the petitioner without reasonable excuse and assertions of the petitioner in the petition are true? OPP.*
- 2. Whether the petitioner is entitled to a decree of restitution of conjugal rights? OPP.*
- 3. Relief.”*

12. The issues on the pleadings in **HMA No. 561599/2016 (Old No. 256/2011)** were framed on 31.07.2012 which read as under: -

- “i) Whether the petitioner has been treated with cruelty at the hands of respondent after solemnization of marriage as detailed in the petition? OPP.*
- (ii) Whether the respondent has deserted the petitioner without any reasonable cause for a continuous period of not less than two years immediately preceding the present petition? OPP.*
- (iii) Whether the petitioner is entitled to a decree of divorce on the grounds as prayed for? OPP.*
- (iv) Relief.”*

13. The respondent/wife and the appellant/husband respectively appeared in support of their rival contentions and tendered their respective affidavits of evidence in support of their assertions.

14. The **learned Family Judge** in detail, considered all the averments of the appellant and concluded that no act of cruelty could be proved on the part of the respondent. It was also not proved that she had withdrawn from the company of the appellant and *thus the petition for divorce under*



Section 13 (1)(ia) and (ib) was dismissed vide Judgment dated 06.04.2018.

15. After appreciation of evidence of the parties, it was held that the appellant/husband was not justified in walking out the matrimonial home on 14.09.2009 and that the respondent/wife had clear intention to restore her matrimonial ties by joining the company of appellant/husband.

16. The appellant/husband was held guilty of wilful neglect and forsaking the respondent/wife and, therefore, ***the Petition under Section 9 of the Act, 1955 for Restitution of Conjugal Rights was allowed vide Order dated 06.04.2018.***

17. Aggrieved of the dismissal of the divorce petition and decree of Restitution of Conjugal Rights, the present appeals have been preferred.

18. **Submissions heard on behalf of both the parties and the record perused.**

19. The appellant who is serving in Navy got married to the respondent on 15.01.2008 according to Hindu Customs and Rites. From the testimony of the parties it emerges that immediately after marriage, he was able to stay in his parental home with the respondent for about five days but thereafter had to resume his job at his place of posting. When he returned in the month of June, 2008 to his parental home, he approached the parents of the respondent to bring her back to the matrimonial home, but was told that since she had not seen the appellant before marriage, she was afraid of him and that time would cure this problem.

20. From these submissions of the appellant, it is evident that the appellant soon after the marriage resumed his duty and thus was unable to spend sufficient time with the respondent to know her and to develop an affinity. A few days together apparently were not sufficient to establish



mutual trust and confidence in each other. The service exigency of the appellant did not permit him to spend more time with his wife during the earlier months of their marriage.

21. The appellant again returned in June, 2008, but the respondent could not adjust in the matrimonial home as she quarreled with the old aged mother of the appellant and again insisted to go back to her parental home. In the meanwhile, appellant again resumed his duties. In January, 2009 again when the appellant returned, the respondent's brother and father took her back on the pretext of a family wedding of a relative and also took away all the jewellery in addition to Rs.10000/- which were taken as an expenditure required for the wedding. The appellant went to the parental home of the respondent in February, 2009 to bring her back, but she refused without any reason. He again approached the respondent's parents third time requesting them to send the respondent since he had come on leave after a long time and wanted to live with the respondent in the matrimonial home. But again the respondent's father did not send her back on the ground that the appellant must arrange a separate accommodation.

22. The respondent, however, had denied these assertions and had claimed that the appellant had no love and affection for her. She claimed that she had no hesitation in establishing sexual relationship, which got established on the first night itself, though denied by the appellant. She had also asserted that she became pregnant, but on the advice of a lady doctor she got the child aborted. Significantly, appellant deposed that he was not aware either of the pregnancy or the alleged abortion. The respondent to prove her sexual relationship with the appellant had claimed about her pregnancy and abortion, but has failed to produce even a single



document in support thereof. As happens in most of the matrimonial cases, it is the word of the appellant against that of the respondent, though the assertions of the respondent that they had physical relationship could have been proved by the documentary evidence by way of a medical record, but pertinently no such document has been produced creating the likelihood of the claim of the appellant being truthful.

23. The facts of this case bring forth that the appellant was able to come back to his parental home after gap of about six months on leave. The respondent, however, during this period also was reluctant to join the appellant. Evidently, this intermittent living together of two to four days did not give the confidence to the respondent in the matrimonial relationship, who avoided spending her time with the appellant. The respondent could have possibly joined the appellant at his place of posting, but neither party has explained as to why the respondent was unable to visit him at his place of posting.

24. That the respondent had inherent reluctance in joining the company of the appellant is also evident from the fact that the appellant had filed a petition under Section 9 of the Act for restitution of conjugal relationship at the Family Court, Mathura, but the respondent did not appear in the said case.

25. The efforts of the appellant to make the marriage succeed did not result in any positive result and thus, he was compelled to file a divorce petition under Section 13 (1)(ia) and (ib) of the HMA on 16.09.2010 i.e. after about two years of marriage. The respondent promptly filed a petition for maintenance under Section 24 in the divorce petition and also filed a petition under Section 125 Cr.P.C for claiming maintenance. In her



application under Section 24 filed before the Mathura Court in the petition under Section 9 HMA, the respondent claimed maintenance for herself as well as for her son. When the appellant preferred an application for perjury, the respondent withdrew her maintenance application, but filed a petition under Section 125 Cr.P.C in New Delhi. The parties arrived at a settlement in the Section 125 Cr.P.C petition, consequent to which the appellant withdrew his divorce petition and also his section 9 petition. In terms of the settlement, the respondent was to join the matrimonial home on 15.04.2011, but according to the appellant, she failed to join his company. Though, the respondent asserted that she had gone to her matrimonial home, but had found the premises locked, for which she made a complaint to the SHO on 15.04.2011 itself. However, according to the appellant as narrated in the complaint dated 17.04.2011, only the brother of the respondent had gone to the matrimonial home on 15.04.2011 and had threatened the mother of the respondent by claiming that the respondent would not do household work and if she was compelled to do so, you would face dire consequences. Whether the respondent made any effort to join back the matrimonial home or not, the fact remains that there was no resumption of living together by the parties despite a settlement before the Court.

26. What thus emerges from the narration of above facts is that firstly, the respondent was hesitant and apprehensive of entering into a matrimonial relationship with the appellant and was not able to adjust during whatever little time she spent with the appellant when he came back from his duty during the period of about two years. It is evident that since 2009 the parties have not been able to reside together. The matrimony has a bedrock of mutuality, understanding and cordiality which in the present case was



completely missing. The respondent has not been able to spell out any circumstance which justified her living away from the appellant. Such deprivation of cohabitation and conjugal relationship by the respondent is a great source of mental trauma for the appellant seeking marital bliss.

27. Significantly, the respondent made various complaints to the Commanding Officer of the appellant vide complaint dated 05.07.2010 Ex.RW1/X and dated 01.06.2010 Ex.RW1/Y, wherein she for the first time made various allegations of dowry harassment by the appellant and his family members. Thereafter, she made a complaint to the ACP, CAW Cell on 12.10.2010 Ex.RW1/Z reiterating her allegations of harassment which resulted in registration of FIR No. 482/2011 under Section 498A/406 IPC against the appellant and his family members. On the complaints so made by the respondent, an enquiry was initiated against the appellant. In the final Enquiry Report dated 28.12.2010 it was concluded that *prima facie* there appeared to be no fault on the part of the appellant. Further, it was observed “*due to continuous mental trauma and pressure, sailor is now no more willing to keep his wife*”. It was also observed that the continuous threats were being received by the appellant’s family members since June, 2010 till date. The Department had written to local Police Authorities for police protection of the Sailor. Also, the Executive Officer of the ship had spoken to her on three occasions and had told her to come to the duty station along with her parents for counselling to sort out the matter, but no response was received from their side. The evidence on record shows that all the family members of the appellant were exonerated at the stage of framing of charge and the appellant as well after facing the trial for ten years was acquitted on 20.05.2022 under Section 498A IPC.



28. The respondent while arriving at a settlement in the proceedings under Section 125 Cr.P.C, nowhere claimed dowry harassment, but soon thereafter made two complaints to the Department of the appellant and one in CAW Cell. The various allegations of dowry harassment could not be substantiated either in the criminal proceedings or in the proceedings before the Family Court. Making frivolous allegations to the Department of the appellant obviously had the potential of adversely impacting his career. Moreover, he was made to face the trial for ten years in FIR No. 482/11 u/s 498-A/406 IPC on the allegations of dowry, which were later found unsubstantiated. Making of such false and frivolous allegations of dowry which the respondent had not been able to prove, amounts to cruelty as has been held in the case of Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, Nishi v. Jagdish Ram 233 (2016) DLT 50 and Rita v. Jai Solanki 2017 SCC OnLine Del 9078.

29. It has also been proven that the wife has withdrawn from the company of the husband and there is denial of cohabitation and conjugal relationship. It is thus established that husband has been treated with cruelty entitling him to divorce u/s 13(1)(ia) of the Act. The parties have been resided separately since last more than 15 years with no possibility of any reconciliation. 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)(ia) 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”.

30. **To conclude**, we find that the marriage between the parties survived barely for two years. During this period as well, the parties hardly resided together and there was no mutuality in their relationship. The appellant being a sailor was subjected to mental trauma as the respondent never came forth to be a partner in true sense to share her life with him. She despite having spent very little time with the appellant made allegations of dowry harassment which she was not able to substantiate. She even made complaints to his Department which also found the complaint to be baseless and also concluded that she had no intention to reconcile the matter.

Divorce on the ground of Desertion u/s 13(1)(ib) of the Act

31. The appellant has also sought divorce on the **ground of Desertion**. Admittedly, the parties are living separately since 2009. As already observed above, though respondent has claimed that she made efforts to reconcile with the appellant and go back to the matrimonial home, no cogent efforts are evident from the evidence. The appellant had filed for restitution of conjugal rights in the Mathura District Court, however respondent did not join the said proceedings nor did she resume cohabitation. The said fact has been admitted by the Respondent in her cross examination.

32. Further, it is pertinent to note that a petition under section 9 of the HMA was filed by the Respondent on 24.05.2012, approximately three years after the date of separation and one year after the appellant filed for Divorce under section 13(1)(ia) and (ib). The Respondent had also initiated proceedings in the CAW Cell against the appellant and his family members,



which led to registration of FIR under 498A/406 IPC. In such background the section 9 petition of the wife appears to be a counter blast to the divorce petition and is *mala fide* in nature. It can be fairly concluded from the entire compendium of facts that the respondent had separated from the appellant in 2009 and she had no intention to resume the matrimonial ties. We, therefore, find that the respondent had separated with intent to not resume the matrimonial relationship for a period of more than two years prior to the filing of this petition. We, thus also hold that in view of the willful and permanent forsaking by the respondent, the appellant is also entitled to divorce on the ground of desertion under Section 13(1)(ib) of the Act, 1955.

Petition u/s 9 for Restituion of Conjugal Rights by the Respondent/ Wife

33. Having concluded that the respondent/wife had no intention to resume matrimonial relationship and that it was she who acted with cruelty towards the appellant/husband, the respondent/wife has not been able to establish that the husband had neglected her or had withdrawn from the matrimonial relationship without any reasonable cause.

34. The Judgment dated 06.04.2018 allowing the Petition under Section 9 of the Act, 1955 by the respondent wife for Restitution of Conjugal Rights in MAT.APP.(F.C.) 126/2018, is hereby set aside.

35. The Appeal filed against the Judgment dated 06.04.2018 dismissing the **Petition under Section 13(1)(ia) and (ib)** filed by the appellant/husband on the ground of cruelty and desertion in MAT.APP.(F.C.) 127/2018 is allowed and divorce is granted to the appellant/husband on the ground of



cruelty and desertion.

36. We also allow the Appeal MAT.APP.(F.C.) 126/2018 filed against judgement dated 06.04.2018 and dismiss the decree of Restitution of Conjugal Rights u/s 9 of the Act in HMA 561532/2016.

37. Accordingly, both the Appeals are allowed in the above terms.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 16, 2023/va