



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

% **Reserved on: September 06, 2023**

Pronounced on: January 05, 2024

+ **MAT.APP.(F.C.) 8/2023**

GAURAV NIGHAWAN Appellant

Through: **Mr.Ajit Singh, Advocate**

Versus

SHWETA Respondent

Through: **None.**

CORAM:

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

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been preferred by the appellant-husband against the impugned judgment dated 24.11.2022 passed by learned Family Court in HMA Petition No.1297/2022 whereby his petition seeking divorce from the respondent-wife under the provisions of Section 13(1)(ia) (ib) of the Hindu Marriage Act, 1955 has been dismissed.

2. The brief background of the case as spelt out in the present appeal, are that the marriage between the appellant and respondent was solemnised on 23.10.2015 as per Hindu rites and customs, however, no child was born out of said wedlock.



3. The appellant in his divorce petition before the learned Family Court has alleged that after their marriage, the respondent was welcomed with love and affection in their family, however, she never gave love, affection and respect to him and his parents instead she used filthy language and picked up unnecessary quarrels. Further submitted that the appellant has alleged that the respondent had gynaecological and internal stomach disease prior to her marriage which fact was not brought into the knowledge of appellant and his family. Even more, she had affairs with 2-3 boys. The appellant has alleged that whenever he confronted the respondent, she used abusive and filthy language against him and his family members.

4. The appellant alleged that the respondent was not willing to live in a joint family and accused his mother of interfering unnecessarily in their married life. According to appellant, he and his family members tried their level best to change respondent's behavior towards them, however, in the month of December, 2015, she left the matrimonial home with all her valuables and belongings

5. The appellant had further alleged that even after respondent left the matrimonial home, her father demanded Rs.50 lacs by threatening the appellant and his family of roping in false cases. Having no ray of hope for his married life, the appellant preferred a petition seeking divorce on the ground of cruelty under Section 13 (1)(ia) and (ib) of the Hindu Marriage Act, 1955.

6. The respondent was served by way of publication vide order dated 11.07.2022 and was later proceeded *ex parte* by the learned Family Court.



7. The appellant examined himself as PW-1 and his father as PW-2 in *ex-parte* evidence.
8. The learned Principal Judge, Family Court vide impugned judgment and decree dismissed his petition, holding as under:-

“31. Keeping in view the contents of the petition, it is clear that the petitioner, who is claiming to be the husband, has failed to furnish the details of any of the alleged instances to prove that the respondent, who is claimed to be the wife, has him with 'cruelty'. He has failed to give the details of the alleged instances of cruelty with sufficient particularity the time and places of the acts alleged including the dates, place, time, etc. as well whether or not such alleged acts of the respondent were witnessed by any person. The allegations levelled by the petitioner are too vague, unspecify and general due to which the same do not appear to be believable. There is not even one specific incident with date, time, place and details mentioned in the petition. The petitioner has not pleaded any incident with the required particulars. Although, the petitioner, in paragraph number 23 of the petition, has averred that he has not condoned the alleged acts of cruelty by the respondent but in fact, the petition reveals that he has averred that he tolerated the alleged cruelty by the respondent keeping in view of the future of married life and he was hoping that someday the respondent would mend herself or cruel ways and will treat the petitioner due love, affection and respect but no miracle took place and the respondent committed cruelties. The same indicates that he has condoned the alleged cruelty by the respondent.

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41. As regards the petition filed on the ground of desertion, although the title of the case indicates that the petition has also been filed on the ground of desertion by the respondent besides the ground of cruelty but except for a passing reference in paragraph number 17 of the petition and paragraph number 15 of his affidavit filed in evidence that the respondent left the parental house of the petitioner in December, 2015 taking all her valuables, jewellery, there is nothing shown by the petitioner that she has deserted him. He has not even prayed specifically in the petition that he may be granted divorce under the provision of section 13 (I) (ib) of the HMA. He has not disclosed about any efforts or complaint to police made by him in order to bring the respondent back to the matrimonial home or the action taken by him regarding the alleged desertion of the respondent since December, 2015 till 04.09.2021 (date of filing of the present petition). He has not even averred in the petition that she has deserted him.

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43. In facts and circumstances of the present case, as the petitioner is not entitled to a decree of divorce on the grounds of cruelty and desertion under section 13 (1) (ia) and (ib) of the HMA, the present petition is hereby dismissed.”

9. The challenge to the impugned judgment dated 24.11.2022 is on the ground that the judgment is absolutely non-speaking, perverse and in violation of principles of natural justice. The learned Family Court erred by not drawing the adverse inference against the respondent as she was



proceeded *ex-parte* vide order dated 11.07.2022.

10. During the course of hearing, learned counsel for the appellant submitted that to satisfy the ingredients of Section 13 (ia) (ib) of Hindu Marriage Act, the conduct of the respondent indicating cruelty and desertion was sufficient as these provisions are not confined to physical violence but also mental torture by one spouse to other. Learned counsel submitted that respondent deserted him in December 2015 and thus, the provisions of Section 20 of the Hindu Marriage Act are also applicable to the present case. Hence, setting aside of the impugned judgment and decree dated 24.11.2022, is sought by the appellant.

11. When this Appeal came up for hearing, vide order dated 14.03.2023 this Court directed service upon respondent through all prescribed modes as well as through SHO concerned. As per office report, notice was served upon the respondent through concerned SHO, however, the respondent refused to accept the service. Hence, the respondent was proceeded *ex-parte* on 06.09.2023.

12. This Court has gone through the impugned *ex parte* judgment dated 24.11.2022 passed by the learned Family Court as well as testimony of witnesses i.e. PW-1 and PW-2 recorded before the learned Family Court and find that since the respondent-wife was proceeded *ex-parte* before the learned Family court, written statement/reply on her behalf to the allegations raised by the appellant were not on record. Hence, the learned Family Court proceeded to pass the impugned judgment based upon the testimony of witnesses examined by the appellant.

13. Learned Family Court, with regard to the cruelty committed by the



respondent upon the appellant, has held that the appellant has not been able to bring forthwith any particular details of the incident of non-cooperation, misbehaviour, demand of Rs.50 lacs, threats to implicate in false criminal case, taking away household goods or valuables etc. Upon going through the testimony of appellant as PW-1 we find that in his evidence by way of affidavit, the appellant has not narrated any single incident depicting cruelty caused by the respondent upon him. No details have been given as to how and when the respondent ill treated the appellant and only wonted allegations have been levelled.

14. The marriage between the parties is a sacred bond which is premised upon respect and trust between the spouses. There exists a thin line between misbehaviour and cruelty. Whether behaviour of a spouse against the other is mere difference of opinion, leading to matrimonial conflicts resulting into normal wear and tear of a married life or the conduct is such which has led to a spouse misbehaving with the other to the extent that it causes mental agony upon the other, determines the aspect of cruelty meted upon the other. What is cruelty has already been dealt with, in a catena of decisions by the Hon'ble Supreme Court and this Court as well.

15. The Hon'ble Supreme Court in *Savitri Pandey Vs. Prem Chandra Pandey* (2002) 2 SCC 73 has recited "Cruelty" in married life in the following words:-

"6. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health."



Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

16. The parties to the present appeal got married on 23.10.2015 and the respondent left the matrimonial home in December, 2015 and since then, parties have not cohabited. Meaning thereby, the parties lived hardly together hardly for about two months only. There is no averment by the appellant that respondent had made any complaint or taken any legal action or recourse to law against the appellant or his family members. The mere allegation raised by appellant against the respondent is that she misbehaved with him and his family members and was not willing to live in a joint family set up. The allegations of misbehaviour are not substantiated by any incident or date and thus, appellant has not been able to prove those allegations.

17. Similarly, appellant has not provided the names and details of the



two-three boys with whom respondent was allegedly having affair and not brought any proof on record to demonstrate this allegations. The learned Family Court has specifically observed that the photographs placed on record appeared to be photoshopped and did not seem to be genuine. Even with regard to whatsapp chats, the appellant did not file Certificate under Section 65B of the Indian Evidence Act, 1872.

18. In our considered opinion the appellant has not been able to substantiate the allegations of cruelty meted out by the respondent within the purview of Section 13(ia) of the Act, as rightly held by the learned Family Judge.

19. With regard to Section 13(1) (ib) of the Hindu Marriage Act, 1955, the pertinent observations of the Hon'ble Supreme Court in ***Bipin Chandra Jaisinghbhai Shah Vs. Prabhavati*** 1956 SCC OnLine SC 15 are as under:-

“Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.”



20. The Hon'ble Supreme Court in **Bipinchandra Jaisinghbhai Shah(Supra)** has further observed that *once it is found that one of the spouses has been in desertion, the presumption is that the desertion has continued and that is not necessary for the deserted spouse actually to take steps to bring the deserting spouse back to the matrimonial home.*

21. Also, the Hon'ble Supreme Court in **Chetan Dass Vs. Kamla Devi** (2001) 4 SCC 250 has observed that:-

“14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of “irretrievably broken marriage” as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.”

22. The pertinent observations of the Hon'ble Supreme Court on the aspect of desertion in **Savitri Pandey (Supra)**, are as under:-

“8. “Desertion”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one



spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case.

23. Applying the provisions of Section 13(ib) of the Act, we find that merely within two months of marriage between the parties, the respondent-wife left the matrimonial home. Neither she made any complaint against the appellant nor did she file petition under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights. No doubt, even appellant has not been able to show before the learned Family Court and even in this Court that he had made any concrete efforts to bring back his wife to the matrimonial home. However, when he approached the court seeking divorce, despite service through publication, the respondent did not appear before the learned Family Court to contest the allegations made by the appellant. The respondent has even abstained herself from appearing before this Court despite service through the SHO concerned. Relevantly, since the marriage in the year 2015 till the year 2023, the respondent has not made



any effort to join company of appellant-husband. There is no doubt that respondent has quietly chosen to stay apart from appellant and broken the bond of marriage, though not legally but otherwise.

24. In the light of afore-noted facts and circumstances of the present case, this Court is of the considered opinion that respondent has wilfully deserted the appellant and so, appellant is entitled to get benefit of provision of Section 13(1) (ib) of the Hindu Marriage Act, 1955. The marriage between the parties is thus, dissolved and a decree of divorce is granted. Decree sheet be prepared accordingly.

25. With directions as aforesaid, the present appeal is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 05, 2024
rk/r