



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

% ***Reserved on: October 05, 2023***

Pronounced on: April 02, 2024

+ **MAT.APP.(F.C.) 33/2022**

SH. AVNESHWAR SINGH

..... Appellant

Through: **Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Kanishk Ahuja,
Advocate**

Versus

SMT.MONIKA

.....Respondent

Through: **Ms. Priya Puri & Mr. Ranjan Dubey,
Advocates**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984, read with Section 28 of the Hindu Marriage Act, 1955 against the impugned judgment and decree dated 18.12.2021 passed by learned Principal Judge, Family Courts, Southwest District, Dwarka, New Delhi in HMA No. 1417/2017.

2. The learned Family Court vide impugned judgment has dealt with two petitions. One, preferred by the appellant-husband under Section 13-1(ia) of the Hindu Marriage Act, 1955 (HMA No. 1417/2017) seeking divorce from

MAT.APP.(F.C.) 33/2022

Page 1 of 16



husband wife and second, petition preferred by the respondent-wife under the provisions of Section 9 of the Act seeking Restitution of Conjugal Rights(HMA No. 1416/2017). The learned Family Court vide order dated 20.04.2019 directed that these petitions shall be tried together and evidence led in HMA No. 1417/2017 shall be considered in both the petitions, being the lead case.

3. Relevantly, the learned Family Court vide impugned judgment dated 18.12.2021, has dismissed the petition seeking divorce preferred by the appellant-husband and has also dismissed the petition preferred by the respondent-wife seeking Restitution of Conjugal Rights. It is against the dismissal of petition under Section 13 (1) (ia) of the Act, the appellant has preferred the present appeal.

4. The marriage between the parties was solemnized on 25.01.2011 according to Hindu Rites and Ceremonies at New Delhi and a male child was born out of this wedlock on 26.09.2011. The parties have been living separately since 06.09.2011.

5. The appellant-husband in his petition under Section 13 (1) (ia) of the Act averred before the learned Family Court that soon after their marriage, the respondent showed her discomfort and in their short span of living together, he had endured severe mental torture and anguish from the respondent-wife. The respondent-wife allegedly conveyed to the petitioner-husband that the marriage was coerced upon her by her parents, and she displayed a lack of interest in the marital bond. Following their marriage, he observed the respondent's disloyalty and frequent visits to her parents' house.



6. The appellant-husband asserted in his appeal that he had been subjected to grave mental torture and agony by the respondent-wife. He claimed that she had threatened him with a kitchen knife in March, 2011 indicating her intent to harm him if he refused to allow her to visit to her parent's house. The respondent-wife neglected her marital responsibilities and insisted on extravagant demands, like a big LCD TV, car, mobile phone, laptop, and similar items, surpassing the appellant -husband's financial means.

7. The appellant further asserted that on 12.04.2011, the respondent inadvertently sent a message containing vulgar and unacceptable language about his parents, wherein she wrote, *"Anu went to Preet Vihar with the old man to buy a scooter. The greedy old man isn't giving us a TV or a car, and I want an expensive and latest scooter for myself"*, which caused great mental agony to him. He immediately contacted the respondent's parents and informed her father about the incident and also expressed concern over the respondent's regular demands for items beyond his financial means, such as a big LCD, cash, mobile phone, and laptop. The respondent's brother, who was present with her parents, verbally abused him and his parents, even making threats of violence. This distressing message further strained their relationship. Despite his attempts to reconcile, threats and confrontational behavior from the respondent's family persisted.

8. The appellant further averred that on 23.05.2011, respondent verbally abused his parents, causing his mother to become unconscious and be hospitalized while he was at his sister's place to board the flight to Ahmadabad, where he was working. But he had to cancel his plans and



return to his parent's house. He could eventually leave for Ahmadabad on May 25, 2011.

9. The appellant alleged that respondent was in the habit of leaving matrimonial home and the Mediator- Mr. Deshraj and her parents had to persuade her to join his company and she finally came to Ahmadabad on 11.07.2011.

10. The appellant alleged that during the course of her pregnancy, she expressed dissatisfaction with various hospitals where she was taken for check-up but ultimately showed satisfaction in Max Hospital. She never bothered the difficulties endured by him, arising from changes in hospital arrangements and the financial burden he shouldered alone. Having stated so, on 06.09.2011, the respondent-wife left with her parents taking all her *istridhan* including, jewellery etc. with her.

11. The appellant asserted that on 26.09.2011, respondent gave birth to a baby boy but showed displeasure and ignored the appellant-husband. When the child was named Tejeshwar Singh, she instructed the hospital staff not to record the name until her parents approved it.

12. On 27.09.2011, the respondent raised objections with regard to keeping of child's name and insisted upon approval from her parents. When her parents arrived on September 28, 2011, her parents verbally abused the appellant and his parents and threatened their lives. Apprehending danger to their lives, the appellant with his parents got a *peshbandi* report lodged with the police station Indirapuram, UP in the night of 28/29.09.2011 for their safety.



13. The appellant alleged that the parties lived together for a brief period of 2-3 months and have been living separately since 06.09.2011 and since after the birth of their child on 26.09.2011, the respondent has been living at her parents' house. Also, multiple legal disputes have filed by the parties in the span of 10 years.

14. The appellant asserted that on 13.01.2012, the respondent-wife made an abusive phone call to him and his parents. Since then, she has also been sending complaints to his employer, the Reserve Bank of India, with the intention of causing him embarrassment and humiliation in front of his colleagues.

15. According to appellant, he was left with no option but to file a petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 seeking divorce from respondent-wife. However, the same was dismissed *vide* the impugned order.

16. The Respondent / wife in her written statement filed before the learned Family Court, refuted all the accusations against her, asserting that it was the appellant who had deserted her and their son. She recounted various instances of mistreatment and neglect, including the appellant's mother taking her jewellery after the wedding and the appellant's refusal to provide adequate household items. She alleged that appellant's mother insisted that her parents should have provided customary household articles for the marriage and requested her to convey to her own parents to arrange for these items. Additionally, she mentioned appellant's frequent harassment for insufficient dowry and his failure to provide financial support for her needs.



17. The respondent alleged that during their honeymoon in Kochi on 12.2.2011, she discovered appellant-husband conversing with someone over a mobile phone at 2:30 AM. Upon confrontation, he admitted to speaking with his ex-girlfriend, Anjana, and instructed her to address Anjana as 'Didi' (elder sister). Furthermore, he disclosed his intentions for all three of them to reside together in the near future. On 08.03.2011 respondent received a call from a girl named Preeti, claiming to be the appellant's girlfriend, further complicating their relationship. This event adds to the existing tension and distrust between the couple.

18. After conception in the first week of March, 2011, she experienced medical complications, however, neither the appellant nor his parents showed concern in seeking medical attention from a reputable doctor. The respondent alleged that despite being advised complete bed rest, she was coerced by appellant's parents into cooking food using mustard oil, despite her discomfort with it.

19. The respondent averred that on 12.04.2011, the appellant rebuked her father over the phone in a very rude manner, making false and frivolous allegations that the respondent had been making extraordinary demands such as mobile phones, laptops, etc. The parents of the respondent immediately reached the matrimonial house in Vaishali, Ghaziabad, and on the illegal and unjust demand of the appellant and his family members, purchased a laptop and a mobile phone.

20. On 18.4.2011, she recounted instances of physical abuse in detail, alleging that she was violently pushed by the appellant in front of his mother and confined to a room for an extended period. She also asserted that the



appellant showed a lack of concern for her well-being, citing incidents where he left her alone while she was sick and prevented her from attending her MBA exam on 14.05.2011. The appellant and his parents took the respondent to Vaishali on 21.05.2011. However, on 23.05.2011, the appellant called her father and requested him to take her away. Consequently, her father brought her back to her parental home.

21. After some reconciliation, she decided to join company of appellant-husband on 08.07.2011 in Ahmedabad. Unexpectedly, on 18.08.2011, the respondent was informed by the appellant that she needed to go to Delhi as he had to prepare for the Civil Services Examination. She was compelled to board the flight for Delhi, and upon arrival, she was picked up by her parents who took her to her parental home from the Airport.

22. Even though appellant had come to Delhi while the respondent was in advance stage of pregnancy, but on 6.09.2011, he and his father departed for Ahmedabad (Gujarat), leaving her in the matrimonial house with her mother-in-law. Soon thereafter, the mother-in-law instructed the respondent to return to her parental home by contacting her father, resulting in significant mental trauma during her advanced stage of pregnancy. Also, when she was admitted to Max Hospital and the appellant and his family was duly informed, but no one cared to visit her. On 25.09.2011, Dr. Neena Behl, who was treating her, informed the appellant via mobile phone that the condition of the child and the respondent was critical.

23. On 26.09.2011, respondent underwent surgery, resulting in the premature birth of a baby boy. The appellant and his father arrived at the hospital around 6:00 PM on that day and instead of inquiring about the well-



being of his wife and new born son, the appellant chose to inquire from the attending doctors about the procedure for getting the name of the child registered with the Municipal Corporation of Delhi. The child remained in NICU for about a month. She had undergone a major surgery and was advised complete bed rest, but nobody from the appellant's family ever visited the hospital during this period. Following the delivery, she made numerous attempts to reach her husband to join them at their matrimonial home with their minor son, but received no response.

24. On 04.04.2012, she went to join her husband at his posting with the Reserve Bank of India but found the door locked and received no response to her calls from her husband. Consequently, she returned to her parental home with her minor son. Subsequently, she made numerous attempts to contact her husband and his family members, but to no avail.

25. On the pleadings of the parties, the following Issues were framed by the learned Family Court on 05.12.2015 in petition under Section 13 (1) (ia) of the Act being HMA No.1417/2017:-

- i. *Whether the respondent has treated the petitioner with cruelty after solemnizing of marriage all 25.01.2011, as detailed in the petition?* *OPP*
- ii. *Whether the petition is not maintainable in view of the preliminary objections taken by the respondent in their written statement?* *OPR*
- iii. *Relief.*

26. Similarly, vide order of even date, the following Issues were framed in petition under Section 9 of the Act (HMA No. 416/2017) preferred by the wife:-



i. *Whether the respondent has withdrawn from the society of the petitioner without reasonable excuse and the version of the petitioner in the petition is true?*

OPP

ii. *Whether the petition is not maintainable in view of the preliminary objections taken by the respondent in his writ/en statement?*

OPR

iii. *Relief.*

27. The parties examined themselves in the evidence. The appellant/husband got himself examined as PW1 and the respondent/wife got herself examined as RW1.

28. Vide impugned judgment dated 18.12.2021, the learned Family Court dismissed the petition preferred by the appellant-husband seeking divorce and also dismissed the petition preferred by the respondent-wife seeking Restitution of Conjugal Rights. The appellant before us has challenged dismissal of his petition under Section 13 (1) (ia) of the Act.

29. **Submissions heard.**

30. The marriage between the parties was solemnized on 25.01.2011 according to Hindu Rites and Ceremonies at New Delhi and a male child was born out of this wedlock on 26.09.2011.

31. Pertinently, the learned Family Court while dismissing the appellant's petition under Section 13 (1)(ia) of the HMA, 1955 observed that the appellant has accused the respondent of committing cruelty by narrating various incidents, including threats by brandishing a knife, and sending vulgar messages, however, has failed to provide sufficient proof of these



claims, such as not filing a complaint to the police in respect of the knife incident and not presenting the alleged message as evidence.

32. Also, with regard to the appellant's allegation of entering into an altercation with respondent's father in the market or the scene at his house where his mother became unconscious, the learned Family Court has held that the appellant has failed to provide concrete evidence or witnesses to support these claims.

33. It is also relevant to note here that in both the petitions preferred by the parties i.e. under Section 13(1)(1a) of the Act and Section 9 of the Act, the learned Family Court relied upon the pleadings and evidence recorded in the lead case being HMA No. 1417/2017. Also that the respondent/wife was only partially cross-examined and her cross-examination could not be concluded as she absented herself and so, her evidence was taken to be closed.

34. The learned Family Court in respondent's petition under Section 9 of the Act, seeking Restitution of Conjugal Rights, observed that no evidence was led by her to show that she was thrown out of the matrimonial house by the appellant. The learned Family Court observed that the allegation of the appellant-husband that the respondent inadvertently sent a message to him on 12.04.2011, which contained unacceptable language for his parents, which caused great mental torture to him, observed that *"the words 'Budha' 'Lalchi Budha' admittedly used by the respondent against the father of the petitioner are certainly derogatory and not expected to be used by daughter-in-law for her father-in-law"*. Further, even though the learned Family Court took note of the admission of respondent in DV Act MAT.APP.(F.C.) 33/2022



proceedings, wherein she admitted that she had used such language for her father-in-law but held that *“This allegation in no manner can be taken as to satisfy the conscious of the Court that because of this conduct of the respondent it would have been impossible for the parties to live together without mental agony, torture or distress”*.

35. In our considered opinion, the learned Family Court has failed to appreciate that spouses engaging in defamatory language directed towards one's in-laws, not only undermines the dignity and reputation of the individuals but also erodes the trust and respect necessary for a healthy marital bond. The respondent's admission to sending a message containing derogatory language towards the appellant's father demonstrates a lack of respect and consideration within the relationship. These actions undermine the foundations of mutual respect and support essential for a healthy marital bond.

36. Further, it is not in dispute that the respondent-wife had sent various complaints to the Reserve Bank of India against the appellant, which fact she has admitted in her cross-examination by stating that these complaints were made after their separation. Whether the complaints were false or true, irrespective of this fact, making derogatory complaints to the Employer of spouse, with intent to harm professional reputation and financial well-being, is nothing but cruelty. Making such complaints demonstrate lack of mutual respect and goodwill, which is crucial for a healthy marriage and merely by stating that such complaints were made after the parties have separated, in no manner absolves a spouse from the guilt of committing cruelty on the receiving end.



37. In the case of *Joydeep Majumdar Vs. Bharti Jaiswal Majumdar* 2021 SCC OnLine SC 146, similar defamatory complaints were lodged with the husband's superiors in the Army, leading to a Court of Inquiry and negatively impacting his career advancement. The Court noted that when such allegations come from an educated spouse, they have the potential to irreparably harm the appellant's character and reputation among colleagues, superiors, and society at large. The wife's explanation that the complaints were made to preserve the marital relationship cannot justify her persistent efforts to undermine her husband's dignity. In such circumstances, it's unreasonable to expect the wronged party to continue the marriage, and there is sufficient justification for separation.

38. In her written statement, the respondent wife stated that she had not filed any official complaints with authorities regarding her husband's alleged extramarital affairs. This indicates her decision not to take formal action despite being aware of the situation. The Supreme Court in the case of *Ravi Kumar Vs. Julmidevi* (2010) 4 SCC 476 has held that "*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.*" The inaction on the part of respondent to make a complaint against appellant's alleged illicit relations, shows that by raising such frivolous allegations, she had committed immense mental cruelty upon the appellant.

39. The appellant and respondent only lived together for a brief period of less than an year and after birth of their child, they have entered into multiple legal disputes, lasting over 10 years.



40. The details of all the litigation between the parties, at the time of passing of impugned judgment, are as under:-

- (i) Maintenance Petition U/S 125 Cr.P.C. Case No. 629/2017,
- (ii) Proceedings U/S 12 of the Protection of Women Against Domestic Violence Act Case No. 56/2016,
- (iii) Application U/S 340 Cr.P.C filed by the appellant-husband tagged along with Domestic Violence case,
- (iv) Execution Petition Ex.No.06/2018, pending at the stage of prosecution evidence
- (v) Revision petition Rev.P.1069/2018
- (vi) Petition u/S 482 filed by Respondent-wife (Crl.M.C. 48/2018)
- (vii) Petition u/S 482 filed by appellant-husband (Crl.M.C.6582/2019)
- (viii) Contempt Proceedings Misc. No. 6/2019
- (ix) Petition u/S 25 of the Guardianship Act being GP. No. 103/2017 (Disposed of)
- (x) Petition u/S 9 seeking restitution of Conjugal Rights (HMA Petition No. 1416/2017)
- (xi) Petition U/S 13 1)(ia) (HMA Petition No. 1417/2017)

41. There is no doubt that prolonged litigations between the spouses, undermines the potential for amicable resolution, exacerbates animosity, and impedes the parties' ability to move forward constructively. This extended legal battle has inflicted significant emotional, psychological, and financial strain on both parties, thereby perpetuating a hostile and contentious environment. Consequently, the persistent engagement in litigation over an



extended period can be viewed as a form of cruelty, spanning over a decade, can be construed as cruelty.

42. In the case of *Kahkashan Kausar Vs. State of Bihar*, (2022) 6 SCC 599, it was stressed that prolonged legal battles can harm both parties, similar to cruelty.

43. In the light of afore-noted narrations of facts of the present case, this Court is of the opinion that respondent's admission to sending a message containing derogatory language towards the appellant's father and filing of complaints with his employer-RBI, can be considered as cruelty. Such incidents create an atmosphere of tension and instability within the marital relationship, causing emotional harm to both parties involved.

44. The respondent's conduct leads to the inevitable conclusion that her behaviour was such which has caused serious concern in the mind of the appellant, disturbing his mental peace. While these incidents may seem trivial when viewed individually, however, with cumulative effect over time, create significant mental stress, making it untenable for the parties to sustain their marital relationship, as has been held in the case of *Gurbux Singh Vs. Harminder Kaur*, (2010) 14 SCC 301.

45. It is also relevant to note here that after the appellant preferred the petition under Section 13 (1) (ia) of the Act seeking divorce from respondent-wife on 01.02.2012 before the learned Family Court, the respondent-wife preferred petition under Section 9 of the Act much later on 24.08.2013, however, chose not even to conclude her cross-examination to substantiate her claims. In view of the fact that parties were already litigating multiple cases against each other, the respondent filed petition



under Section 9 of the Act, just as an eye wash to pretend she was willing to live with appellant. It is not in dispute that the parties have been living separately since 06.09.2011. During pendency of the present appeal, vide order dated 07.12.2022, parties were referred to Samadhan (Delhi High Court Mediation & Conciliation Centre) and multiple mediation sessions were conducted. Despite extensive discussions, no settlement could be reached.

46. After carefully analysing the impugned judgment and the evidence on record, we firmly conclude that the respondent by absenting herself for cross-examination has willingly opted to not substantiate her allegations against the appellant. By making false allegations of adultery, making complaints to his employer, passing derogatory comments against his father and filing multiple litigations against him, she has committed mental cruelty upon the appellant within the ambit of Section 13 (1) (ia) of the Hindu Marriage Act. The respondent has lived for a short span of less than even one year with the appellant and has deliberately chosen to stay away with his parents and son of the parties, thereby depriving the appellant of marital bliss and fatherhood.

47. The Hon'ble Supreme Court in **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511, has held that: -

“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 serve 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



the emotions of parties. In such like situations, it may lead to mental cruelty.”

48. Furthermore, by filing petition under Section 9 of the Act, and then not pursuing it, she has made deliberate attempt to delay the divorce proceedings, causing further harassment to the appellant.

49. In light of the above, it is abundantly clear that the respondent's conduct towards the appellant amounted to cruelty.

50. Consequently, the judgment dated 18.12.2021 passed by the learned Family Court is partly set aside to the effect it dismisses the petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 filed by the appellant.

51. The present appeal is accordingly allowed and the appellant is granted divorce under Sections 13(1)(ia) of the Hindu Marriage Act, 1955.

52. Decree sheet be drawn accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2024

rani/r