



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

% ***Reserved on: September 26, 2023***

Pronounced on: March 13, 2024

+ **MAT.APP.(F.C.) 56/2019 & CM APPL. 9026/2019**

KITTY BHARDWAJ

..... Appellant

Through: Mr. Kunal Kishore, Advocate

Versus

LALIT PYARE LAL BHARDWAJ

.....Respondent

Through: Mr. Jivesh Kr. Tiwari, Advocate

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 filed by the appellant-wife against the judgment and decree dated 29.11.2018 passed by the learned Family Court in HMA No. 1036/2014, whereby the petition seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 filed by the respondent has been allowed.

2. The respondent-husband had initially filed a divorce petition before the Family Court, Bandra, Mumbai however, subsequent to appellant-wife moving transfer petition before the Hon'ble Supreme Court, the trial of the



case was transferred to the jurisdiction of Delhi Courts and thus, the matter was listed before the Family Court, Saket, New Delhi.

3. The marriage was solemnized on 15.04.1973 in New Delhi and registered in Mumbai. Both parties are Hindus and American citizens, holding 'Overseas Citizen of India' status. Two children were born out of this wedlock. After about 41 years of marriage, the respondent-husband sought divorce from the appellant.

4. According to appellant, the respondent in his petition filed before the learned Family Court, averred that at the time of marriage between the parties, he was running Kwality Restaurant at Nagpur. He falsely averred that during the initial months of their marriage, there were marital discords between the parties and the appellant never liked to live in a small town like Nagpur and haunted the respondent that she was in the habit of living in big cities like Delhi and London where her mother had a luxurious apartment. The respondent alleged that the appellant often neglected her household responsibilities as well as that of the wife; and one day she packed her bags and left for London.

5. The respondent alleged that he got a job at Gaylord Restaurant in London and his job required him to stay late due to his official obligations. Therefore, he requested his employer to transfer him to Chicago, USA. While he was in Chicago in the year 1974, the appellant informed him that she was pregnant and wanted to accompany him so that the child could be born in America. During the delivery of the appellant, her mother came to Chicago while the parties were living in one BHK apartment and her mother made their lives miserable. The appellant left the respondent and stayed with her mother in London.



6. In the year 1976 when the respondent changed his company and got promoted to the post of General Manager and also took a 2 BHK apartment on rent, the appellant alongwith her daughter came back to join his company. However, again she showed discomfort and went back to her mother to live a luxurious life. The respondent alleged that he was extremely hurt and upset since despite his best efforts, he was not able to provide good lifestyle to his wife, which she expected. However, when the appellant returned with her mother, she was already pregnant and gave birth to a baby boy on 23.02.1977.

7. The respondent claims to have obtained green card and turned owner of Garland Restaurant at San Francisco in the year 1980 and rented a 3 BHK. However, the appellant alongwith her mother and child of the parties came back upon which the respondent was really happy. However, again the appellant started complaining and dominating the respondent and made his life miserable. Therefore, he wanted to take divorce from his wife. However, for the sake of his children, he continued in the relationship even though his wife accused him of drinking and gambling and turned suspicious of seeing other women for no reason whatsoever.

8. In the year 1984, the respondent claims to have received an opportunity to open a restaurant in Denver Colorado, USA; and the appellant showed her willingness to join him in his company even though she had no experience. She caused lot of problems with the staff and unfortunately, the restaurant had to be shut down.

9. Again on the pretext of working in an oil venture, the appellant left the respondent's company, however, came back later doing zero business. The appellant picked up the children and left for London instead of being



with the respondent. Despite his request to come back to Denver, she refused to join his company. The respondent thereafter went to London in the year 1989 to be with his children and wife. He again started his business in London and in the year 1981, they decided to go to Florida, USA. Both started working together and opened a company importing handicrafts. However, due to suspicious behavior of the appellant, they got into heated arguments quite often.

10. The respondent alleged that in the year 2007, his father had suffered a stroke in Delhi. Since the appellant was in Delhi, the respondent requested her to go and take care of him. However, she barely visited the hospital and was busy in visiting beauty parlours/salons, shopping etc. Again in the year 2008, the respondent's father requested him to come to India when the appellant was already here with her mother. On 31.08.2009, the respondent's father passed away. The appellant arrived only for *Chautha* ceremony and did not show any sympathy to the respondent and his family and was only concerned with what his father had left in his will.

11. In the year 2010, the flat inherited from his father was sold by the respondent and according to the appellant, the sale proceeds were deposited in the joint name in the bank. However, the appellant chose to stay with her mother in Delhi. Despite the respondent repeated requests, the appellant did not join him. However, the appellant preferred to supervise the construction of her mother's new house, neglecting her matrimonial obligations *qua* the respondent.

12. The respondent claims to have borne all the expenses in respect of marriage of their daughter. On 05.01.2013, the respondent lost his mother while the appellant was in London. Even though she came for the *Chautha*



ceremony, she showed no sympathy to the respondent or his family. On 16.01.2013, the respondent went to the flat of his sister, who was ill. However, the appellant refused to move out, stating that the house was inherited from her father-in-law *i.e.* the respondent's father and the respondent's sister should get a court order to put her out; and thereby she went on to grab the property which caused great mental agony to the respondent's sister as well as the respondent.

13. The respondent averred that on 13.02.2013, they had major arguments and had left for some work. After he returned back in the evening, he did not find the appellant. Thereafter, the respondent called her and was informed by the appellant that she was in Delhi and will be back in a few days.

14. However, the appellant filed a case under Domestic Violence Act, 2005 in Delhi and at a later stage withdrew the case filed in Mumbai court.

15. The appellant claims to have sent several notices to the respondent through his counsel and also filed a complaint dated 20.04.2013 before the ACP, Colaba Division, Mumbai. However, the respondent did not return. The respondent alleged that he and his family has been put to great mental and physical cruelty at the hands of the appellant; and the respondent (being the husband) has the right to live in the company of the appellant, who has deprived him of the same. The respondent has alleged that the appellant has never kept him happy and treated him with cruelty; and so he preferred a petition under Section 13 1(ia) of the Hindu Marriage Act, 1955 before the learned Family Court seeking divorce from the appellant.

16. To the contrary, the appellant-wife, in her written statement filed before the learned Family Court, stated that the petition for divorce filed by the respondent was a counter-blast of the Domestic Violence Petition filed



by her against the respondent wherein she was granted *ex-parte* order which included fixed deposits, joint bank accounts, one land at Baroda, Bond in NHAI and capital gain account and shareholding in Kwaliti Restaurant and Modern Caterers and also granted the stay on the matrimonial home bearing no. 11, Hari Niwas, "C" Road, Marine Drive, Church Gate, Mumbai.

17. Whereas, the respondent stated that the appellant's application under Section 25(2) seeking setting-aside of *ex-parte* order dated 14.03.2013 was dismissed on 31.03.2014 whereafter he preferred the present divorce petition. The appellant alleged that her husband was having illicit relationship with one Ms. Mehnaz Merchant and he had deserted the appellant. On 05.01.2013, the respondent informed the appellant about the demise of his mother; and even though the appellant was in Florida, she flew to Mumbai to support him. However, rather than appreciating her, she was taunted in front of all the relatives that she had come only for money. The appellant alleged that the respondent's sister asked her to move out of the Hari Niwas, Mumbai house; and she was forced to move to Diplomat Hotel on 28.01.2012; and was thereafter constrained to live at her parents' house in Delhi.

18. The appellant, in her written statement, averred that she was 67 years old and suffering from various ailments and is fully dependent upon her 94 years old mother financially and for residence as the respondent had failed to maintain her. The appellant also alleged that she was having UK passport for which reason the respondent had married her and soon after their marriage, he asked her to move to U.K. to live with her widowed mother. The appellant alleged that her mother was supporting both of them to settle in their lives in London. However, for a long time, the respondent made no



efforts to get a job and rather spent time in drinking and gambling in bars and pubs.

19. The appellant averred that during the initial stage of her pregnancy, she had insufficient funds; and the respondent was not ready to support her and so she had to, time and again, go to her mother's place for care and the delivery. The appellant alleged that in April, 1976, the respondent left his job in Chicago and moved to the appellant's mother's flat and they both worked hand in glove in the restaurant to build a business whereas the respondent would return home late after joining his friends in drinking and gambling etc, leaving behind his wife and daughter at her mother's small flat.

20. In the year 1977, the parties were blessed with a baby boy. However, the appellant had to stay at her mother's house because the respondent was not earning at that time. Many times, the respondent started new business or a new job but to no avail. The appellant alleged that she had to stay home with her two small children and for managing their expenses, she had taken up a job from home so that she could look after her young children whereas the respondent would leave at 9 am in the morning and returned late in the evening.

21. The appellant alleged that since 1980, they were not in a matrimonial relationship; and she got to know that the respondent was in relation with a girl named Ms. Flora, who was a hostess at Gaylord Restaurant; and when she confronted him for this, he admitted his relationship, however, stating that it was over.

22. The appellant further alleged that the respondent never sent any money to support her and her children and rather dissuaded her from joining



his company. The appellant alleged that the respondent's behavior was distant and off-hand. The appellant, through his friends, came to know that the respondent was living with a lady, who was divorced. On being asked about the relationship, the respondent once again acknowledged his affair and relationship. The appellant alleged that the respondent did not show interest in the better education of their children or their needs and due to lack of funds, the appellant had made a decision to sell the warehouse so that out of the sale proceeds, she could pay the mortgage on the family home.

23. The appellant pleads that both the appellant and the respondent returned to India in November, 2008 as the business in USA was not going well. Besides, after their return, the appellant was living in Delhi at her mother's flat and the respondent at his father's flat in Mumbai. However, she kept travelling to Mumbai to meet the respondent. She asserts that the respondent was then financially supported by his father and she was given Rs. 15,000 as pocket money. In the same year, the respondent's father had gifted him a flat in Worli, Mumbai which the respondent subsequently sold and put the proceeds he received in bank in their joint accounts but did not deposit the amount of Rs.20,00,000/- he received in cash. The appellant further pleads that her mother had arranged an amount of Rs. 14 lac for the respondent to pay-off his mortgages in Orlando in the year 2009.

24. The appellant alleged that even at the time of wedding of their daughter, the respondent did not participate and remained in Mumbai and came only to attend the wedding and left immediately thereafter.

25. On 26.09.2012, the appellant sent an e-mail to the respondent, in reply to which respondent communicated his desire to live alone but she flew to



Mumbai to confront him so that their marriage could be saved, but the respondent on 13.01.2013 he expressed his intention to move in with one Mehnaz, with whom he was having an extra marital affair. The appellant denied that she had ever put the respondent to mental and physical cruelty and prayed the learned Family Court that the petition preferred by the respondent seeking divorce on the ground of cruelty deserves to be dismissed.

26. On the pleadings of the parties, the learned Trial Court framed the following issues.

- (1) *Whether the respondent after the solemnization of the marriage has treated the petitioner with cruelty, within the meaning of sec.-13 (1) (i-a) of the Hindu Marriage Act? (OPP)*
- (2) *Whether the petitioner is entitled to decree of divorce, as prayed for? (OPP)*
- (3) *Relief*

27. In support of their case, the appellant and the respondent examined themselves as RW-1 and PW-1 respectively.

28. Based upon the testimony of the witnesses recorded and the material on record, the learned Family Court held that issue Nos. 1 and 2 were decided against the appellant-wife and in favour of the respondent-husband and granted him decree of divorce under Section 13 1(ia) of the Act, which has been assailed in the present appeal by appellant-wife.

29. The appellant has challenged the impugned judgment on the ground that the learned Trial Court has failed to appreciate that the impugned judgment and decree passed by the learned Family Court is based on false and unsustainable grounds. The learned Trial Court has erred in making the



alleged dilatory conduct of the respondent as a saga of cruelty and did not consider the entire record and evidence while passing the impugned judgment. The points on which the appellant was cross-examined, which were already pleaded in the written statement, constituted a part of defence. Hence, setting aside of impugned judgment is sought by the appellant.

30. This court has gone through the impugned judgment as well the testimony of the witnesses recorded before the learned Family Court.

31. The primary challenge to the impugned judgment by the appellant in the present appeal is that the divorce has been granted by the learned Family Court on the grounds of cruelty which was not at all meted-out on her part.

32. This Court now proceeds to examine whether in the facts of the present case, the learned Family Court was justified in awarding decree of divorce on the grounds of cruelty allegedly committed by the appellant-wife upon respondent-husband.

33. On the aspect of cruelty, the Hon'ble Supreme Court in **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511 held "*the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.*"

34. In the present case, parties to the present appeal got married on 15.04.1973. Even though the appellant has raised the allegation that the



respondent chose to marry her because she was holding green card in London and the respondent has alleged that he was forced to leave his job to accompany the appellant in order to save his married life; the fact remains that parties had consented to live in London, but had marital conflicts since beginning, which went throughout their lives.

35. Further, it is not in dispute that ever since marriage of the parties, respondent, time and again, failed in his business and also lost his job and had to face financial crunch. However, it could not be denied that the appellant during their stay in U.K. most of the time stayed back with her mother at her house and the respondent many times shifted to different cities in US to stabilize his work and income.

36. The respondent, in his petition seeking divorce, alleged that his wife was of suspicious nature and alleged him of staying out of the house during late hours, drinking and gambling etc. On this aspect we find that even though appellant in her pleadings have raised allegations of respondent entering into illicit relationships, however, during recording of her testimony as RW-1 before the learned Family Court, she is silent on this aspect. However, in her pleadings, appellant has accepted that she had hired services of a private detective in Orlando, US to find-out involvement of the respondent in illicit relation but admitted that she had not filed any complaint against the respondent in respect of his illicit relations.

37. The Supreme Court in the case of **Ravi Kumar Vs. Julmidevi** (2010) 4 SCC 476 has categorically 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’.



38. This Court in its earlier decisions has already held that the sacrosanct bond of marriage is based upon faith and trust and so, raising false allegation of illicit relationship, is ultimate kind of cruelty, which drives the spouses apart and shakes the foundation of marriage.

39. Further, at the first instance, appellant had filed a complaint under D.V.Act in Mumbai which was withdrawn by her. Thereafter, she filed similar petition on 05.03.2013 in Delhi against the respondent. The appellant in her cross-examination admitted that lump sum amount of Rs.2 crores was paid to her in the year 2015-2016 towards full and final settlement; and it is so evident from her statement recorded on 28.08.2015 in the proceedings under Domestic Violence Act, 2005, wherein, she stated that *"I have settled my financial issues with my husband in pursuance of the settlement so I am withdrawing my interim maintenance application as not pressed"*. Thereafter, on 25.11.2017, the learned Family Court dismissed her application under Section 24 of the Hindu Marriage Act, 1955 with the observation that the appellant had conceded of accepting Rs.1 crores 80 lacs from the respondent towards full and final settlement.

40. In our considered opinion, even if it is taken that respondent had failed to financially support the appellant during the period they lived together but despite having received payment of Rs.1 crores 80 lacs from respondent, the appellant had pressed her application under Section 24 of the Act in present proceedings, this shows her ill intention to mentally harass the appellant.

41. It is also to be noted that appellant has also preferred a Probate Petition against sister of the appellant in respect of a flat, thereby challenging the Will of father of appellant.



42. The respondent in his petition seeking divorce asserted that he has been staying separately from respondent-wife since the year 1980, but according to appellant, they are living separately since January, 2013. The parties are more than seventy years old and even at this age of life, appellant instead of giving quietus to their disputes, has chosen to continue with divorce proceedings by making unsubstantiated allegations. In our opinion, it is abundantly apparent that the appellant barely sees any good in respondent and by stretching multiple litigations against him and his sister, she has made it clear that there is no scope for their reunion. Moreover, despite living separately since the year 2013, she has never made an effort to reconcile the disputes.

43. In the light of above, the present appeal filed by the appellant against the judgment dated 29.11.2018 passed by the learned Family Court in HMA No. 1036/2014, is hereby dismissed. Consequently, the marriage of the parties stand dissolved under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

44. Decree sheet be prepared accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 13, 2024

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