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

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Date of decision: 20.03.2024

+ **MAT.APP.(F.C.) 88/2024**

SUBHASH CHAND

..... Appellant

Through: Mr Udit Gupta and Mr Manan Aggarwal, Advocates.

versus

DEEPA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

C.M. No. 17281/2024

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment and decree dated 17.02.2024 passed by the learned Principal Judge, Family Court, Central District, Tis Hazari Courts, Delhi.

3. *Via* the impugned judgment, the learned Principal Judge has dismissed the petition filed by the appellant under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.

4. It is pertinent to note that although the appellant had setup a case of cruelty, he did not step into the witness box. The only witness that he tendered in support of his allegations was his own brother, one, Mr Akash

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Babu (PW-1).

5. The learned Principal Judge has broadly concluded that although the appellant had suffered a paralytic attack, it was not as if he could not have tendered oral evidence.

5.1 Furthermore, the learned Principal Judge, de hors this aspect of the matter, has also concluded that the appellant's Power of Attorney, i.e. Mr Akash Babu (PW-1) had no personal knowledge of the assertions made concerning cruelty in the divorce petition.

6. Concededly, apart from the couple, there were other members of the appellant's family, including Mr Akash Babu, who lived in the matrimonial home. However, admittedly, Mr Akash Babu (PW-1) moved out of the home in 2016.

6.1 According to the counsel for the appellant, the couple have not lived together since 2018. Therefore, as to what transpired between the couple during 2016-2018 was not known by Mr Akash Babu (PW-1). The learned Principal Judge's findings concerning the aforementioned aspects are captured in paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f) and 8(g) of the impugned judgment. For convenience, the said paragraphs are set forth hereafter:-

"a) To begin with, in order to prove allegations of cruelty petitioner did not step into the witness box. It is his younger brother/attorney Akash Babu who came to depose on his behalf. Petitioner did not come to depose apparently for the reason that he suffered paralytic attack on 14.06.2021 and is 'almost bed ridden' ever since then. In his regard, Akash Babu (PW1) in his cross-examination stated, "I have been authorized to appear as an attorney of the petitioner as he is not well. He was paralyzed in the year 2021. He was filed before this." However, the material on record does not persuade me to believe that he is not in a position to give oral evidence. He may have ambulatory problems. But, I do not think that his condition is such that he cannot depose in the court. I say so for several



reasons. He suffered paralytic attack on 14.06.2021. But, as per the petition, just two months later on 20.08.2021 he was busy installing CCTV camera in the house for his safety and security and when respondent and son did not let him do so then he himself called the police on helpline number 100. In this regard, in paragraph no. 20 of his petition, he states, "That first on 30.07.2020 and again on 20.08.2021 the petitioner was installing CCTV Camera in his house for his safety and security purpose, but the respondent and his son objected for the installation of the CCTV Camera and started beating the petitioner, so the petitioner was forced to call the police helpline no. 100, but the police refused to interfere by saying that this is a family matter." Secondly, as per averments in the petition (paragraph no.16), petitioner made a police complaint on 29.09.2021 against respondent and son Nakshatra. That apart, copies of petitioner's police complaints dt. 20.08.2021, 12.03.2022 and 14.03.2022 are on record. The fact that he rakes his grievances by making police complaints implies that he is very much able to comprehend things. Thirdly, copies of petitioner's police complaints dt. 20.08.2021, 12.03.2022 and 14.03.2022 are under his {petitioner's} signatures. The manner of handwriting of these police complaints do not even remotely indicate that petitioner's medical condition is so pitiable that he cannot give oral evidence. But then it is claimed that it was Akash Babu who used to pen down the police complaints for the petitioner. In this regard, in his cross-examination, Akash Babu (PW1) claimed that police complaints were in his handwriting. Nevertheless, the manner and style of petitioner's signatures on these police complaints is apparently quite fluent. Grave illness tends to produce significant deteriorating effect in quality of signatures. But, this does not appear to be the case with the petitioner. Fourthly, in the trial Akash Babu (PW1) was confronted with three photographs (Ex. PW-l/R-1) of the petitioner. Akash Babu (PW1) admitted that these were petitioner's photographs. I have seen the photographs. From these photographs it does not at all appear that condition of the petitioner is such as is being made out by his younger brother. For the aforesaid myriad reasons, I am not inclined to believe that petitioner is not in a position to come and give his oral evidence.

b) Akash Babu was not competent to depose with regard to events/facts personal to knowledge of petitioner {see Janki Vashdeo Bhojwani and Ors. v. Indusind Bank Ltd. and Ors., (2005) 2 SCC 217}. It is only the aggrieved spouse who can depose with regard to events/ facts relating to cruelty and what impact they had on him. An attorney cannot give evidence about the alleged instances of cruelty on his principal and the impact thereof on him (principal).

c) In any event, Akash Babu (PW1) had no information about the crucial facts. He, in his cross-examination, admitted that he had no access to the matrimonial house of the parties since at least year 2016. He deposed, "It

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is correct that I have no access in the house bearing no. 2108, second floor, Desh Bandhu Gupta Road, Karol Bagh, New Delhi.....It is correct that at the time of solemnization of marriage of the petitioner I was residing with them till the year 2016.” He also admitted in his cross-examination that ‘he was not aware of all the talks between the petitioner and the respondent’ When asked about petitioner’s allegations, as set out in the petition and evidence affidavit, qua respondent’s demands for money from him (petitioner) to fulfill her brothers’ greed, Akash Babu (PW1) feigned ignorance. When asked about the allegations of absence of physical relations between the spouses, Akash Babu (PW1) deposed that he derived this knowledge on the basis of hearsay information from the petitioner; and he further deposed that he could not tell about the date when they ceased to have physical relations. It was claimed in the petition that petitioner used to take financial help from his siblings, and when asked about its proof Akash Babu (PW1) deposed that it is only the petitioner who can give the proof. The point therefore is that Akash Babu (PW1) was not privy to the day to day events of the spouses since at least year 2016 and had no knowledge of their inter se relations and conversations. His evidence thus proves nothing vis-a-vis cruelty and the impact thereof on his brother Subhash Chand. In any event, his oral evidence qua events and incidents took place after year 2016 is of no value and counts as nothing.

d) It bears repetition to state that Akash Babu (PW1) has had no access to matrimonial house of the parties since at least year 2016. He can offer no evidence qua events/incidents that took place after year 2016. Source of his information qua events/incidents that took place after year 2016 would be hearsay at best. In Suman Singh v. Sanjay Singh, (2017) 4 SCC 85 it was observed, “A petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such incidents. The incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition.”

e) The allegations as set out in the petition, barring one or two, are too general, vague and omnibus in nature. No specific date of any incident has been set out in the petition or in Akash Babu’s evidence. The statement in the petition that respondent used to quarrel with petitioner, used to tell him not to care for his father, used to demand money from him for her brothers, used to tell him to ask his father to give money to buy a separate accommodation, used to create mischief, used to refuse to do household chores, did not enquire about his well-being, used to publicly denigrate him and his family members, used to always to find faults in the tasks done by him, tried to throw him out of the house and interfere in his work, used to regularly beat and abuse him are too general and omnibus in nature.



General allegations can afford no ground for divorce {see Suman Singh (supra)}. There are no details as to when such incidents took place, what was its background, who witnessed and what the petitioner actually said etc.

f) A specific incident of 26.09.2018 has been cited when respondent allegedly went to younger son's school to withdraw his admission so that he could work at a shop and fetch Rs. 5,000/- - Rs. 7,000/- per month for her, but she was unsuccessful owing to petitioner's intervention. Respondent's stand, as is evident from suggestions given to PW1, is that she had sought cancellation of the admission as the school was Hindi medium and she wanted him to study in a convent school for better future. To this, Akash Babu (PW1) deposed that he had no knowledge whether the school was Hindi medium. Oral evidence of Akash Babu (PW1) on this count proves nothing. It was the petitioner who had allegedly made the intervention and therefore it was only he who could have deposed about the entire background of this incident. That apart, it is not shown or proved as to whether respondent had actually spoken to or approached any shopkeeper to have her minor son employed. Therefore the allegation that she wanted him to work in a shop remains unproven. The other specific allegations of respondent forcibly installing air conditioner on 13.06.2019 and not letting her husband install CCTV camera on 30.07.2020 and 20.08.2021 are also not proved. PW1 Akash Babu derives information qua these incidents only on hearsay information. He has no personal knowledge about these incidents. It is next claimed that son Nakshtra does business of online trading with his mother and earns Rs. 70,000/- per month and despite this they have refused to give a single penny towards household and other necessary expenses. It is to be noted that respondent is an undergraduate. Akash Babu (PW1) in his evidence admitted that he had no evidence to show that respondent and her son were earning Rs. 70,000/- per month out of online business. He deposed that he got to know about this as 'they used to talk loudly about online business in the house.' But the problem is that Akash Babu (PW1) admittedly has had no access to the matrimonial house of parties since at least year 2016 and thus he could have heard nothing. Secondly, one does not become rich and starts to earn in several thousands of rupees only and only on the basis of what one may brag in routine conversations.

g) Respondent (RW1) in her oral evidence admitted that she had moved an application in Mahila Court to restrain her husband from entering the kitchen. An isolated and a solitary incident will not suffice to put an end to the marriage. That apart, it is only the aggrieved spouse who ought to come and depose as to what impact this incident had on him."

[Emphasis is ours]



7. On perusal of the record, we are of the opinion that the learned Principal Judge has appreciated the evidence placed on record and thereafter reached a conclusion that the assertions concerning cruelty had not been made out.

7.1 Except for a solitary incident where the respondent appears to have moved an application before the Mahila Court for restraining the appellant from entering the kitchen, there appears to be nothing substantial to indicate that the respondent has inflicted cruelty, either mental or physical, on the appellant.

8. The record also discloses that the appellant is about 56 years old. We are told by counsel for the appellant that the respondent is about 52 years of age.

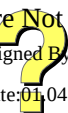
8.1 It is not disputed by counsel for the appellant that the respondent is a home maker and is residing in one of the rooms in the building where the matrimonial house is located.

9. The record also discloses that the couple were married as far back as on 03.05.1995 and from the wedlock they have two sons, aged 27 years and 23 years.

10. The sense we get is that the respondent has no wherewithal or residence apart from the place where she is presently housed.

11. Counsel for the appellant also concedes that no orders for award of maintenance have been passed in the proceedings initiated by the respondent under the Protection of Women from Domestic Violence Act, 2005 and the petition under Section 125 of the Code of Criminal Procedure, 1973.

12. Therefore, for the aforesaid reasons, we are not inclined to interfere





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with the impugned judgment and decree.

13. The appeal is, accordingly, dismissed.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

MARCH 20, 2024

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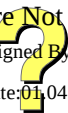
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