



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

% **Reserved on: October 3, 2023**

Pronounced on: April 02, 2024

+ **MAT.APP.(F.C.) 156/2023**

SUMAN KUMAR BHAN

..... Appellant

Through: In person with Mr. Saurabh Agrawal
& Ms. Komal Mundhra, Advocates.

Versus

DURGA BHAN NEE HAIFZ

.....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 appellant in the present appeal under Section 19 of Family Courts Act, 1984 has challenged the impugned judgment and decree dated 14.10.2009 passed by the learned Family Court, Delhi in HMA No.989/2005, whereby his petition seeking dissolution of marriage under Section 13(1)(ia) & (ib) of Hindu Marriage Act, 1956 (hereinafter referred as 'HMA') from respondent-wife, has been dismissed.

2. The facts of the case, as enumerated in the present appeal by the appellant, are that appellant-husband and respondent-wife got married on 18.11.1995 as per Hindu Rites and Customs and no child was born out of



this wedlock.

3. According to appellant, at the time of marriage, the respondent had not disclosed her correct age and she was actually 08 years elder to him being 45 while appellant was 37 years old.

4. The appellant has alleged that his marriage with respondent was consummated but respondent did not conceive. On 31.03.1995, when he was outstation to Gujarat for his business purpose, the respondent pretended to have conceived, upon which he got very happy and kept enquiring over phone about her well being. However, one week later the respondent told him that she had lost the child, due to which he abandoned the tour and came back to Delhi but the respondent refused to go to the doctor stating that pregnancy was dissolved.

5. The appellant has averred that he took the respondent to best of Gynaecologists for treatment but the doctors opined that since she had cyst in the ovary, the surgery was advised. The date of surgery was fixed for 31.08.1996 but the respondent on the pretext of operation of her mother's brain tumour, did not go. Thereafter, the surgery was scheduled for 18.09.1996 and the doctor opined that the respondent was already operated earlier and her left ovary and uterus were removed, which fact was not disclosed by her prior thereto.

6. The appellant has alleged that despite the fact that respondent had lied about her age and was not able to conceive, he tried to keep her happy but she refused to cohabit with him and used filthy language for him and thereby, he had to suffer great mental agony and torture at the hands of respondent. The respondent, thereafter, left the matrimonial home on



27.04.2000 and never returned.

7. The appellant preferred petition under Section 13(1) (ia) (ib) of the Act seeking dissolution of marriage with respondent.

8. In addition to the afore-noted assertions, the contentions of appellant as have been noted in the impugned judgment by the learned Family Court, are that the respondent ridiculed him before his friends and relatives; respondent used to have sexual relations with her friends etc. who she used to bring to her matrimonial home and also had several extra marital affairs and warned the appellant to not come in her way; and respondent used to stay away from home for days and refused to come back and upon enquiry, she used to bring some robust persons to scare him.

9. The appellant also alleged that respondent never did household chores and did not obey his parents and also due to her misbehaviour, his mother expired on 23.11.1998. The appellant alleged that the respondent left the matrimonial home on 27.04.2000 and took away all the jewellery and cash of Rs.5,000/- with her. The appellant claims to have gone to the parents' house of respondent to request her to come back to home but she picked up quarrel and misbehaved with him. According to appellant they had not cohabited since 27.04.2000.

10. The respondent, on the other hand, in her written statement pleaded that she was cooperative, and submissive toward the appellant and his family members. They lived in a joint family which consisted of eight members and appellant's mother was not required to do anything. However, she died due to chronic illness after a long treatment. The respondent averred that her surgery was delayed because appellant and his family



wanted her family to bear her medical expenses. The respondent alleged that only a part of her ovary was operated upon in surgery and the appellant did not consider her suggestion to adopt a child. She had discovered a plot to kill her by burning her alive, as she found her evening attire soaked in kerosene oil. The respondent alleged that though she was compelled to leave her matrimonial home on 27.04.2000 but came back to the matrimonial home and stayed there overnight. But next day when she returned from the office, she found the main door locked and waited till 10:00 PM and thereafter, went to her parental house. The respondent alleged that appellant was forcing her to sell of the DLF plot and other properties, which were in her name so that he could purchase a big plot in his name for opening his factory business. The respondent denied the allegations of adultery and also sought assistance of voluntary organization to counsel the appellant.

11. On the pleading of the parties, the learned Family Court framed the following Issues:-

“1. Whether the respondent has treated the petitioner with cruelty as claimed by him?

OPP

2. Whether the respondent has deserted the petitioner as claimed by him?

OPP

3. Relief.”

12. The appellant got himself examined as PW-1 and the respondent got herself examined as RW-1 and no other witness was examined by the parties.

13. The learned trial court dismissed the appellant's petition while observing that the appellant did not mention any specific date or incident



when the alleged cruelty was committed upon him by the respondent. He could not prove the bad conduct of the respondent which could give rise to an apprehension in the mind of the appellant that living with the respondent was unsafe and harmful. To the mind of learned Family Court, the appellant had married the respondent knowing about her wealth and immovable properties. However, when she declined to sell the plot of land at DLF, Gurgaon, the appellant got annoyed and aggravated cruelties upon her.

14. The learned Family Court also observed that the appellant had failed to bring on record any witness or evidence to rebut the allegation of the respondent that she had found her evening attire doused in kerosene oil, which shows his mental reckless behaviour and thought of throwing the respondent out of the matrimonial home.

15. The learned Family Court further held that the respondent was compelled to leave the matrimonial home owing to the cruelties and atrocities committed by the appellant and had failed to bring home the ingredients which constituted desertion on the part of the respondent.

16. In the present case, the appellant-husband has averred that the learned Family Court did not appreciate his evidence and also the fact that since long there was no cohabitation with the respondent and so there is irretrievable breakdown of marriage.

17. **Submissions heard.**

18. When the present appeal came up for hearing before this Court, Notice was directed to be issued to respondent through SHO concerned. This Court vide order dated 19.09.2023 observed that respondent could not



be served and learned counsel for the appellant submitted that whereabouts of respondent-wife were not known to appellant or his family. To this effect, affidavit dated 26.09.2023 was filed by the appellant-husband. The appellant in his affidavit dated 26.09.2023 has stated that he has no contact with respondent for last over 10 years and she and her family, are not residing at the address submitted before the trial court. The appellant has further averred that through reliable sources it has come to his knowledge that respondent has passed away and even whereabouts of her parents are not known.

19. Pertinently, the respondent had appeared through counsel on 12.07.2010 and on the said date, parties were referred to Mediation and Conciliation Cell of Delhi High Court to explore possibility but efforts could not be fruitful and the appeal was admitted for final hearing. The respondent was proceeded *ex parte* vide order dated 03.10.2023.

20. In the light of the afore-noted facts of the present case, this Court has gone through the examination of the parties recorded before the learned trial court.

21. The appellant, in his affidavit by way of evidence, has alleged that there was no demand of dowry from his side nor any dowry was given by the parents of the respondent. The appellant admitted that having lived with the respondent for about 05 years, she was dominating and commanding upon him. She had taken all the things in her custody, including the jewellery and cash etc. and she never bothered to inform him when she wanted to visit her parental home. The appellant has alleged that there was constant interference from her mother, sister and brother, who continued to



interfere in their married life and also threatened to kill him if he ever tried to take the respondent with him.

22. The appellant alleged that he was unaware that the respondent was earlier operated for her left ovary and uterus removal and this fact was concealed prior to the marriage. The appellant also reiterates that the respondent was pretending to have conceived but later on the pregnancy was dissolved. The appellant alleged that she had denied sexual relationship with him and hence, deprived him of such marital bliss. She also demanded to build plot in Gurgaon; and she misbehaved in front of her friends and relatives. It was alleged that the conduct of the respondent *qua* the appellant in front of her friends was shameful as her friends used to see her indifferently and he could not do anything when they sat and committed intolerable sexual acts. The respondent allowed such friends and persons to come to their home and had developed extra marital relationship and started threatening the appellant that if he ever tried to interfere, he would be killed by her acquaintance. The appellant alleged that he has suffered cruelty at the hands of the respondent.

23. In his cross-examination, the appellant admitted that the dowry articles given in her marriage were handed over to the respondent as per the list. He also admitted that the respondent was having a DLF plot at Gurgaon, a property at Indirapuram, a DDA flat in her name. The appellant admitted that the respondent had left her matrimonial home on 27.04.2000 and he could not tell any date or time when he had gone to her parental home to bring her back to the matrimonial home. The appellant also admitted that he had never made a complaint to the police in respect of the respondent's



misbehaviour, threat and extra marital relations.

24. The respondent, in her affidavit by way of evidence, stated that since the inception of their marriage, behaviour of appellant's family members was cruel towards her. She asserted that even though there was no demand of dowry, her parents had given several gifts to the appellant, his family and other relatives. She refuted the claims of the appellant that she was dominating and commanding, instead stated that she was soft and polite and that she did her official as well as domestic duties sincerely. The respondent stated that besides her, there were two sisters-in-laws (brother-in-law wives) and so there was no occasion for the appellant's mother to do household chores. The respondent stated that the appellant's mother had died due to chronic illness after spending long time in the hospital and in no way she had committed any cruelty upon him or his family which could have resulted in her demise. The respondent alleged that the appellant in connivance with his brother Kush Bhan, threw her out of the matrimonial home at late hours in the night because she had refused to sell her DLF plot. The respondent pleaded that despite such atrocities, her mother, brother and sister pleaded the respondent to let her rightfully live in her matrimonial home. However, the appellant disowned her and showed complete neglect of his duties as husband.

25. The respondent stated that her ailment requiring surgery was an act of God which has surfaced post marriage and only a part of ovary was removed. However, the appellant tortured her for not being able to conceive and request for adopting a child was not considered by him. The respondent stated that one day, after she returned from office, she found her clothes



soaked in smell of kerosene oil. She dodged use of those clothes that evening and found threat to her life. She under duress, left from her mother's home. The respondent stated that even thereafter, she had once again come back to her matrimonial home but next day when she went to her office and returned in the evening, she found that the appellant had locked the entry door and she had to sit on road till 10:00 p.m. and thereafter she again left for her mother's home. The respondent stated that the appellant had tried to malign her character, image and modesty despite her being positive and patient all through their married life. The respondent alleged that the appellant had thrown her of matrimonial home because she had refused to sell plot of land against which he wanted to purchase a factory in his name.

26. During her cross-examination, the respondent stated that she had gone to voluntary organization for settlement in order to bring peace to her matrimonial life and refuted the allegations levelled by the appellant.

27. The bond of marriage is built on the mutual respect, trust, and love of the partners. There is a fine line separating cruelty and misbehaviour. To determine whether a spouse's action towards other qualify as 'cruelty', as has been spelt out under section 13(1)(ia) of HMA, has been spelt out by the Hon'ble Supreme Court in ***Shobha Rani Vs. Madhukar Reddi, (1988) 1 SCC 105*** while observing as under:-

“4. Section 13(1)(i-a) uses the words “treated the petitioner with cruelty”. The word “cruelty” has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and



obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

28. Also, in **A. Jayachandra Vs. Aneel Kaur**, (2005) 2 SCC 22, the Hon’ble Supreme Court has observed as under: -

“10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls



within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.”

29. In the present case, there is no dispute that the marriage between the parties was solemnised on 18.11.1995 and no child was born out of this wedlock. The respondent left the matrimonial home on 27.04.2000 and for more than one decade the parties have been living separately.

30. Relevantly, the appellant has alleged that the respondent did not



disclose him her true medical condition and details with regard to her surgery, whereas the respondent, in her written statement, has averred that the ailment suffered by her was an act of God that surfaced post marriage. On this aspect, the learned trial court has observed that the appellant has not been able to bring forth any document on record to show the medical condition of the respondent. The appellant has failed to substantiate his allegation that at the time of her surgery on 18.09.1996, the doctor had opined that the respondent had already been operated earlier, which fact was not brought to his knowledge by the respondent. No such prescription, mentioning the aforesaid opinion of the doctor has been placed on record by the appellant. In the absence of any document on record, this court is unable to comment as to what was the nature and extent of the injury. However, by making such allegation, which is not substantiated, the appellant has committed grave cruelty upon the respondent.

31. So far as the allegation of the appellant that his mother was forced to do household chores and was treated with cruelty at the hands of the respondent is concerned, this court finds that it is not in dispute that the parties were living in the joint family set up where two brothers of the appellant alongwith their wives also shared the same room and hence, it cannot be said that the mother of the appellant was forced to do household chores by the respondent.

32. The respondent has also alleged that after her return from office, she found her night wear soaked in kerosene and she brought this fact to the knowledge of the elder brother and his wife, who advised her to throw her clothes in the bathroom. However, the trial court on this aspect, has rightly



observed that the appellant did not examine his brother and sister-in-law (*bhabhi*) to falsify this allegation and also there is no cross-examination of the respondent on this point.

33. The Hon'ble 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. Similar observations were made by the Coordinate bench of this Court in the case of ***Rita Vs. Jai Singh*** (2017) SCC OnLine Del 907.

34. The appellant has also raised the allegation that the respondent used to bring her friends to her matrimonial home with whom he had illicit relations, however, he has not provided the details of such friends or not led any witness to substantiate his allegation.

35. The Hon'ble Supreme Court in ***Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate*** (2003) 6 SCC 334 has observed and held as under:-

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character,



*honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. **That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court.** On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”*

36. In our considered opinion, such kind of allegations which assassinate the character of the spouse amounts to highest level of cruelty, which no doubt shall shake the foundation of their marriage. In the present case, the appellant by levelling allegations of respondent having extra marital affair, has committed immense cruelty upon her.

37. It is not in dispute that the respondent, prior to her marriage with the appellant, had a few properties in her name. The appellant has also not been able to show that he had no interest whatsoever in those properties and had



accepted that the respondent has informed him about the said properties prior to their marriage. The respondent has also raised allegations that on the instigation of his brother, Khush Bhan, the appellant used to torture her to sell those properties, however, the appellant has not cross-examined the respondent on this allegation.

38. As far as allegation of respondent that she was thrown out of the matrimonial home is concerned, the learned Family Court in the impugned judgment has held that appellant did not make any effort to bring back the respondent to the matrimonial home and he never contacted her after 27.04.2000, even though she was willing to come back and had also met husband of appellant's elder sister and also approached a voluntary organization. In our opinion, the respondent was compelled to stay away at her parent's house because husband and his family members tried to grab properties which were in her name. The appellant has not been able to substantiate any date or occasion when he had gone to the parental home of the respondent to bring her back to the matrimonial home. Moreover, he did not also file petition under Section 9 of the Act seeking Restitution the Conjugal Rights, which shows that he had deliberately shunted her out of the house and was not willing her return.

39. The parties have been living separately since 27.04.2000 i.e. the day respondent left the matrimonial home.

40. In ***Bipinchandra Jaisinghbhai Shah Vs. Prabhavati*** (1956) SCC Online SC 15, the Hon'ble Supreme Court has observed that: -

“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.”

41. The Hon’ble Supreme Court in **Bipinchandra Jaisinghbhai Shah (Supra)** has further noted 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.*

42. 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.”



43. In the backdrop of the facts of the present case, the learned Family Court has rightly held that appellant has failed to establish that respondent had committed cruelty upon him and had deliberately chosen to stay away from his company. Instead, the manner in which appellant had committed cruelties upon the respondent during their stay of five years together, the respondent felt threat to her safety and dignity and was thus, forced to stay at her parental home.

44. Finding no error in the impugned judgment, the present appeal is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2024

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