



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12th September, 2023

Pronounced on: 27th February, 2024

MAT.APP.(F.C.) 188/2023 & CM APPL. 33480/2023 (Stay)

SMT MEENU GUPTA

..... Appellant

Through: Mr. Sameer Dewan, Advocate.

versus

SHRI SANDEEP KUMAR JAIN

..... Respondent

Through: Mr. Deepak Khadaria, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (*hereinafter to be referred to as "HMA"*) has been filed on behalf of the appellant/wife against the Order dated 26.04.2023 passed by the learned Judge, Family Court vide which divorce has been granted on the ground of cruelty and desertion in the petition filed by the respondent/husband under 13(1) (ia) and (ib) of the HMA.

2. Briefly stating, the parties got married on 04.06.2009 as per Hindu rites and ceremonies at Delhi. Thereafter they were blessed with one son on 27.01.2011.

3. The respondent/husband (*petitioner in the Divorce petition hereinafter referred to as the 'respondent'*) in his Divorce petition had



asserted that the appellant/wife (*respondent in the Divorce petition hereinafter referred to as the 'appellant'*) did not care for him and his family since the day of their marriage. It is alleged that the appellant was in the habit of hurling sarcastic comments at him and his family members. She used to quarrel with him on petty issues without any reason and would become calm only after great difficulty and persuasion. He asserted that every weekend, the appellant was adamant to go to her parents' home without any regard to his wishes. Further, she never took any responsibility and did not accept the respondent or his mother. She did not do any household chores and did not take care of even his basic requirements, like food and clothing and would make excuses.

4. He asserted that after about four months of the marriage, in the first week of November 2009, the appellant left for her parents' house on the pretext that her cousin was getting married. Despite various requests, she returned after six months in May 2010.

5. The respondent further asserted that in June 2010, he took her to Kashmir on a holiday for 5–6 days with a hope of normalization of their matrimonial relationship. Against his hope, upon returning from Kashmir, the situation went from bad to worse as she continued to throw tantrums and humiliate him.

6. In the same month, she became pregnant and started threatening the respondent that if they did not move out of the matrimonial home, she would abort the baby. To satisfy her illogical demand, the respondent took a flat at 534, Sector 15, Part – I, near Jain Mandir, Gurugram, Haryana on a monthly rent where they started living from 24.06.2010 onwards. During her entire pregnancy, she restrained the respondent from visiting his parents by



threatening that if he did not listen to her, she would jump out from the house which was on the second floor. Thus, he was under constant threat from the appellant causing him huge mental agony. He claimed that the appellant had always wanted to live separately and lead a flamboyant life despite being aware that he had certain obligations towards his parents, being their only son.

7. The respondent submitted that the appellant did not take care of his parents when the respondent's mother suffered from a brain stroke July 2013, and his father had an AICD implant put in his heart as his heart function had come down to 15% in March 2014.

8. On 31.10.2014, the respondent's father died and they shifted back to the paternal house of the respondent. However, the appellant neither helped his mother in any of the post death ceremonies nor provided any moral support in her grief. Mrs. Ashu Gupta, the sister of the respondent was called from her own matrimonial home and did all the work for post death rituals.

9. It was further alleged that due to the demise of the father of the respondent, the trip that had been booked to Goa for the month of December, 2014, had to be cancelled. The appellant created a scene at home because of the cancellation of the trip and compelled him to rebook the trip to Goa for January, 2015. As they had gone for an entire week to Goa, the respondent had to request his sister to come and stay with his mother to take care of her.

10. On one such instance in December 2014, when he wanted to get intimate with the appellant, she rudely pushed him from the bed and went out of the bedroom. On being confronted, she lied and told him that she was



unwell and did not let him have coitus with her.

11. It was claimed that on Grandparents day on 07.03.2015 in the school of the son, because of a slight difference of opinion, the appellant went away threatening the respondent that he would find her dead body on the road. The respondent informed the mother and the brother of the appellant but instead of taking any action, her mother told him not to call them. The respondent, being disturbed by such events, had a meeting with the parents of the appellant at their residence in Punjabi Bagh. He requested them to advise him on further course of action upon which, one of the uncles of the appellant, Dr Suresh Gupta, a senior consultant at Sir Ganga Ram Hospital, suggested that the appellant should be taken for a consultation with the Clinical Psychologist and suggested the name of Dr Aarti Anand. However, the appellant being very impulsive and aggressive, was not ready to go there and with great difficulty the respondent took her for a consultation with the recommended Doctor at Sir Ganga Ram Hospital in March, 2015. Thereafter, things improved marginally, however she was back to her tantrums after some time. She refused to go for further consultation with the psychologist and when he took her to the hospital, she started screaming and crying aggressively in the Doctor's room.

12. It was asserted that on 19.11.2015 at about 9 PM, the appellant had a scuffle stating that she wanted to go to her parents' house and began shouting at him. She created a scene in front of his mother and left the house threatening that she would go to her parental house and call the police. The respondent tried to pacify her but to no avail. He also called the appellant's brother and requested him to talk to her parents about the behaviour of the appellant. He was informed telephonically by his cousin, who stayed nearby



in Sector – 15, Gurugram, that the appellant had stayed overnight at his house on the pretext that she could not take the Metro from Gurugram to Delhi. The respondent with great difficulty brought her back to the matrimonial house from his cousin's place. However, the very next morning she left for her parents' house and did not come to attend the engagement ceremony of his cousin on 21.11.2015 as she was not interested in attending any function of his family, causing him grave mental agony.

13. On 15.12.2015, the mother of the respondent fainted in the bathroom and it was only due to timely help by him that she was rushed to the hospital. However, the appellant did not show any concern for her whatsoever; in fact she went away to her parental house the very next day. For the sake of his son, the respondent did not react to the incident but later on he told the appellant that she ought to take care of his mother and should not have shown such indifference. Upon this, she again shouted at him and told him that he should not teach her how to behave in the family. She also threatened him that she would go out where ever and whenever she wanted.

14. It was further submitted that on 24.02.2016, the real *Mama* of the respondent had died and his *Rasam Pagdi* was fixed for 05.03.2016. However, the appellant, instead of attending the prayer ceremony, left the matrimonial house 3-4 days prior to the ceremony on the pretext that she had to go to *Kumbh Mela* with her parents. Thus, it was alleged by the respondent that the appellant was disinterested and did not like to socialise in the family of the respondent. She never cared to follow any family rituals of the respondent, and was always more interested in celebrating the festivals and birthdays with her parents/friends.

15. It is asserted that he and his family members tried their best by taking



her parents and her brother into confidence and messaged the brother of the appellant on 07.08.2016 regarding such conduct of the appellant but did not receive any response. Instead of mending her ways, the appellant started levelling false accusations at him and his family members for no reasons. She also made the most audacious remark by referring to him and his mother as *husband and wife* which caused him extreme emotional turmoil. He claimed that her indifferent and callous attitude was also known to the neighbours as she, in a fit of rage, used to come out of the house and publicly abuse him and his family members. She also physically abused him by scratching him by nails and throwing slippers on him. She did not realise any of her mistakes and did not even bother to save her marriage.

16. It was asserted that on 18.08.2016, the appellant left the matrimonial home along with the minor son stating that she was going for *Raksha Bandhan* to her paternal home. However, she refused to return thereafter. It is asserted that he came to know from the appellant, after he noticed that the locker key was missing, that she had taken all the jewellery from her locker on 19.08.2016.

17. Her intention to not return back became glaringly evident when she stopped sending the son to his school and got him admitted to SD Public school, East Punjabi Bagh, Delhi – 26 in April 2017. His endeavours to meet and talk snowballed as it was told that she would never return to her matrimonial home. His efforts to connect in December, 2017 through the Manager of the Company where she used to work, also did not result in any fruitful result; her behaviour was the same as before and finally he realised that he could not do anything more than this. Her intention of not returning to matrimonial home was also evident when she did not come despite his



mother not keeping well and did not even visit her once when she underwent knee replacement surgery in July, 2018.

18. The appellant went ahead to lodge a complaint on 16.07.2018 to Women Cell and the respondent was called to the Police Station. It was claimed that various meetings had taken place between the parties for reconciliation, including the one on 29.07.2018 before the Investigating Officer, Police Station, Sector 15, Gurugram, Haryana. Further, Mediation proceedings had also taken place between them before Crime Against Women Cell, Mahila Thana in February, 2019 but there was no fruitful result because of the adamant behaviour of the appellant. She only stayed for 22 months with her in-laws, from 01.11.2014 to 18.08.2016.

19. The appellant's police complaint shows that she had left the matrimonial home of her own accord on 18.08.2016 without giving any information to the respondent or his mother in this regard.

20. The respondent further alleged that in order to harass him the appellant filed a *petition under Section 125 of CrPC on 08.05.2019* seeking an exorbitant amount of ₹44,000/- per month as maintenance when in fact, she herself draws a salary of ₹77, 522/-p.m. as per the salary slip filed by her in maintenance petition. Vide order dated 24.02.2020, the said petition was disposed of with the consent of the parties and it was directed that ₹11,000/- per month shall be paid to her towards maintenance, directly in her bank account.

21. It was further asserted that the appellant was not allowing him to meet the son, and he was constrained to file a *Guardianship Petition under the Guardianship and Wards Act, 1890*. The visitation rights to meet his son was granted to the respondent by the Court. However, the respondent did



not facilitate his meeting with the child in a congenial atmosphere and created trouble for him. This conduct of the appellant caused him grave mental agony as she was adamant on not letting the son meet him.

22. He stated that it was the appellant who was responsible for the turmoil in the matrimonial relationship and the parties started to drift apart. She was the one responsible for the “no-return” situation due to the scandalous allegations levelled by her during their marriage. The respondent claimed that the appellant had deserted him and withdrawn from his society without any reasonable excuse from August, 2016. *As there is no possibility of any reconciliation between them, the respondent filed for divorce on the ground of cruelty and desertion.*

23. **The appellant/wife (who was the respondent in the Divorce Petition before the Family Court) in her Written Statement, denied the allegations of cruelty, as made against her by the respondent/husband.** It was submitted that despite having been given a cash of Rs.15,00,000/- along with the jewellery items, the respondent and his family were not satisfied, on account of which they developed indifference towards her. Time and again, she was harassed for not having brought sufficient dowry. The appellant asserted that since the day of a marriage, she performed all the household duties and gave due respect to the respondent, his family members and the relatives, who visited their house. She did all the household chores, so much so that no maid was employed for helping her in the household work. Her mother-in-law never served food. She never faulted in discharge of her duties as a daughter-in-law but was unable to get any reciprocal sentiments from her mother-in-law. She was denied the fundamentals like using of washing machine. Every weekend, she would find her one or two sets of



clothing missing and on enquiry, she was told by her mother-in-law, to bring more clothes from her parental home.

24. It is further asserted that she participated whole-heartedly in all the festivals and the family functions and gave due respect to all the relatives. On the occasion of first *karva Chauth*, as she tried to take the blessings of her mother-in-law by touching her feet, she refused to let her do so and even told her that there was no need for her to keep the fast. The respondent was like a silent speaker, who did not intervene.

25. It is asserted that she was never accepted as a family member and was never introduced to the guests so visited their house. She was not permitted to interact with the neighbours. Her mother-in-law particularly had little affection for her and her husband had close affection for his mother. She was threatened time and again. She was not only abused by the mother-in-law but always threatened that she would not let her stay in the matrimonial home.

26. The respondent also did not show much affection towards her as he was under the influence of his mother. It is asserted that the influence of the mother-in-law was so pervasive on the respondent that when she would go to sleep at around 11 p.m., the mother-in-law would telephonically call the respondent to come out of the room. Whenever the appellant tried to enquire from the respondent about the reason for his having been called, he would just tell her to go off to sleep.

27. He went for an official trip to Bahrain but refused to take her along, on the pretext of huge expenditure. He used to beat her on flimsy and petty matters and even used to pour hot tea on her hand and make videos.



28. She got pregnant in June, 2010. The parents of the husband on coming to know of her pregnancy, did not open the door of the house for her and asked her to leave the matrimonial home immediately, without her clothes and medicines. In such a situation, she was compelled to stay for about 10 days in the house of paternal aunt (*Tai*) of the respondent, while house could be arranged on rent. She has asserted that during her pregnancy, she was not taken care of and was made to do all the household work. The respondent even asked her to get the child aborted as his parents did not want them to have a child and that the child was unlucky for the family.

29. The child was born in the hospital on 27.01.2011, but none of his family members came to see her and the child. The respondent's sister was the only one who visited the hospital but that too, after 4-5 days. She subsequently came to know that the respondent's father had threatened everyone not to visit the hospital to see the child. The entire medical expenses were borne by the parents of the appellant.

30. The appellant has further asserted that the respondent's father retired as a School Teacher on 31.07.2009, but he took an extension for two more years. She was not aware that he had any health complications. The angioplasty report was also not shown to her and it was not in her knowledge that his arteries were blocked. She subsequently came to know that the father-in-law was a chain-smoker. She would prepare the food to the liking of the father-in-law, who regularly consumed oily food and butter despite his heart complications. When she would object to his taking such food, the respondent would rebuke her. She despite all the resistance from the respondent and his mother, took good care of the father-in-law.



31. The appellant has claimed that she came to know in March, 2014 that her father-in-law was critical and was given ACV Implant in his heart. She immediately rushed to the hospital from her Office but was abused by her mother-in-law, who questioned her having come to see the father-in-law. The appellant did not react and tolerated the abusive comments. She even took leave from her Office to take care of the father-in-law. However, her mother-in-law forced her to go to her parental home despite which she stayed in the hospital.

32. On 01.07.2010, the respondent took her to rented accommodation in Gurugram, Haryana, on a monthly rent of Rs.8,500/-. It is asserted that the respondent's parents had compelled them to set-up an independent home. They stayed in a rented accommodation from 01.07.2010 till 31.10.2014. They left the rented accommodation and shifted back in the house of mother-in-law on the demise of her father-in-law on 31.10.2014. She participated in all the last rituals of her father-in-law and always give support and help to her sister-in-law in the household work and the kitchen work., but the conduct of the mother-in-law continued to be difficult towards her. There were 2-3 family marriages wherein she got an opportunity to meet the relatives but it was not to the liking of her mother-in-law.

33. The appellant has asserted that while they were living in rented accommodation from July 2010 to October 2014, the parents of the respondent never visited them even though the respondent regularly visited his parents. He would even take the child with him to his parental home but never informed her about their well-being, despite her asking. He told her that his parents did not want her to either visit or speak to them.



34. The appellant has asserted that the respondent had scant affection for the child and on the Grand-Parents day in the child's School on 07.03.2015, he left abruptly and unnecessarily gave a twist to the telephonic message only to gain sympathy and to claim that the appellant was irresponsible. Her father even went to meet the respondent and his parents, where the respondent admitted his mistake of leaving the school premises, but assured that the same history would not be repeated.

35. The appellant has further submitted that the mother-in-law had fainted on 15.12.2015 and was taken to the hospital by the respondent, without informing her. When she returned from the Office in the evening, she was not told about the incident. It is claimed that she was being tortured and beaten by the respondent and his mother and when she told them she would call the police, they snatched her phone and threw it away. In order to save her life, she left the house at late hours and thought of going to the house of the respondent's paternal aunt (*Tai*), who was living nearby in the hope of getting the help and that she would understand her predicament instead; she informed the respondent and told him to take her away from her house.

36. The appellant has admitted that she along with her son, had gone to her parental house on 18.08.2016, on the occasion of *Raksha Bandhan*. She was told by the respondent and his mother that she should bring back gifts from her parents lest she could continue to stay in her parental home. They did not let her return till their dowry demands were fulfilled. She went to her parental home because of the pressure of the respondent and his mother. She denied that she took any jewellery along with her. However, she admitted that she had operated the locker on the next day of leaving the matrimonial home but asserted that all the jewellery in the locker, had been purchased by



her from her own salary during the years 2011 to 2014. She has claimed that she had never left the matrimonial home and all her belongings were still lying there. Subsequently, she became aware of a complaint dated 24.08.2016, that was made against her by the respondent.

37. She has asserted that whenever she tried to talk to respondent, he told her to continue to stay in the parental home. She asserted that the renovation work in the house had been commenced not in the year 2016-17 but in January, 2015 and she was told to take a loan of Rs.25,00,000/- for house renovation or to bring this amount from her parents, if she wanted to continue to live in the matrimonial home. This condition was again repeated on the occasion of *Raksha Bandhan*, when she finally left on 18.08.2016. It is claimed that she remained in the matrimonial home from November, 2014 to 18.06.2016, for about 20 months and suffered all their atrocities.

38. The appellant has admitted that she got the child admitted in S.D. Public School, Punjabi Bagh, Delhi, as it was not certain whether she would be able to join her matrimonial home. She has denied that she prevented the respondent from ever meeting the child. She even tried to talk to the respondent many a times and make the child also talk to him, during the period from December 2017 to March 2018, but he showed no interest in talking to them. So much so on 03.06.2018, the mother and the respondent happened to see the child in the Ambience Mall, Gurugram but they completely ignored her and the child. She immediately called the respondent on the telephone but he did not show any interest in meeting the child and stated that they have already left the Mall. The appellant has thus, asserted that it is she, who had been subjected to cruelty and the petition was without merits.



39. On the basis of pleadings of the parties, the following issues were framed on 27.01.2021 by the learned Judge, Family Court:

“(i) Whether petitioner is entitled to a decree of divorce on the ground of cruelty under section 13 (1) (ia) of The Hindu Marriage Act, 1955? OPP

(ii) Whether petitioner is entitled to decree of divorce on the ground of desertion under section 13 (1) (ib) of The Hindu Marriage Act, 1955? OPP

(iii) Relief”

40. **The respondent examined two witnesses** namely, himself as PW1 and PW2 Dr. Arti Anand, Consultant Psychologist, Sir Ganga Ram Hospital who deposed about the appellant's treatment.

41. **The appellant examined five witnesses** on her behalf namely, herself as RW1; RW2 Mrs. Kamlesh Devi her mother; RW3 Sh. Parmod Aggarwal her brother-in-law(jija); RW4 Sh. Parijat, Manager of Toluna India Pvt Ltd, where the appellant used to work and RW5 Ms. Divya Rani, Manager in State Bank of India, Sector 15, Gurugram, Haryana, where the parties had a joint locker.

42. **The learned Judge, Family Court**, observed that the averments of the appellant that she was not aware of the medical condition of her father, despite residing in the same home was nothing but feigning of ignorance and taking a posture, which was totally unnatural and beyond the comprehension of a reasonable person. The father-in-law having health issues must have been visiting the hospital regularly and the least the appellant could have done was to enquire about the health of the respondent's father. Her explanation of not being aware of the medical condition of the father-in-law, was held to be not believable.



43. The learned Family Judge further observed that the appellant admittedly had gone in the last week of November, 2009, to attend the cousin's marriage that was scheduled in the first week of December, 2009 and she finally returned after nearly six months i.e. in the first week of April, 2010. She admitted that the respondent had visited her, once or two times but denied that it was for the purpose of taking him back. She admits that she eventually came back in April, 2010 along with the respondent. The preponderance of probability would thus, reflect that the appellant had gone to reside with her parents from November 2009 to April 2010, not on account of demands of dowry which she has alleged was being made by the respondent, but rather to create pressure on the respondent to stay away from his parents. Moreover, it was observed that on becoming pregnant in May/June, 2010, the appellant started to threaten him to separate out or else she would abort the child. This again reflects that the appellant had wanted to live separately and away from her parents-in-law. The learned Family Judge also noted that the appellant had threatened to extract a flat from her husband in divorce proceedings.

44. The staying away of the appellant from the respondent for more than six months for no reason, the threats to abort the child if the respondent did not take a separate accommodation and a claim for flat in divorce proceedings, were all held to be acts which caused the husband mental agony and constituted cruelty. The appellant's assertion that she was prevented from visiting the mother-in-law, when she suffered a brain stroke was held to be unbelievable. The detached conduct of the appellant was held to be cruelty towards the respondent. It was also held that the allegations of



respondent failing to take care of the child, was false and amounted to mental cruelty.

45. Though allegations of dowry demands were made but they were neither substantiated nor was any Police Complaint was ever made by the appellant. The appellant never made a single complaint throughout her marriage and even thereafter despite having left the matrimonial home in the year 2016.

46. It was also concluded that the marriage is long dead and over. All her allegations that the respondent and his parents being cruel towards her, were unsubstantiated. It was held that the appellant had treated the respondent with cruelty and had also deserted him on 18.08.2016, without any explanation with an intent to not return to the matrimonial home. The divorce, was thus granted on the grounds of cruelty and desertion.

47. Being aggrieved, the appellant has filed the present appeal.

48. **Submissions heard** and record perused.

49. Admittedly, the parties got married on 04.06.2009 and one son was born from their wedlock, on 27.01.2011. However, the parties admittedly separated on 18.08.2016; thus it is apparent that their marriage survived for seven years.

Cruelty:

50. The respondent had asserted that the appellant since marriage, had no interest to settle in the matrimonial home and failed to discharge the household duties. She even failed to take care of the father-in-law, when he fell sick and later when the mother-in-law suffered a brain stroke in the year 2013. Though the appellant had asserted that she discharged all her matrimonial obligations and gave due respect to the family members and to



the relatives and also took care of the parents-in-law but from the evidence as led by the parties, it is evident that there were adjustment issues between the parties, which largely were on account of the mother-in-law. This is evident from the allegations of the appellant that when she would go off to sleep, the mother-in-law would call the son outside by making a telephone call and that respondent on return would not even disclose to her the conversation that he had with his mother.

51. Clearly, there were *inter se* issues between the appellant and the respondent and the appellant harboured a suspicion of her mother-in-law influencing the respondent, though she has not been able to prove any foundational basis on which her apprehension could be justified. The respondent had asserted that the appellant went to the extent of making the most audacious remark by referring to him and his mother as *husband and wife* which further reinforces that appellant had serious issues with her husband having affection for his mother. Making remarks to such an extent is an act causing the respondent extreme emotional turmoil.

52. It is not denied that the appellant went to her parental home in November, 2009, that is after about four months of her marriage and returned only after six months in April, 2010. It is apparent that because of the appellant was having issues in her matrimonial home, she went to her parental home. No cogent explanation is forthcoming as to why the appellant went to stay with her parental home for six months, especially when the marriage of her cousin had been held in December, 2009 itself and she had no reason to continue to stay in her parental home till April, 2010.

53. The explanation for her conduct can be inferred from the testimony of the respondent, who has asserted that she was disinclined to stay with his



parents in the matrimonial home and was insisting on a separate accommodation. It is evident that she went to stay with her parents as she wanted to exert pressure on the respondent to take a separate accommodation. Though the appellant had claimed that it was her mother-in-law, who was not inclined to keep her in the matrimonial home when she came to know in June 2010, about her pregnancy, but from the evidence of the appellant, it is abundantly evident that she felt that respondent was under the influence of his mother and wanted to reside separately. She even stayed in the house of the relative of the respondent for about 10 days, till the rented accommodation was arranged. This again supports the contentions of the respondent that the appellant had insisted on staying in the rented accommodation, largely because of her issues with the mother-in-law.

54. This fact is further corroborated by the admissions of the appellant herself that while they stayed in the rented accommodation from July, 2010 till October, 2014, neither did she visit her matrimonial home nor the parents-in-law ever came to the rented accommodation. The respondent admittedly visited his parents regularly and would even take the son along but it is established that the appellant never accompanied him. Her claim that she was not welcome and was prevented from visiting her matrimonial home, is not believable for the simple reasons that she herself is a working women and as per her own admission, used to regularly go to her Office. If she actually intended to visit her parental home, there was nobody, who could have stopped or prevented her from doing so. The only inference that can be drawn from her own evidence is that she did not want to stay in the matrimonial home but was insisted on having a separate accommodation.



55. In light of the above discussion, it must be noted that the spouses who are tied in a bond of holy matrimony expect mutual love, affection and a semblance of care for each other and their family as well. The conduct of the appellant in the present case, may be small incidents which appear to be trivial and petty but when considered as a whole, it creates a general sense of unsettlement, pervasive mental stress and agony which clearly constitutes cruelty.

56. It is also on record that on the demise of the father-in-law on 31.10.2014, the respondent and the appellant, shifted back to the matrimonial home. Again, this became an issue as admittedly, the appellant left the matrimonial home on the occasion of *Raksha bandhan* on 18.08.2016 and since then, she has never returned back to the matrimonial home. The inability to adjust in the matrimonial home with the mother-in-law may not in itself be considered as unjustified, but it is not a case of only setting up of an independent accommodation, but complete rejection of the family of the respondent as is evident from her conduct of not even bring on visiting terms with her mother-in-law while they lived separately in rented accommodation for about four years. To have differences is one thing, but to reject her matrimonial relationship itself on this account, is a clear act of mental cruelty.

57. The appellant tried to explain her leaving the matrimonial home by asserting that she was being harassed for dowry, which is neither established by any cogent evidence in the present proceedings, nor is it corroborated by her conduct. She alleged that she was harassed for dowry but there is not a single instance or a complaint ever made by her from where any inference of dowry harassment could be inferred.



58. Significantly, for major part of her marriage i.e. for about more than four years, she lived separately in rented accommodation and had no contact with the parents-in-law, then where was the occasion for the parents in-law to make the dowry demands from the appellant. It is evident that the appellant again was not able to adjust as she admittedly left the matrimonial home along with her son, on the occasion of *Raksha bandhan* on 18.08.2016.

59. The respondent has explained in his evidence that he made repeated calls and visited her to convince her to come back but was unable to do so. That the appellant had left with an intent of not returning back is corroborated by the testimony of the respondent, who asserted that on checking, he found that the appellant had taken along with her, all her jewellery. Not only this, she even operated the locker on the next day to take out the jewellery, a fact which is admitted by the appellant in her testimony. These overt acts of the appellant reinforce the conclusion of she having left the matrimonial home with an intent to desert the respondent.

60. This is further corroborated by she getting the child admitted in S.D. Public School, Punjabi Bagh, Delhi-26, which according to her, *was done as she was not certain as to whether she would ever live with the respondent.*

61. The evidence on record shows that it is the appellant, who had withdrawn herself from her matrimonial home and she has levelled allegations of beatings, cruelty and dowry demands, which are completely unsubstantiated. The appellant though not having been able to substantiate any allegation of dowry demands, even made a complaint to the police dated 16.07.2018, which was marked to the crime against Women Cell, the



meetings took place in the Women Cell but apparently no FIR has been registered.

62. The term "*conjugal*" as defined in Merriam Webster dictionary means "*of or relating to the married state or to married persons and their relations*" while cohabitation means "*to live together as or as if a married couple*". "*Cohabitation*" and "*Conjugal relationship*" are the essence of a marriage and it needs no reiteration that they are the bed rock of any matrimonial relationship. The gravamen of any marriage is the succour and the peace that the couple derive from the company of each other. For a couple to be deprived of each other's company, joy, trust and bliss of conjugal relationship, without the fault of the respondent is an act of extreme cruelty warranting dissolution of the marriage as held by the Apex Court in the case of Samar Ghogh v. Jaya Ghosh (2007) 4 SCC 511.

63. It is also significant to observe that the appellant having withdrawn from the company of the respondent, did not permit the son to meet the respondent, who was driven to file a Guardianship Petition, for seeking the custody of the child. According to the respondent, even during the meetings through video-conferencing, she used to tutor the child with such negativity as it impacted the child's mental condition and he had to have sessions with the Psychologist.

64. In the case of Prabin Gopal v. Meghna 2021 SCC OnLine Ker 2193, it was observed by the Kerala High Court that the child has the right to receive love and affection from both the parents and likewise, the parents also have the right to receive love and affection from the child. Any calculated act of the parent to deny such affection to the other parent, amounts to mental cruelty. It was observed that since the child was in the



custody of the mother, she had breached her duty she owed as a custodian parent to instil love and affection in the child for the father. Such wilful alienation amounted to cruelty. Where the disputes are between the parents, no matter how bitter the relationship, the child should not be involved or alienated from the other parent.

65. In the present case as well, the conduct of the appellant in alienating the child from the father, is an extreme form of mental cruelty.

66. *The learned Judge, Family Court, has thus rightly concluded that the respondent was subjected to mental cruelty and granted Divorce under S.13(1)(ia) of the Act.*

Desertion under S. 13 (1)(ib) of the HMA:

67. The respondent had also sought Divorce on the ground of Desertion under Section 13 (1)(ib) of the HMA.

68. It has also been proved that she herself left the matrimonial home on 18.08.2016, with an intent to never come back.

69. The ingredients for establishing the desertion have been explained by the Supreme Court in Bipinchandra Jaisinghbhai Shah v. Prabhavati, 1956 SCC OnLine SC 15 which 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”.

70. Essentially, what is mandatorily required to be proved is not only the physical separation of the parties but also an animus i.e., the intention of the wife not to return to the matrimonial home.

71. In the present case, the *animus* is clearly brought from her conduct thereby proving that she had deserted the respondent, for a period of more than two years, before the filing of the petition. We hereby conclude that the divorce on the ground of desertion has been rightly granted to the respondent under Section 13(1) (ib) of the HMA.

Conclusion:

72. In light of the above observations, the impugned judgment dated 26.04.2023 granting divorce to the husband on the ground of cruelty and desertion under Section 13(1)(ia) and (ib) of the HMA is upheld.

73. The appeal is dismissed along with the pending application.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBRUARY 27, 2024
S.Sharma/nk/RS