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

+ **MAT.APP.(F.C.) 173/2019**

AMIT KUMAR MAHERIA

.....Appellant

Through: Mr Parminder Singh Goindi, Adv.

versus

RASHMI

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% **02.09.2024**

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

1. This appeal is directed against the judgment and decree dated 29.04.2019.

1.1 *Via* the impugned judgment, the family court has dismissed the appellant's petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (in short, '1955 Act').

2. The record shows that notice in the divorce petition was issued. Since the respondent did not enter appearance despite service, she was proceeded *ex parte* on 19.02.2018.

3. The appellant, in support of his assertions made in the divorce petition, had filed an affidavit-of-evidence. The family court, however, concluded that the appellant was not able to prove the allegations and assertions made in the divorce petition.

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4. The case set up by the appellant concerning cruelty against the respondent was pivoted on allegations of extramarital affairs with several persons including one, Mr Rahul.

5. To be noted, the appellant in support of his case, apart from the affidavit-of-evidence, had placed on record copies of two (02) documents i.e., a handwritten letter dated 03.09.2017 addressed to the SHO, Mehrauli Police Station and an affidavit of even date, which is broadly indicative of the fact that the respondent had made a statement to the effect that she had left the matrimonial house of her own free will without undue influence or coercion.

5.1 These documents were not taken into account as the appellant was unable to prove the same. The appellant did not summon the official witness which was, perhaps, one of the ways of proving the documents.

6. That said, the record discloses that from the wedlock, the couple has two (02) children. A girl child was born on 10.12.2007, while the second child, a boy, was born on 30.07.2012.

6.1 We are told that during the pendency of the appeal, the boy child has passed away. Therefore, as matter stands today, the girl child is in the custody of the appellant.

7. The respondent, as noted above, did not participate in the proceedings before the family court.

7.1 The position is not different in the instant appeal as well. The respondent was proceeded *ex parte* by the coordinate bench on 21.03.2022.

8. Thus, we are left with a situation where couple has not stayed together since January, 2017.



9. The respondent does not seem to be interested in contesting the proceedings initiated by the appellant for divorce.
10. Given this position, it is quite obvious that the marriage between the couple is beyond repair. Therefore, this aspect, thus, falls within the ambit of cruelty i.e., Section 13(1)(ia) of the 1955 Act. [See ***Samar Ghosh vs Jaya Ghosh*** (2007) 4 SCC 511]
11. Having regard to the aforesaid position, we are inclined to allow the appeal and set aside the impugned judgment and decree.
12. The marriage between the parties shall stand dissolved.
13. The Registry will prepare a decree sheet accordingly.
14. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 2, 2024/ds

[Click here to check corrigendum, if any](#)