



2024:DHC:7543-DB



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

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Decision delivered on: 05.09.2024+ **MAT.APP.(F.C.) 255/2023 & CM No.45692/2023**

SH. MOHD. RAFI CHOWDHARY

.....Appellant

Through: Mr Sagar Chandra, Adv.
along with appellant.

versus

MISAAL HAIRAT

.....Respondent

Through: Mr Dipak Kumar Jena, Mr
R.K. Poshwal, Mr Ashutosh Singh and
Mr Raj Sekhar Jena, Advs. along with
respondent.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal is directed against the judgment and decree dated 21.04.2023 passed by the family court.
2. The family court has allowed the petition preferred by the respondent under Section 2(ix) of the Dissolution of Muslim Marriages Act, 1939 [in short "1939 Act"].
3. The appeal is accompanied by an application for condonation of delay. As per the prayer made in the application, there is a delay of 40 days in filing the above-captioned appeal.

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3.1 We may note that, the learned counsel for the respondent has stated, at the outset, that there is a delay of more than 100 days in filing the appeal.

3.2 Furthermore, that there is no assertion in the application explaining the delay.

4. A perusal of paragraph 7 of the application would show that the appellant has concluded that the appeal is delayed only for 40 days by erroneously coming to the conclusion that the period prescribed for lodging an appeal under Section 19 of the Family Courts Act, 1984 [in short “1948 Act”] is 90 days as against 30 days.

5. Although, there is no explanation for the delay, we have examined the matter on merits as well.

6. The record shows that the parties entered into matrimony on and about 07.03.2016. The mehar was settled at Rs.3,00,000/-.

6.1 The record also discloses that parties do not have any child from the wedlock.

7. According to the appellant, the relationship between the parties soured in and about 2017 when the respondent came to Delhi as she was selected for a teacher’s job, i.e., TGT/PGT English for which she had to appear in an interview.

8. As per the appellant, the respondent did not take the interview. It is also the appellant’s case that the respondent did not return to Srinagar, where the appellant was located. This position, according to the appellant, obtained since October 2017.



9. The divorce petition was filed on or about 18.09.2019. It has emerged upon a perusal of the record that although the respondent had filed her affidavit-of-evidence and offered herself for cross-examination, the appellant did not cross-examine her.

10. At least on two occasions, i.e., 15.02.2023 and 13.03.2023, neither the appellant nor his counsel was present to cross-examine the respondent.

10.1 Given this position, the family court was left with no choice but to consider the weight of the evidence placed before it, *inter alia*, in the form of the testimony of the respondent.

11. The family court has, amongst others, returned the findings of fact with regard to the only substantive issue framed in the divorce petition, i.e., whether the respondent was entitled to seek dissolution of marriage as per the averments made in the petition.

12. For convenience, the relevant part of the findings returned by the Family Court, which are contained in paragraphs 46 and 49 of the impugned judgment, are extracted hereafter:

“46. It is asserted that respondent repeatedly failed to bear his responsibilities towards the wife. The respondent failed to pay any money to the petitioner towards her maintenance since the inception of the marriage. The respondent used to threaten the petitioner for remarrying. The respondent indulged in inquiring from the petitioner about the details of her income and on refusal the respondent became more cruel and even assaulted the petitioner. Both the petitioner and respondent even started residing in rental accommodation. However, the respondent vacated the rented accommodation on 19.01.2019 and collected Rs.11,000/- from the landlord which was paid by the petitioner and respondent left without disclosing his whereabouts to the petitioner. When the petitioner went to rented accommodation to take her belongings on 27.01.2019, she was informed that respondent has taken away all the belongings. The petitioner testified about her complaint dated 30.09.2019 Ex.PW1/14 before SHO



PS Malviya Nagar registered vide DD No.38B which also demonstrates that petitioner was treated with cruelty by the respondent. The respondent regularly visited the surroundings of the house of the petitioner and indulged in her defamation. Respondent threatened the petitioner for not doing the job at Delhi and petitioner also missed her interview for the teaching job. It is evident that respondent has neglected his responsibilities towards his wife.

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49. *On examining the facts and assertions of the petition, in the light of the testimony of the petitioner and the documents produced in support thereof, I am of the opinion that petitioner/wife has been able to properly prove the neglect by the respondent and cruelty inflicted upon her. The evidence of the petitioner has remained un-controverted and un-rebutted as respondent has neither cross examined the petitioner nor led his evidence. The onus to establish the objections in the written statement has been upon the respondent but he has failed to lead any evidence in support of his pleadings. Issue no. 1 is therefore, answered in favor of the petitioner / wife and against the respondent /husband."*

13. A perusal of the above extract would show the following:

- (i) That the appellant failed to provide money to the respondent since inception of the marriage.
- (ii) The appellant threatened the respondent that he would remarry.
- (iii) Although, briefly, the parties lived under the same roof in Delhi in a rental accommodation, the appellant abruptly vacated the accommodation on 19.01.2019 and left the premises after collecting Rs.11,000/- from the landlord.
- (iv) The accommodation in Malviya Nagar was vacated by the appellant with the belongings of the respondent.
- (v) There is a complaint dated 30.09.2019, i.e., Ex.PW1/14 pending before the Station House Officer, Malviya Nagar P.S., which is registered as DD No.38B concerning the cruelty inflicted by the appellant on the respondent.



(vi) The appellant often visited the neighbours of the respondent with the intent to defame her.

14. In a nutshell, the family court's conclusion that the appellant has subjected the respondent to cruelty is founded on assertions and materials produced by the respondent, which has remained unrebutted.

15. We may note that since the appellant is physically present in court, we had sought to enquire from him as to what was the reason for disruption of the marital bond between him and the respondent.

16. The appellant informed us that the respondent had deceived him and quite strangely, stated that it was difficult to live with her.

16.1 We are of the view that this, perhaps, is another reason why the couple should part ways. That said, it appears to us that the appellant did not want to concede to a divorce only to place the respondent in a more difficult position.

17. Be that as it may, we are of the view that since the testimony of the respondent has remained unrebutted, there is no scope for interference with the impugned judgment.

18. As noted at the outset, the appellant has failed to provide any good reason which would persuade us to condone the delay.

19. Thus, on merits and for the reason that there is no explanation for condonation of delay, we are not inclined to interfere with the impugned judgment.



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20. The appeal is, accordingly, dismissed. Consequently, the pending application shall stand closed.

21. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 5, 2024/aj

Click here to check corrigendum, if any

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