



2024:DHC:6072-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 29.07.2024

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MAT.APP.(F.C.) 240/2024 & CM APPL. 42601-42602/2024**SH VIJAY KUMAR****.....Appellant****Through: Mr Parvesh Saroha and Mr Davender
Kumar, Advs.****versus****SMT NISHU****.....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)**

1. This appeal is directed against the judgment and decree dated 30.03.2024.
2. *Via* the impugned judgment, the family court has allowed the petition filed by the respondent under Section 13(1)(ia) of the Hindu Marriage Act, 1955 [hereinafter referred to as, "the Act"].
 - 2.1 Although the respondent had filed the divorce petition on two (02) grounds i.e., cruelty and desertion, the family court has dismissed the ground propounded by the respondent concerning desertion.
3. The record shows that the couple entered into matrimony on 17.08.2012.
4. Even according to the counsel who appears on behalf of the appellant, the couple has not stayed together for more than eight (08) months, that too in Mukherjee Nagar, when both of them were students.

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5. Approximately twelve (12) years have passed since the parties entered into matrimony.
6. The learned family court judge, while ruling in favour of the respondent, has made, *inter alia*, the following observations in paragraph 12 of the impugned judgment:-

“12. The bottom line is that parties, who got married on 17.08.2012, never cohabited as husband and wife. Despite lapse of more than 11 ½ years there was no cohabitation between them as husband and wife. There never had any established home at any point of time. The marriage was only in the name. This is an instance of extreme and grave cruelty on petitioner, who despite her 11 ½ years old marriage, never got to cohabit with respondent-husband. Notwithstanding her marriage more than a decade ago, she never got to set up an established home with respondent-husband. Apex Court in Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 while enumerating some instances of human behavior which may be relevant in dealing with cases of 'mental cruelty' held that where there has been long period of separation it may fairly be concluded that marriage was beyond repair. Refusal to sever to such a dead marriage will only lead to more mental cruelty. In Suman Kapur v. Sudhir Kapur, (2009) 1 SCC 422 it was held that mens rea is not an essential ingredient of divorce on the ground of mental cruelty. Relief to a party cannot be denied on the ground that the cruelty meted out to the other spouse was not deliberate or intentional. Relief also cannot be denied on the ground that there was no willful treatment. It is the view of this court that the petitioner has proved that she was subjected to mental cruelty. This issue is answered in petitioner's favour and against the respondent.”

7. We are in agreement with the conclusion arrived at by the learned family court judge, which is that the marriage is beyond repair. Concededly, the couple has not cohabitated together as husband and wife.
8. It is contended by the counsel for the appellant that the appellant was always willing to have the respondent reside with him. In this context, reference is made to the petition filed by the appellant under Section 9 of the Act.
- 8.1 Our attention has been drawn to the order dated 06.12.2023, passed on



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the said petition, by the Additional Principal Judge, Family Court at Kharkhoda, Sonipat.

8.2 On being queried, the counsel for the appellant has conceded that the respondent has preferred an appeal against the said order, which is pending adjudication.

9. In our view, the respondent seems to be held hostage to the marriage which was performed in Arya Samaj Mandir, without any participation from the parents of the parties.

10. The record indicates that the appellant has taken no concrete steps in setting up a matrimonial home. A petition under Section 9 of the Act was filed by the appellant only on 17.07.2019, when seven (07) years had passed since the day he got married to the respondent.

11. We find no good reason to interfere with the judgment rendered by the learned family court judge. Sporadic interaction with the respondent concerning the visit to Vaishno Devi in September, 2017 or to Mannat Haveli at Sonipat in June, 2018 would not suggest that the appellant is interested in having the marriage to hold.

12. For the forgoing reasons, the appeal is dismissed.

13. The pending applications shall also stand closed.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

JULY 29, 2024/ds

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