



2024:DHC:9998-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 23.12.2024***

+ MAT.APP.(F.C.) 421/2024, CM APPL. 73236/2024-Delay 39 days in re-filing

MOHAMMED ATIQUE

.....Appellant

Through: Mr. Praveen Agrawal with Mr. Rohit Dhamija, Advs.

versus

APARAJITA ATIQUE

.....Respondent

Through: Ms. Jhuma Bose, Adv.
Respondent through V.C.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****SAURABH BANERJEE, J (ORAL)**

1. The present appeal under Section 19 of the Family Courts Act, 1984 seeks to assail the order dated 15.07.2024 passed by the learned Family Court in Petition No.07/2014, which was filed by the respondent-wife seeking divorce under Section 27(1)(a), (b) & (d) of the Special Marriage Act, 1954 (SM Act).

2. Vide the impugned judgement, the learned Family Court has, after taking into account the evidence led by the parties as also the submissions made by them in their pleadings, allowed the petition for divorce filed by the respondent by holding that the respondent had been able to prove that she had been met out with cruelty by the appellant-husband during the course of her marriage.

3. Marriage between the parties having been solemnized on 20.08.1998



under the SM Act, out of the said wedlock, three children namely Ali, Rabiya and Ashweena were born on 13.10.1999, 21.12.2001 and 18.11.2006 respectively.

4. Almost 16 years of marriage thereafter, the respondent filed a divorce petition under Section 27(1) (a), (b) and (d) of the SM Act, before the learned Family Court on the grounds of adultery, desertion and cruelty, primarily alleging that the appellant had treated the respondent with utmost cruelty and harassment and used to even beat her up on several occasions. Further, he also led an immoral life as he was involved with several other females including foreign nationals and sex workers as also with the maid of the appellant herself, namely, Rano. It is the respondent's plea that she started suffering from gynaecological problems due to this immoral character of the appellant. The respondent further alleged that since she was an IAS Officer the appellant coerced her to get posted in Goa so that he could meet high-ranking officers and use his contact with them for business purposes.

5. The learned Family Court, on the basis of the pleadings and contentions raised before it, framed the following issues:-

"1) Whether the respondent has exercised cruelty upon the petitioner after solemnization of marriage between the parties? OPP

2) Whether the respondent had voluntarily sexual intercourse with third person after solemnization of marriage between the parties? OPP

3) Whether the respondent has deserted the petitioner without any justifiable reason? OPP

4) Whether the petition in the present form as filed by the petitioner is not legally maintainable? OPR

5) Whether the petitioner is entitled for decree of divorce as against the respondent as prayed for? OPP



6) Relief'

6. While passing the impugned judgement, the learned Family Court decided issue nos. 4, 1 and 5 in favour of the respondent and against the appellant. The learned Family Court, however, decided issue nos. 2 and 3 in favour of the appellant and against the respondent.

7. As such, the learned Family Court allowed the petition under Section 27(1)(d) of the SM Act granting a decree of divorce.

8. Being aggrieved, the appellant/husband has approached this Court by way of present appeal. Despite urging numerous grounds in the appeal, the learned counsel for the appellant, in support of the appeal, has raised two primary contentions. The first and foremost contention of the learned counsel for the appellant is that the learned Family Court has failed to appreciate that since the respondent had voluntarily already converted to Islam as early as on 15.07.1995 and as the marriage of the parties was solemnized under the provisions of the SM Act subsequently on 20.08.1998, the respondent could not have sought divorce under the provisions of SM Act, but was required to seek divorce only under the Muslim Personal Law.

9. Secondly, as per learned counsel for the appellant, the learned Family Court has also erred in accepting the allegations of cruelty leveled by the respondent only because the appellant had not specifically dealt with the instances of cruelty in his written statement. In fact, learned counsel for the appellant submits that since it was a family matter, the appellant was maintaining discretion and, therefore, simply denied that he had ever treated the respondent with cruelty.

10. It is in these circumstances that the learned counsel for the appellant contends that the findings of cruelty arrived at by the learned Family Court



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in the impugned judgment were incorrect. He submits that these findings being without any basis, were liable to be set aside. Learned counsel for the appellant, therefore, prays that the appeal be allowed and the decree of divorce granted by the learned Family Court by way of the impugned judgement be set aside.

11. On the other hand, learned counsel for the respondent seeks to oppose the appeal by urging that the appellant has approached this Court with unclean hands, having concealed the fact that vide an earlier decision, a learned Single Judge of this Court on 23.03.2018 in CM(M) 140/2017 titled **M vs A**, had already concluded that the marriage of the parties under the SM Act was valid. The appellant could, therefore, not be permitted to challenge the jurisdiction of the Family Court to entertain and try the petition for divorce instituted by the respondent and consequently, his petition was dismissed by the learned Single Judge with costs of Rs.50,000. Not only that, though the said order was unsuccessfully assailed by the appellant before the Supreme Court by way of SLP(C) 16343/2018 titled as **Mohd. Atique vs Aparajita Atique**, which came to be dismissed on 18.10.2019, there is an utter silence qua it before this Court. In the wake of the above, she, therefore, contends that the appellant's plea that the marriage between the parties was not valid under the SM Act deserves outright rejection. In fact, she further contends that the parties would not be governed by the Muslim Personal Law (Shariat) Application Act, 1937. The said contention of the appellant, she submits, is wholly unwarranted and, in any event, barred by *res-judicata*, as this issue has been conclusively decided up to the Supreme Court.

12. Learned counsel for the respondent also submits that the respondent



had given a number of instances of her being treated with cruelty, which also included having been mercilessly beaten up with belts by the appellant, which stand she reiterated during her oral testimony and stood the test of cross-examination, which cross-examination was admittedly carried out for all of ten days. She, therefore, prays that the learned Family Court was fully justified in passing the impugned order.

13. We have considered the submissions of learned counsel for the parties and perused the record as well.

14. Firstly, while dealing with the contentions of the learned counsel for the appellant, we find that it is not the case of either of the parties before us that the marriage *inter-se* them was not solemnized initially on 20.08.1998 under the SM Act in Mumbai. In fact, it is the case of the parties that since solemnization of their marriage under the SM Act on 20.08.1998, they both cohabited with each other as husband and wife and were also blessed with three children. This, is, *prima facie*, proof of validity of their admission of the marriage *inter-se* them under the SM Act.

15. Furthermore, though it is the case of the appellant that subsequently a Nikah was performed *inter-se* them and a *Nikahnama* was executed on 06.12.1998. However, once again the same was admittedly, a subsequent event and cannot, in fact, in any event, have any bearing on the marriage solemnized under the SM Act *inter-se* them for the first time in Mumbai on 20.08.1998. Therefore, the necessary corollary from the above is that any marriage performed under the SM Act, like that of the parties herein, could only be dissolved under the provisions of the same act namely SM Act. As such, merely because the parties like the respondent herein, after having getting married under the SM Act, allegedly got converted and entered into a



subsequent marriage (Nikah) under the Muslim Law, does not mean that their earlier marriage under the SM Act stood either dissolved and/ or overridden and/ or abated. To be precise, it cannot in any manner mean that their pre-existing marriage under the SM Act automatically stood dissolved.

16. Furthermore, a perusal of the Family Court record reveals that *de hors* the aforesaid, the learned Family Court vide its order dated 02.11.2016 had dismissed a very similar application of the appellant wherein also very similar issues like the present qua the non-maintainability of the present petition of the respondent were taken since, according to the appellant, the respondent was already a Muslim at the time of her marriage with the appellant under the SM Act on 20.08.1998.

17. The appellant, upon challenging the aforesaid order dated 02.11.2016 of the learned Family Court, faced dismissal at the hands of the learned Single Judge of this Court, who in CM(M) 140/2017 (supra), after deliberating upon the similar contentions sought to be raised by the appellant and discussing the law regarding the SM Act in detail, held as under:-

“11.2. Under Section 13(2), the aforesaid Certificate dated 20th August, 1998 is deemed to be conclusive evidence of the fact that marriage under the Act had been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

11.3. The Certificate of Marriage issued by the Marriage Officer under the Special Marriage Act is a conclusive proof of their valid marriage under the Special Marriage Act and the petitioner cannot be permitted to challenge the jurisdiction of the Family Court to entertain and try the petition for divorce instituted by the respondent. The petitioner’s challenge to the jurisdiction of the learned Family Court to entertain and try the petition under the Special Marriage Act is barred by law.

11.4. The learned Family Court has clear jurisdiction to entertain and try the respondent’s petition as both the parties are governed by the Special Marriage Act.



11.5. The petitioner's contention that the respondent embraced Islam prior to 20th August, 1998 is contradictory and mutually destructive to the petitioner's admission in the written statement that the respondent was Hindu at the time of the marriage on 20th August, 1998. The petitioner has neither withdrawn the admission made in the written statement nor given any justification for setting up a contradictory plea. In that view of the matter, the respondent cannot be permitted to set up a contradictory and mutually destructive plea in the written statement by way of an amendment."

18. It is the above order, which, once again resulted in dismissal by the Hon'ble Supreme Court, vide order dated 18.10.2019 in SLP(C) 16343/2018 (supra).

19. Most notably, the appellant despite being fully completely aware of the aforesaid proceedings and the same position of law already having been concluded, it is the very same appellant, who has by the virtue of the present appeal once again tried to urge the very same issue qua non- maintainability under the SM Act, therefore the said contention is liable to be outrightly rejected since the same already stands decided by the learned Single Judge of this Court in CM(M) 140/2017 (supra), which has been upheld by the Hon'ble Supreme Court in **Mohd. Atique** (supra) and when both parties are bound by it for more than the past five years. Thus, the appellant is estopped by principles of *res-judicata* from urging the same plea once again.

20. Not only that, what is highly disturbing is that the very same appellant has nowhere whispered anything about any of the aforesaid proceedings, including anything about the dismissal of his application qua the same issues before the learned Family Court vide order dated 02.11.2016 (supra) or about the subsequent dismissal by the learned Single Judge of this Court vide order dated 23.03.2018 (supra) and finally the final dismissal by the Hon'ble Supreme Court vide order dated 18.10.2019 (supra).



21. No doubt, we are pained to express our anguish and callous attitude of the appellant before this Court.

22. Now we may advert with the findings of the learned Family Court in granting a decree of divorce under Section 27(1)(d) of the SM Act on the ground of the respondent having been able to prove cruelty by the appellant upon herself.

23. For this, it would be necessary to examine whether there were any pleadings before the learned Family Court which were sufficient for the respondent to have made out a case of cruelty against herself by the appellant within the parameters of Section 27(1)(d) of the SM Act and also whether she was able to sustain and corroborate the said pleadings with sufficient evidence.

24. A perusal of the learned Family Court record, especially the pleadings comprising of the divorce petition filed by the respondent and also the written statement thereto filed by the appellant, reveals that even though the respondent had in her petition made categoric averments qua a number of instances of cruelty met out to her by the appellant. The appellant in his reply had neglected to either admit or deny any of the said pleadings. This factual position is not denied by the learned counsel for the appellant. Thus, it is evident that the response filed on behalf of the appellant, was not at all specific and was extremely vague. There being no specific categoric denial, the averments made by the appellant in his reply, were rightly deemed by the learned Family Court as admission by him of the averments made by the respondent in her divorce petition.

25. The learned Family Court while dealing with the aforesaid position qua the said contentions and the response thereto by the appellant before it,



has in the impugned order held as under:-

“33. Before discussion of evidence led by the petitioner, it is necessary to point out that it is not a disputed proposition of law that the admitted facts by the parties need not to be proved as laid down by Section 53 of Indian Evidence Act. Order VIII Rule V has also prescribes that denial of the facts in Written Statement must be specific and vague denial is no denial and rather amounts to admission. In this case, the petitioner has levelled various and serious allegations against the respondent in her petition, whereas denial to those allegations in written Statement of the respondent would show that most of the allegations have not been specifically denied by him. In fact, those allegations in the absence of specific denial amounts to admission of the facts by the respondent to be correct.

34. Respondent has not denied that the petitioner was subjected to cruelty and harassment, beaten up and harassed for the delivery of a female child. He has further not denied that he had relations with different ladies and also availed financial favors from the petitioner and failed to refund that money, which caused financial loses to the petitioner. In fact, Written Statement filed by the respondent has been drafted in haphazard manner and that too without following proper procedure of law in terms of Order.”

26. Therefore, what entails from the aforesaid analysis and reasonings of the learned Family Court is that amongst all the six issues framed by the learned Family Court under Section(s) 27(1)(a) with respect to adultery, under Section 27(1)(b) with respect to desertion and under Section 27(1)(d) with respect to cruelty, has granted a decree of divorce in favour of the respondent only on the ground of cruelty under Section 27(1)(d) of the SM Act.

27. The learned Family Court while extensively dealing with the issue of mental cruelty as also adultery, after relying upon the pleadings as also the , deposition of the witnesses of the parties and primarily that of the respondent's witnesses i.e., being respondent herself (PW1) and her mother Ms. Uma Sharma (PW2), and taking into account the legal position with



respect to the concept of cruelty as held by the Hon'ble Supreme Court in **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511, **A. Jayachandra v. Aneel Kaur**, (2005) 2 SCC 22, **Ramchander v. Ananta**, (2015) 11 SCC 539, **V. Bhagat v. D. Bhagat**, (1994) 1 SCC 337, proceeded to grant decree of divorce on the grounds of cruelty after noting that “... *Admittedly, in matrimonial life, there may not be proof of everything or every allegation, as usually spouses ignore many misconducts of other spouse to maintain family life and do not entangle to legal issues, but any mischievous conduct definitely cause mental trauma to bona fide partner.*”.

28. In fact, it can be verily deciphered from the extensive cross-examination of the respondent (PW1) conducted by the learned counsel for the appellant, that almost the entire cross-examination by the learned counsel for the appellant which stretched for as many as ten dates, was premised only on mere suggestions. There were thus, hardly any questions put by the learned counsel for the appellant during the cross-examination of the respondent on any of the aforesaid ten dates qua the instances of cruelty set out by her in her deposition. Thus, the aforesaid is sufficient for this Court, to draw an inference that the respondent was able to prove her case, beyond any doubt qua cruelty on the part of the appellant.

29. We also find that the learned Family Court while dealing with the aspect of physical cruelty, and taking note of various physical incidents of cruelty on the respondent by the appellant from time to time coupled with the numerous injuries caused to her by the appellant, which resulted in her making two police complaints dated 12.10.2014 (lodged on 18.11.2014) and then on 07.02.2015, has observed as under:-

“... *In fact, every conduct/ act of the parties may not be recorded*



in police compliant and most of the matrimonial disputes remain unreported, which does not mean that no incidents take place in matrimonial relations.”

30. Further, while dealing with the aspect of the economic cruelty, the learned Family Court after taking note of the finances and compelling the respondent for availing housing loan in a official capacity as also purchase of expensive cars and her bank accounts from time to time, after relying upon **Manisha Tyagi v. Deepak Kumar**, (2010) 4 SCC 339, went on to hold as under:-

“... .. In view of the evidence led by the petitioner, it has duly proved that the conduct of the respondent was abnormal and much below accepted standard of an educated person and such conduct amounts to cruelty, which has been duly proved by her.”

31. Lastly, after taking a note of the law laid down by the Hon’ble Supreme Court in **Samar Ghosh** (supra); **Naveen Kohli v. Neelu Kohli** (2006) 4 SCC 558; **Rakesh Raman v. Kavita** 2023 SCC OnLine SC 497, which were dealing with the aspect of long separation between the parties, the learned Family Court also held as under:-

“In view of abovesaid case law, it stands proved that a long separation between the parties for more than 10 years amounts to physical as well as mental cruelty and such a dormant marriage is liable to be dissolved on this ground alone under the head of cruelty.”

32. Consequently based on the aforesaid, this Court finds that what the learned counsel for the appellant in fact seeks to argue before this Court, has already been agitated and argued at length before the learned Family Court, so much so that each of the said contentions sought to be raised by the appellant herein have already been answered in detail and negative by the learned Family Court. This Court finds that, the learned Family Court has carefully applied its mind and it is only after duly appreciating the facts involved as



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also the legal position qua the various grounds agitated by the respondent, on the basis of pleadings, despite having framed as many as six issues, granted the decree of divorce only on the solitary ground of cruelty under Section 27(1)(d) of the SM Act and not on any other ground.

33. As already noted hereinabove, the issue qua the maintainability of the divorce petition under the provisions of the SM Act having already been agitated and argued before, by the learned counsel for the appellant and on behalf of the appellant at length before the learned Family Court, learned Single Judge of this Court right up to the Hon'ble Supreme Court and despite the said issue has been settled and laid to rest more than five years back, the appellant has tried to mislead this Court by trying to re-argue the issues which already stood decided against him.

34. In light of the aforesaid, taking into account the instances of extreme cruelty on the part of the appellant which have been set out in the impugned judgment, with which findings, we have no hesitation in concurring, as also the attempt on the part of the appellant to conceal material information from this Court, it is a fit case where the appeal deserves to be dismissed with exemplary cost. The appeal being meritless, is accordingly, dismissed with costs of Rs.1,00,000/-.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

DECEMBER 23, 2024/akr