



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 19th September, 2023
Pronounced on: 28th February, 2024*

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MAT. APP. (F.C.) 326/2018

KANWAL KISHORE GIRDHAR Appellant
Through: Mr. Chandan Kumar Mandal, Mr.
G.K. Chauhan and Mr. Rajeev Kumar
Tomar, Advocates along with
appellant in person.

versus

SEEMA GIRDHAR Respondent
Through: Mr. Mukesh Kumar, Advocate along
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.

Howsoever abysmal the differences maybe between the spouses, but in no realm can the act of the aggrieved spouse of igniting animosity and hostility in the minor child in an attempt to use the child as a weapon to get even with their spouse, could be justifiable. Such vindictiveness aimed to erode a father-daughter relationship is not only an act of extreme cruelty to the father but also gross inhumanity to the child.

1. The appeal under Section 19 of the Family Courts Act, 1984 read with 28 Hindu Marriage Act 1955 has been filed by the petitioner/husband against the Judgment dated 09.10.2018, *vide* which his petition under



Section 13 (i) (ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'the Act'*), has been dismissed.

2. Briefly stated, the parties got married on 09.05.1998, according to the Hindu Rites and Customs at Arya Samaj Temple at Baroda, Gujarat. The marriage was consummated and two daughters were born from their wedlock on 25.03.1999 and 15.10.2004 respectively.

3. **The petitioner/husband has asserted in his Divorce Petition** that he was working in Indian Army at the time of marriage, while the respondent was a PHD in Management and was working as a lecturer and earning good salary. The temperamental differences *inter se* the parties grew and the respondent left the matrimonial home in May, 1999, without any justifiable cause. She made a complaint to his Commanding Officer and consequently, directions were passed for deduction of Maintenance Allowance from the salary of the petitioner, to be paid to the respondent directly, w.e.f. July, 1999.

4. Eventually, the respondent joined the matrimonial home in September, 1999, but continued to receive the maintenance from the Army Authorities. The appellant approached the Army Authorities to stop the deduction from his salary as the respondent had joined the matrimonial home, but the respondent had not disclosed this fact to the Authority, which caused immense pain and agony to the appellant.

5. The appellant further claimed that he suffered an injury in his leg and was admitted in the Army Hospital, Udhampur, from September, 2001, for six months, but the respondent did not take care and left him to the mercy of the hospital.

6. The respondent despite getting a handsome salary, never contributed



to the household expenses and made derogatory remarks against the appellant for being less qualified than the respondent. She had immense inclination and affinity for her parental family and would frequently visit her parental home without informing the appellant.

7. On 29.01.2007, the respondent demanded separate residence from the mother of the appellant and when she refused, the respondent gave beatings to the old aged mother and threw her out of the house. The petitioner/appellant was compelled to set-up a rented accommodation in Paschim Vihar but because of the callous attitude of the respondent, the landlord asked him to vacate the premises. He made alternate arrangement of another rented accommodation at Vikas Puri, but the respondent refused to shift to the new accommodation or stay in the company of the appellant. The respondent preferred to reside in Paschim Vihar accommodation and did not permit the appellant to enter the premises.

8. Rather, she filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on 18.10.2007, without any reasonable cause and thereby withdrew herself from the company of the petitioner. The repeated requests of the appellant did not yield any result. He, therefore, filed a *Petition under Section 9 of the Act, for Restitution of Conjugal Rights*. With great efforts of the appellant, the respondent consented to live with him w.e.f. 04.05.2009, consequent to their Settlement in December 2008 . He withdrew his Petition under Section 9 of the Act and the parties started residing together.

9. However, the conduct of the respondent continued to be indifferent and she refused to establish conjugal relationship. She also refused to withdraw her complaint under Domestic Violence Act, 2005, in complete



violation of their Settlement, despite the petitioner having withdrawn his Restitution of Conjugal Rights petition.

10. The appellant asserted that the respondent would frequently call the local police on false and frivolous pretext because of which the petitioner was subjected to humiliation, atrocities and cruelty.

11. Thus, he filed the *Petition bearing HMA No. 506/2010 under Section 13 (i) (ia) of the Act*, to seek divorce on the ground of cruelty. The respondent filed her Written Statement but due to compelling circumstances, *he had to withdraw his Divorce Petition on 25.04.2012.*

12. The appellant has asserted that the conduct of the respondent continued to be torturous, who humiliated him in front of his friends, relatives and neighbours resulting in his severance of relationship from his friends and neighbours.

13. On 03.12.2011, the respondent came to the rented accommodation of the petitioner and caused injury to his aged mother. She again came to the rented accommodation on 07.04.2012 and again abused his mother and called the Police. The petitioner's niece and cousin sister came to meet him and his mother on 11.08.2012. The respondent came to his residence and abused him and called the Police before whom she made allegations of adultery against him. She again called the Police on 02.03.2013, when the sister of the mother of the petitioner, came to their house for a visit. The respondent tried to forcibly entered their house on 02.08.2013, while he and his mother had gone out of station. She also threatened to implicate the appellant in false cases.

14. The appellant has asserted that they have been living separately since 2006 and their marriage has completely broken down. He thus, filed the



present Petition under Section 13 (i) (ia) of the Act, seeking divorce on the ground of cruelty.

15. **The petition was contested by the respondent, who in her Written Statement,** took the objection that the earlier Divorce Petition bearing *HMA No. 506/2010*, was based on similar allegations as the present Petition and the same was unconditionally withdrawn on 25.04.2012, without seeking any liberty to file the petition again on the same grounds. The present petition being on similar grounds, was barred under law and was liable to be dismissed.

16. The respondent further asserted that the appellant has failed to comply with the Order of Maintenance awarded by Mahila Court *vide* Order dated 26.07.2010. The appellant, despite being a highly qualified Engineer and supporting a high status in society, was an egoistic and short-tampered person, who often indulged in physical and mental violence towards the respondent and the two daughters. She always gave proper respect to the elders in the family and always discharged her duties and responsibilities, despite which she was subjected to ill-treatment and abuse by the appellant. He also ignored his responsibilities towards the respondent during her pregnancy and physically abused her on 05.04.1999.

17. She has claimed that she along with the minor daughters, was thrown out of the matrimonial home in May, 1999, when she went to reside in her parental home. Under these circumstances, she was compelled to approach the Commanding Officer of the Army, with a request for maintenance as the appellant had stopped maintaining her.

18. The respondent further asserted that the conduct of the appellant became even more cruel, after the birth of second daughter. She was forced



to lodge a report of Domestic Violence on 28.02.2007, as she was brutally attached by the appellant and his mother. Subsequently, the appellant left their house in Paschim Vihar, without any reason and shifted to another accommodation, without informing her.

19. The respondent submitted that pursuant to the *Petition under Section 9 of the Act*, filed by the appellant without any reason, she joined the matrimonial home but the appellant failed to adhere to the terms of their Settlement. She was subjected to grave physical violence on 11.08.2012, on which date, she caught him red-handed with another strange lady at his residence. She and the two daughters were severely beaten up by the appellant.

20. The respondent thus asserted that it was she, who was subjected to cruelty and that petition was liable to be dismissed.

21. The **issues were framed on the pleadings on 10.11.2016**, as under:-

- “(i) Whether the petitioner is entitled to a decree of divorce on the ground of cruelty under section 13(1) (ia) of the HMA, 1955? OPP
- (ii) Relief.”

22. **The learned Principal Judge, Family Courts, observed** that the matrimonial disputes amongst the spouses often lead to conflicting evidence, with no corroborative evidence. It is left for the Court to decide the complete truth to do complete justice. It was observed that the complaint dated 11.08.2012, was admittedly made by the respondent and their daughter, in regard to the incident in which, she and the daughter had been inflicted injury. The respondent had alleged about the adulterous act of the appellant of being present with a strange lady. It was concluded that the appellant could not advantage of his own wrongful act by alleging that the respondent



has made false allegations of adultery. A reference was also made to the proceedings under Section 12 of the Domestic Violence Act, 2005, wherein, it was found that the respondent has been able to *prima facie* establish that she had been subjected to domestic violence. It was held that the withdrawal of the respondent from the company of the petitioner, cannot be held to be, without any justified cause.

23. It was concluded that the allegations as made by the appellant, were normal and natural outcome of long-standing matrimonial differences and were not sufficient to constitute cruelty and against the appellant and his family members; more so, when these allegations had not been substantiated by any direct, cogent and definite evidence. **The divorce petition was thus dismissed.** Aggrieved by the said judgment, the present appeal has been preferred.

24. **Submissions heard and record perused.**

25. The first objection that has been taken by the respondent is to the maintainability of the present Divorce Petition, as the earlier Divorce Petition bearing HMA No. 506/2010, on the ground of cruelty had been unconditionally withdrawn by the appellant on 25.04.2012, without seeking any permission to refile the petition on the same grounds. However, it has been rightly observed by the learned Principal Judge that while the present petition contained the allegations that existed in the earlier Divorce Petition but in addition, there were various other incidents alleged in the Divorce Petition, which has transpired after the year 2010, when the first Divorce Petition was withdrawn. Therefore, it could not be held that the present Divorce Petition which included new grounds of alleged cruelty, was not maintainable.



26. The appellant a qualified Engineer working in the Indian Army, got married to the respondent, who herself is a PHD in Management and working as a Lecturer since 09.05.1998. However, being educated is no guarantee of a successful marriage. The incompatibility in the two, became evident soon after the marriage. Admittedly, the respondent had left the matrimonial home in May, 1999 and had returned after about five months in September, 1999. Though, there are no cogent explanation of their prolonged separation but one inference which can be safely drawn is that there was incompatibility, which led to the separation of the parties, soon after the marriage for a period of about five months. In this period, the respondent admittedly approached the Commanding Officer and a maintenance amount was deducted from the salary, to be paid directly to the respondent.

27. It is not in dispute that the mother of the appellant was residing with them in the matrimonial home. It is further not under challenge that the parties shifted to a separate rented accommodation in the Paschim Vihar in January, 2007, where they resided together for some time. However, it is also not in dispute that the appellant thereafter, arranged an alternate rented accommodation in Vikas Puri, though the respondent was not willing to join this rented accommodation and continued to stay along with her two daughters, in the rented accommodation in Paschim Vihar.

28. It is further not in dispute that a Domestic Violence Petition under Section 12 was filed by the respondent on 18.10.2007, against the appellant. The appellant filed a Petition under Section 9 of the Act, in which the parties arrived at a settlement of December 2008 and they started living together. The appellant in terms of the settlement, withdrew the Petition under Section



9 of the Act, though the respondent was not forthcoming in withdrawing her Complaint under Section 12 of the Domestic Violence Act. It reflects that despite all endeavours made by the appellant, the differences between the parties did not get reconciled. Since things did not work out between the parties and the appellant filed the Divorce Petition bearing No. 506/2010, though the same was withdrawn on 25.04.2012.

29. It is evident that all the efforts of living together did not yield any results and hostilities amongst the appellant and the respondent, continued. The appellant has claimed that the respondent made false and frivolous complaints against him in the Police Station. He narrated the incident of 03.12.2011, where the respondent visited the rented accommodation and injured the old mother of the appellant. She again visited the rented accommodation on 07.04.2012 and abused the mother. The police was also called.

30. The major incident which happened was of 11.08.2012, on which date, according to the appellant, his cousin sister and niece had come to their house to meet the mother. The respondent came to the residence and abused them and also called the Police and made allegations of adultery against him.

31. This incident has been admitted by the respondent but with a different version. According to her, the appellant was *in an adulterous relationship with a strange woman* and she along with her younger daughter, who was barely eight years old, went to the rented accommodation and even called the police. The fight took place between them and the respondent made Police Complaint alleging that the appellant had been bringing a lady to his house regularly. According to her, she had taken the phone number of that



lady and also her photograph. The narration does not end there because the complaint of the respondent was supported with the complaint of her eight years daughter of the same day to the police SHO, P.S.: Rani Bagh.

32. It is unfortunate that despite the respondent being educated, she was unable to manage her sentiments and emotions, when it came to her husband. She has made adulterous allegations against the appellant and according to her, she had even taken the phone number and the photographs of the lady. However, significantly nothing has found its way to the present proceedings and no cogent evidence of the same has surfaced. Making such unwarranted allegations of adultery without any corroboration, is an act of mental cruelty as held in the case of *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, (2003) 6 SCC 334 and *A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22. Similar observations were also made in the case of *Jayanti vs Rakesh Mediratta*, 2016 SCC OnLine Del 5760.

33. The differences between two adults may arise due to myriad reasons, some may be temperamental or factual, but the irrationality of the conduct of the respondent is brought forth by her conduct of involving in eight years old child, in their disputes. The petitioner and the respondent may not have been able to generate mutual affection, respect and understanding due to their differences, but it does not justify the act of the respondent in embroiling their minor daughter in their fights. Taking a small daughter along with her with a specific design to the house of the appellant and then to make allegations of adultery and call the Police, is an act of ruining the psyche of a child and turning her against her father. *A person may be a bad husband but that does not lead to the necessary conclusion of he being a bad father.* The act of the respondent in trying to turn the children against their



father and even making her write a complaint against her father, is a clear case of parental alienation, which in itself is an act of grave mental cruelty.

34. This Court in MAT. APP. (FC) 309/2018 titled Sandhya Malik v. Col. Satender Malik had observed that no matter how bitter the relationship between husband and wife may become, it is not appropriate to involve the child or embitter her against the father or to use her as a tool against him.

35. In the case of Prabin Gopal vs. Meghna 2021 SCC OnLine Ker 2193 in a similar situation, the Kerala High Court observed that the mother had intentionally distanced the child from the father and had deprived the child from the parental love and affection. It was a case of parental alienation where the child, who was in the custody of one parent, had been psychologically manipulated against the estranged parent. It was a strategy whereby one parent intentionally displayed to the child unjustified negativity aimed at the other parent, with the intent to damage the relationship between the child and the estranged parent and to turn the child emotionally against the parent. It was observed by Kerala High Court that the child has a right to love and affection of both the parents and likewise, the parents also have a right to receive love and affection of the child. Any act of any parent calculated to deny such affection to the other parent, amounts to alienating the child which amounts to mental cruelty. Since the child was in the custody of the mother, it was held that the mother had breached her duty which she owed as a custodian parent to instil love, affection and feelings in the child for the father. Nothing can be more painful than experiencing one's own flesh and blood i.e., the child, rejecting him or her. Such wilful alienation of the child amounts to mental cruelty.

36. This is a clear case of parental alienation where the respondent has not



even spared her children and has involved them in her differences, with the appellant. Such conduct of making unsubstantiated allegations of adultery coupled with involving their child in the *inter se* disputes between the parties, can be termed as nothing but an extreme act of cruelty.

37. We may also observe that admittedly, parties have separated in the year 2006 and their efforts of re-conciliation, which followed thereafter, did not succeed and the parties are living separately since the year 2011. There is not an iota of evidence that after the parties separated, there was any effort made for re-conciliation. Rather, the testimony of the appellant shows that having separated from each other, the respondent repeatedly visited the rented accommodation and made complaints to the police. The acts of the respondent reflect her non-re-conciliatory attitude and also establishes that she had withdrawn from the company of the petitioner and abandoned her matrimonial relationship for no justifiable reason. For a couple to be deprived of each other's company and denial of conjugal relationship by the other spouse, with no effort by the respondent/wife to resume matrimonial relationship, is an act of cruelty as is held in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511.

38. We thus, conclude that the evidence on record proved that there is no chance of reconciliation between the parties and such long separation peppered with false allegations, Police reports and criminal complaints and further aggravated by parental alienation, can only be termed as acts of mental cruelty. This dead relationship has become infested with acrimony, irreconcilable differences and protracted litigations; any insistence to continue this relationship would only be perpetuating further cruelty upon both the parties.



39. We, hereby conclude that the appellant has been able to prove cruelty at the hands of the respondent. We hereby set-aside the impugned Judgment dated 19.10.2018 and grant divorce on the ground of cruelty under Section 13 (i) (ia) of the Act, 1955

40. The appeal is hereby allowed.

41. The decree sheet be drawn accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 28, 2024
RS