



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Reserved on: October 11, 2023***
Pronounced on: March 07, 2024

+ **MAT.APP. (F.C.) 210/2017 & CM APPL. 49458/2023**

SANJEEV KUMAR

..... Appellant

Through: In person with Mr. Manoj Kumar
Duggal, Advocate

Versus

SAPNA

.....Respondent

Through: In person with Counsel (appearance
not given)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 19 of the Family Court Act, 1984 has been filed by the appellant against the judgment and decree dated 31.10.2017 passed by the learned Family Court in HMA No. 58548/2016 whereby his petition seeking divorce from the respondent/wife under the provisions of section 13(1)(ia) and 1(iii) of the Hindu Marriage Act, 1955 has been dismissed.
2. The brief facts, as noted by the learned Family Court in the impugned



judgment, are that the marriage between the parties was solemnized on 25.04.2012 as per the Hindu Rites and Ceremonies. The marriage was duly consummated; and one child was born-out of this wedlock.

3. The appellant, in his pleadings before the learned Family Court, alleged that since the day of their marriage, the behaviour of the respondent towards the appellant and his family was indifferent and cruel. The respondent told the appellant that the marriage was not of her choice and she was forced to enter into this wedlock against her wishes. She also taunted the appellant that the matrimonial home was very small and she felt suffocated. Not only this, the respondent also complained of breast pain, low blood pressure, headache and back pain and the appellant had to take her for medical test to different hospitals.

4. The appellant averred that on 06.05.2012, the father, brother and other relatives of the respondent came to their house when he and his parents told them that the respondent always complained about her ill health in order to avoid household chores upon which they assured that the respondent would try to adjust in her matrimonial home. However, the respondent went to the house of her parents along with them and did not come back to her matrimonial home. Left with no option, the appellant, along with his parents and brother, went to the parental home of the respondent on 07.07.2012 to bring her back to the matrimonial home to which she flatly refused.

5. On the other day *i.e.* 08.07.2012, the mediator of the marriage called the appellant's father and informed him that the respondent has refused to come back to her matrimonial home; and had told him that either they should settle the matter or get ready to go to jail. After persuasion of the



appellant, the respondent came back to her matrimonial home on 25.07.2012. But again, on 11.08.2012 she told the appellant that she wanted to go back to her parental home. When the appellant had told the respondent to adjust in the matrimonial home, the respondent had threatened to commit suicide. On the same day, the respondent called her father in the evening and left her matrimonial home. On 22.08.2012, the appellant, alongwith his brother, went to the parental home of the respondent to bring her back to the matrimonial home which she again refused. Similar efforts were made by the appellant on 05.09.2012. In yet another attempt on 19.09.2012, the respondent came back to her matrimonial home.

6. The appellant averred that the respondent had never adjusted in the matrimonial home and was very disrespectful towards the appellant and his family members. The respondent used to leave her matrimonial home and go to her parental home as and when she desired. The appellant also alleged that the respondent was of quarrelsome nature and a short tempered lady, who was non-cooperative and hostile towards the appellant and his family. The appellant also alleged that the respondent frequently visited her parents without his consent and stayed there for long time altogether and used to come back on her own. She picked-up quarrels on petty matters and openly declared that she will live according to her wishes. The appellant alleged that she used to get up late in the morning and never did any household work and if there were guests at home, she would attend them unwillingly. Not only this, the appellant has alleged that she avoided co-habitation with him and was reluctant to maintain physical relations and even on various occasions she warned him that if he tried to touch her, she would not



hesitate to cause injury to him. The appellant alleged that she was hostile and created nuisance on petty issues.

7. The appellant also averred before the learned Family Court that the parents of the respondent had told him that she was suffering from mental illness and was getting treatment in Saroj Hospital, Delhi which fact was not told at the time of their marriage. The appellant stated that the doctor at Babu Jagjivan Ram Memorial Hospital had referred the respondent to the Institute of Human Behaviour and Allied Sciences ('IHBAS') for treatment on 22.01.2013. However, she refused to undertake any treatment. The appellant also stated that on 22.01.2013, the respondent was examined at Mental Hospital in Shahdara and in the evening, the respondent's father took her to his house and dropped her back to the matrimonial home on 06.02.2013. The respondent was again examined in Mental Hospital at Shahdara on 14.02.2013 when the father of the respondent had also come to the hospital and in their presence, the respondent told that she did not want to live with him and threatened to commit suicide if she was forced to do so.

8. The appellant alleged that on 21.02.2013, the respondent had again suffered fits and started throwing articles in the house due to which the appellant had to call her father, who took her to his house. On 16.03.2013, the appellant alongwith his parents and relatives went to the parental home of the respondent where the respondent and her father apologized and on the assurance that the respondent will change her behaviour, they brought her back to the matrimonial home again on 25.03.2013. She left the matrimonial home and again came back her on 04.04.2013.

9. On 11.06.2013, the respondent gave birth to a female child and the



appellant requested her to come to her matrimonial home. However, after her discharge from the hospital, she went to her parental home.

10. On 07.09.2013, the appellant made a complaint to the SHO, P.S.: Jahangir Puri against the respondent and her family members. On 15.09.2013, the respondent, alongwith her mother, came to the matrimonial home when the appellant told them that they would like to talk to respondent's father. However, a false complaint was made at P.S.: Jahangir Puri due to which the appellant and his family members had to stay in the police station for the entire day. The appellant has alleged that the said complaint was lodged by the respondent in order to get forcible entry into the matrimonial home.

11. Again on 30.09.2013, the respondent picked-up quarrel with the appellant and threw household articles here and there in the house. The appellant had averred that the respondent has continuously treated him with mental cruelty and wilfully deserted him without any fault. The appellant alleged that the respondent was suffering from mental disorder even before the marriage and was under treatment which fact was not disclosed to him or his family members. However, he had made all the efforts for her treatment but the behaviour of the respondent towards him and his family members did not change and he was subject to mental cruelty. The appellant also alleged that on 30.09.2013, the respondent left the matrimonial home after taking all the jewellery and valuable items with her.

12. **The respondent, in her written statement** filed before the learned Family Court, averred that the appellant and his family members had committed all kinds of cruelties upon her including demand of dowry; and



when she and her parents failed to fulfil those demands, they abused and harassed her. The respondent has averred that she is mentally fit but the appellant with the help of lab technician/assistant, who is working in the said Mental Hospital, had tried to establish that she is mentally unsound, which is false and concocted. The respondent has alleged that she had given birth to a female child, however, the appellant and his family desired a son. Had she given birth to a son and her parents would have given a car in dowry, she would not have been made to suffer the atrocities at the hands of the appellant. The respondent also alleged that the appellant and his mother had tried to find out the gender of the foetus during the pregnancy and when she could not give birth to a son, his mother advised him to dump her. The respondent alleged that her parents, at the time of her marriage, incurred huge financial expenditure on genial and valuable items which they gave to the appellant and his family members. However, she was also taunted for bringing less dowry.

13. The respondent alleged that in February, 2013, when she got pregnant, the appellant and his family members did not give her required food to eat. Moreover, she was deprived of basic requirements such as fan in the room even though they themselves enjoyed comfortable living and due to which reason she had always visited her parental home. The respondent alleged that the kitchen in the house was on the ground floor whereas the appellant and his family members used to eat on the third floor and even during her pregnancy, she was made to climb stairs to serve them hot food which caused great mental and physical agony to her. The respondent alleged that the appellant had deliberately thrown her out of their house on



the assurance that they would arrange a separate accommodation for them.

14. The learned Trial Court, on the basis of the pleadings of the parties, framed the following issues:

1. Whether the respondent treated the petitioner with cruelty after the solemnization of their marriage?

OPP

2. Whether the respondent is incurably of unsound mind or has been suffering continuously or intermittently with mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent?

OPP

3. Whether the petitioner is entitled to dissolution of his marriage with the respondent by way of decree of divorce?

OPP

4. Relief.

15. In order to substantiate their case, the appellant examined himself as PW-1 and the other official witnesses. The respondent/wife examined herself as RW-1.

16. In the light of the testimonies recorded and the other material placed on record, the learned Family Court observed that when the respondent appeared before the court during her cross-examination, she appeared attentive and was able to communicate and express herself adequately and did not seem of unsound mind. The court also observed that the respondent was maintaining the child of the parties single handedly and independently and therefore, the appellant failed to prove that the respondent was of



incurable and unsound mind. The learned Trial Court on the allegation of cruelty observed that the troubles in the early days of marriage of the parties was due to minor adjustments and no specific incident has been described by the appellant which could have created a reasonable apprehension that the respondent was committing cruelty upon the appellant.

17. The learned Family Court further observed that the conduct of the respondent at her early stage of pregnancy was due to physical changes which most of the women suffer in their early days of pregnancy. However taking the respondent to the Mental Hospital in order to prove that she was of unsound mind amounts to mental cruelty.

18. With the aforesaid observations, the learned Family Court held that the appellant was not entitled to any relief on the ground of Section 23(1)(d) or other grounds under Section 23 of the Hindu Marriage Act, 1955.

19. The challenge to the impugned judgment dated 31.10.2017 by the appellant is on the ground that the learned Family Court failed to appreciate that the respondent in her cross-examination admitted that she was not aware of the contents of her affidavit filed in examination in-chief; and that she had humiliated him to such an extent that there were no chances of reconciliation. The learned Family Court failed to appreciate that the medical documents placed on record and even during her cross-examination, no suggestion was put forth by the respondent with regard to mental health of the respondent. The learned Family Court also failed to appreciate that the respondent very frequently threatened the appellant of committing suicide, which is a mental cruelty caused upon the appellant and his family; which constitutes a valid ground to grant divorce under provisions of



Section 13(1)(ia) of the Act. The appellant has also challenged the impugned judgment on the ground that the respondent denied sexual relations with him, which allegation has not been rebutted by the respondent and denial of sexual relations in a marriage amounts to cruelty. Thus, setting-aside of the impugned judgment is sought by the appellant.

20. The submissions advanced by learned counsel for the parties were heard at length and the impugned order and other material placed on record of the learned Trial Court has been carefully perused by us.

21. The appellant had examined himself as PW-1 and in his affidavit filed in examination-in-chief, he has raised the allegations against the respondent of committing cruelty upon him and his family members, as has been noted above. He, however, denied that he had thrown out the respondent out of his house.

22. Appellant also examined an official from IHBAS (PW-2) to establish medical record (**EX. PW-2/1**) in respect of respondent, who had only brought the record and was not able to tell whether the case of respondent was referred to some other hospital or not.

23. The respondent got herself examined as RW-1 and denied all the allegations levelled by the appellant and reiterated her stand narrated in the written statement. During her cross-examination, she at the first instance denied that she was having any kind of brain problem or Calcified focus interhemispheric fissure in parasagittal location or that she was ever referred to IHBAS for treatment. However, in her subsequent cross-examination, she admitted of undergoing treatment at IHBAS and volunteered she was taken there by the appellant and his mother.



24. This Court has gone through the various medical prescriptions placed on the record of learned Family Court. A perusal of EX. PW-2/1 shows that respondent was first taken to IHBAS on 22.01.2013 and was put on certain medication. On the next date i.e. 14.02.2013, the doctor mentioned in prescription that *“history obtained was unrealistic and inadequate and respondent was referred to psychologist and no psychotropic medication was prescribed. The prescription dated 05.03.2013 by IHBAS notes that “respondent was six months pregnant and her attention was adequate and was well motivated to complete the test”.*

25. A perusal of these reports thereby show that respondent was physically and mentally fit and even if it is taken that she had complaint of pain in breast or chest or low blood pressure, headache, etc, this could be due to hormonal changes during the period of pregnancy. The medical prescriptions are categoric to opine that respondent was pregnant and was in alert state of mind. These prescription mention that respondent was accompanied by her husband and mother-in-law. In our considered opinion, the accusations of appellant that respondent was suffering from mental illness and taking her for treatment to Mental Hospital or IHBAS, demonstrates his ill intention to create evidence that respondent suffers from mental disorder, which has been disproved by the prescriptions placed on record. Thereby, the learned Family Court has rightly rejected appellant's claim seeking divorce under Section 13 1 (ia) iii of the Act.

26. The marriage between the parties is a sacred bond which is premised upon respect and trust between the spouses. There exists a thin line between misbehaviour and cruelty. Whether behaviour of a spouse against the other



is mere difference of opinion, leading to matrimonial conflicts resulting into normal wear and tear of a married life or the conduct is such which has led to a spouse misbehaving with the other to the extent that it causes mental agony upon the other, determines the aspect of cruelty meted upon the other. What is cruelty, has already been dealt with, in a catena of decisions by the Hon'ble Supreme Court and this Court as well.

27. What is Cruelty has been spelt out in a catena of decisions. The Hon'ble Supreme Court in **Savitri Pandey Vs. Prem Chandra Pandey** (2002) 2 SCC 73 has recited "Cruelty" in married life in the following words:-

*"6. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from **the ordinary wear and tear of family life**. It cannot be decided on the basis of*



the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.”

28. So far as the claim of the appellant that the respondent had committed cruelty upon him, which entitles him to take divorce under Section 13(1)(ia) of the Act, this court finds that the parties to the present petition got married on 25.04.2012 and a female child was born on 11.06.2013, meaning thereby soon after their marriage, the respondent had conceived. The parties are stated to have been living separately since 30.09.2013, meaning thereby all the allegations levelled against the respondent pertain to the short period of less than 01 year *i.e.* immediately after their marriage. Even the nature of the allegations levelled against the respondent are that she used to sleep till late in the morning, was reluctant to do household chores, was not willing to adjust in the family of the appellant etc.

29. In our considered opinion, the learned Trial Court has rightly observed that having conceived pregnancy immediately after marriage, brought lot of physical and psychological changes in respondent and sleeping late and reluctance to do house hold chores could be result thereof. During the said period, the appellant was expected to understand that doing house hold chores was not the responsibility of respondent alone and he should have shared this burden with her.

30. It is relevant to note here that even though the respondent has raised allegation of dowry demand against the appellant and his family members, the respondent did not lodge any complaint in this regard. Had the



respondent intended to cause harm to the respect of appellant or his family, she would not have hesitated to lodge a complaint against them.

31. In the light of the aforesaid observations, this Court is of the considered opinion that the appellant has not been able to establish that the respondent was suffering from mental disorder or had committed any kind of cruelty upon him. Instead, this court is of the opinion that in an attempt to prove that the respondent was suffering from mental disorder, the appellant has been too harsh upon her to make her suffer agony of such like treatment.

32. With the aforesaid observations, the present appeal is dismissed.

33. Pending application stands disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 07, 2024

uk/r