



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

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*Reserved on:19th September, 2023
Pronounced on:30th January, 2024*

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MAT.APP.(F.C.) 314/2019 & CM APPL. 52365/2023 (Stay)

NISHA KAPOOR @ NISHA SAINI

..... Appellant

Through: Mr. Imran Khan, Advocate with
appellant in person.

Versus

DEEPAK SAINI

.....Respondent

Through: Mr. Rambir Singh, Advocate 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.

1. The present Appeal under Section 19 of the Family Courts Act, 1984 and Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/wife against the Judgment and Decree dated 05.08.2019 whereby the divorce petition filed by the respondent/husband on the ground of cruelty under Section 13(1)(ia) of HMA, 1955, has been allowed.

2. Briefly stated, the parties got married on 15.02.2006 according to Hindu rites and customs at Delhi. One daughter was born from their wedlock on 30.08.2007.



3. The respondent/husband in the Divorce petition before the Family Court, Delhi had claimed that within one week of joining the matrimonial home, the appellant/wife had started insisting to live separately from his parents as she did not like their interference in their day-to-day affairs. The appellant/wife also made demands from the respondent/husband for latest gadgets and all luxuries of life. She frequently started visiting her parental home on one pretext or the other and would stay there for 10 to 15 days. She was having a difficulty to adjust herself in the matrimonial home and discharge her duties and obligations.

4. The appellant/wife, when advised by the respondent/husband to adjust, threatened him that she would get him implicated in false cases with the help of her father, who was in Delhi Police and her brother, who is in Central Bureau of Investigation (CBI).

5. After the birth of their daughter, the appellant/wife became more aggressive and passed sarcastic and taunting remarks on the parents of the respondent/husband. Moreover, the appellant/wife would lock the respondent/husband in his room and go out and release him from the room only after she returned in the evening.

6. The appellant/wife kept mounting pressure on the respondent/husband to start living separately from the parents. Ultimately, under the compelling circumstances, the respondent/husband separated from his parents in the month of September, 2008 and with their permission, the respondent/husband started residing independently on the 4th floor of the same house. However, the behaviour of the appellant/wife did not change. She again misbehaved in November, 2008 and manhandling the respondent/husband without any rhyme or reason and cursed him to leave



her alone or go anywhere he wanted. Left with no choice, the respondent/husband started residing with his parents on the third floor of the same house.

7. The appellant/wife started visiting the premises of his parents and continued to extend threats of false implication. The respondent/husband apprehending some mischief at the hand of the appellant/wife, lodged the Complaint dated 18.12.2008 at the Police Station Anand Parbat, New Delhi, narrating the threats that were being extended by the appellant/wife. He also forwarded a copy of the said complaint to the Commissioner of Police, Delhi.

8. The appellant/wife suddenly left the house on 23.12.2008 along with all her belongings, aside from taking Rs. 7,300/- and started living at her parental home. The respondent/husband again reported the matter on 24.12.2008 at Police Station Anand Parbat, Delhi and forwarded the copy of the same to the Deputy Commissioner of Police, Darya Ganj, New Delhi.

9. The respondent/husband claimed that he was subjected to cruelty due to cruel and arrogant nature of the appellant/wife and the marriage between them had irretrievably broken with no chance of reconciliation.

10. The respondent/husband also disclosed that he had filed the divorce earlier in the Court of learned Additional District Judge, Delhi, but because of the technical objection of jurisdiction, he had withdrawn the said divorce petition and again filed the present Divorce petition in which the impugned Judgment and Decree dated 05.08.2019 has been passed.

11. *The appellant/wife in her Written Statement* denied all the allegations made by the respondent/husband. She asserted that the respondent/husband has not approached the Court with clean hands and had



suppressed the material facts. She also claimed that the respondent/husband had filed the Divorce petition only to escape the consequences for his atrocities of beating and assault, making her starve for days together, disconnecting electricity connection of her room in summers and demanding more dowry, etc. The appellant/wife further asserted that many litigations are pending between the parties and the respondent/husband is not entitled to divorce.

12. **On merits**, the appellant/wife contended that at the time of marriage, luxurious arrangements were made and expensive gifts were given. The respondent/husband and his family members were not satisfied with the dowry articles and kept demanding more cash and dowry. Since the day of their marriage, she was ill-treated, humiliated and harassed and given severe beatings on this account.

13. The appellant/wife further asserted that after the daughter was born, the family members expressed their anguish on the birth of the girl child and made her life miserable by giving her inhumane beatings and by not providing her with the basic necessities such as food, medicines, electricity supply, etc.

14. The appellant/wife admitted that her father and brother were working with the Delhi Police and the CBI respectively and her father retired long back. It was however, denied by her that her behaviour was aggressive or that she extended threats of false implication as alleged by the respondent/husband. She claimed that she continued to discharge her marital obligations and give love and affection to the respondent/husband and his family members.



15. She admitted that she had initiated litigation against the respondent/husband and his family members under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as “D.V. Act, 2005”*) and had also made a complaint under Section 156(3) of the Code of Criminal Procedure, 1973 praying for appropriate orders.

16. The appellant/wife further submitted that on every petty matter, she was turned out of her matrimonial home with numerous demands and in the month of August, 2008, it was decided that the parties would start residing separately on the 4th floor of the matrimonial home to help them develop mutual understanding. However, the behaviour of the respondent/husband did not change.

17. The appellant/wife explained that on 23.12.2008, she had gone to her parental home with the permission of the respondent/husband and had merely taken her day-to-day clothes to her parental home in order to prepare for entrance examination. However, on her return on 25.03.2009, she was prevented from entering the house by the respondent/husband and his family members. She was thus compelled to make the complaint to the Police. She again returned to her matrimonial home, but she found that Rs. 2,000/-, clothes, jewellery, toys, keys of motorcycle, gas stove etc. were missing from her room. She found that all the household items had been stolen by the respondent/husband and his family members. She, therefore, made a complaint to SHO, Police Station Anand Parbat.

18. On 22.04.2009, brother and mother of the respondent/husband entered the room of the appellant/wife and tried to strangulate her and even attacked her with a beer bottle, somehow she succeeded in saving herself. The appellant/wife suffered severe injuries on her abdomen and neck and she got



herself treated at visited RML Hospital, Delhi and made a complaint to the SHO Police Station Anand Parbat on 23.04.2009.

19. It is asserted that it is the appellant/wife who suffered cruelty at the hand of the respondent/husband and his family members and she was treated with cruelty. Therefore, the respondent/husband was not entitled to divorce.

20. On the basis of pleadings, the issues were framed on 22.08.2017 which read as under: -

“(1) Whether the petitioner is entitled to decree of divorce on the ground of cruelty u/s 13 (1) (ia) HMA? OPP

(2) Whether petitioner is not entitled to decree of divorce on the ground of cruelty under Sec. 13(1)(ia) HMA as he has not approached the court with clean hands? OPR

(3) Relief.”

21. The appellant/wife and the respondent/husband appeared as their own witnesses in respect of their respective case.

22. The ***learned Principal Judge, Family Court*** on appreciation of the evidence concluded that after the birth of the child, the appellant/wife herself went to her parental home and lived there for four and five months. Though the respondent/husband brought her back on 16.08.2008, but she again left the matrimonial home on 05.09.2008. It further emerged from the testimony of the parties that the respondent/husband had been compelled to stay away from his parental home while the appellant/wife continued to stay there with her daughter.



23. Ld. Family Judge further observed that the most significant aspect was that the respondent/husband produced one CD, Ex. PW1/6 along with the photographs, Ex. PW1/5 showing that the appellant/wife was residing with one Ajit Aryan or she was visiting or she stayed in different hotels in Delhi and Gurgaon. Though the appellant vehemently denied these allegations, but the CD and the photographs were held to speak otherwise. It was thus, concluded that such acts of the appellant/wife constituted not only the physical but also mental cruelty and thereby the Divorce was granted.

24. Aggrieved by the Judgment and Decree dated 05.08.2019, the present Appeal has been preferred by the appellant/wife.

25. Submissions heard from the counsels for the parties and the documents as well as the evidence perused.

26. Significantly, the parties got married on 15.02.2006 and they finally separated on 23.12.2008. The respondent/husband has been living out of the matrimonial home in the 4th floor while the appellant/wife along with the daughter continues to reside therein. The appellant/wife, however, has not been able to explain the circumstances under which the parties had separated and have been living separately since 23.12.2008. She admits of having made a complaint under Section 156(3) of Code of Criminal Procedure, 1973 on the ground of having been inflicted with physical beatings.

27. The appellant/wife narrated an incident of having been beaten up severely on 22.04.2009 by the brother and the mother of the respondent/husband with beer bottle and also made an attempt to strangulate the appellant/wife for which she had to get herself treated at RML Hospital and for which she also made the Complaint dated 23.04.2009.



28. The appellant/wife during her testimony had produced the Complaints dated 29.03.2009 and 14.04.2009 which was marked as Mark 'A' and 'B' and the Complaint dated 23.04.2009 marked as Mark 'C' and her Discharge Slip dated 23.04.2009 marked as Mark 'D', but neither these documents have been proved in accordance with law nor has the appellant/wife been able to lead any cogent evidence to prove that there was any attempt to kill her by the mother and the brother of the respondent/husband.

29. Making such irresponsible, unproven and unsubstantiated allegations against the family members of the respondent/husband clearly amounts to mental cruelty to the respondent/husband. In the case of Narendra vs K. Meena (2016) 9 SCC 455, the Apex Court had held that making false allegations devoid of any substantiation amounts to cruelty in a matrimonial relationship.

30. It is further significant to note that the respondent/husband has produced a CD, Ex. PW1/6 and photographs Ex. PW1/5 duly supported by a certificate under section 65B of the Indian Evidence Act, 1872, showing the appellant/wife in a compromising position with one Ajit Aryan. Though the appellant/wife has denied any relationship with Ajit Aryan or that she has been living with him in different hotels, however, the photographs and the CD speak loud. A mere denial by the appellant cannot wash away the truth that she was in a relationship with one Ajit Aryan after separating from the respondent/husband.

31. The appellant/wife had also taken a plea that the CD and the photographs are morphed, fabricated and manipulated, but aside from making bald assertions of these documents being false and fabricated, no cogent evidence has been led by the appellant/wife to repel these documents



or the testimony of the respondent/husband in regard to her relationship with Ajit Aryan.

32. The conduct of the appellant/wife, therefore, reflects that after separation from the respondent/husband, the appellant/wife has developed affections for another man and has no intent to continue in the matrimonial relationship with the respondent/husband.

33. The conduct of the appellant/wife also demonstrates that there is a complete repudiation of the matrimonial relationship. Moreover, there is no evidence to establish the circumstances in which she separated from the respondent, and of any endeavour whatever having been made by her to resume the matrimonial relationship. Rather, it has been established that she has forged new relationship and affection for a third person.

34. It clearly shows that the respondent/husband, due to the conduct of the appellant, for the last more than ten years has been deprived of conjugal relationship and the joy of togetherness, trust, love and affection which are the gravamen of any matrimonial life. Depriving a spouse of the bliss of matrimony, conjugal relationship and cohabitation for such a long period without any fault of the respondent, is a complete anathema to what marriage means and entails. This in itself is an act of mental cruelty warranting a dissolution of marriage as held by the Apex Court in the case of Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.

35. For the foregoing discussions, we conclude that there is enough evidence on record to prove that the respondent/husband was subjected to cruelty entitling him to divorce under Section 13(1)(ia) of HMA, 1955 and the Ld. Family Judge has rightly granted the divorce to the respondent/husband.



36. Therefore, we find no merit in the present Appeal which is hereby dismissed along with pending applications, if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

JANUARY 30, 2024
S.Sharma