



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

% **Reserved on: September 20, 2023**

Pronounced on: March 07, 2024

+ **MAT.APP.(F.C.) 246/2023**

RUMA CHAKRABORTY Appellant
Through: Ms. Manali Singhal, Mr. Santosh
Sachin, Ms. Aanchal Kapoor &
Mr. Deepak Singh Rawat, Advocates

Versus

PRANAB KUMAR CHAKRABORTY Respondents

Through: None.

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CORAM:

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

JUDGMENT

SURESH KUMAR KAIT, J

1. The above captioned first appeal [MAT.APP.(F.C.) 246/2023] has been preferred by the appellant against the judgment dated 13.05.2010 passed by the learned Family Court, whereby her petition under Section



13(1)(ia) and desertion under section 13(1)(ib) of the Hindu Marriage Act, 1955 seeking divorce from respondent-husband has been dismissed.

2. The above captioned second petition [MAT.APP.(F.C) 247/2023] under Section 28 of the Hindu Marriage Act, 1955 read with Section 96 and 151 of the Code of Civil Procedure, 1908 has also been filed by the appellant seeking setting aside of the order dated 13.05.2010 whereby petition under Section 9 of the Act, filed by her husband i.e. respondent herein, seeking Restitution of Conjugal Rights, has been allowed by the learned Family Court.

3. The brief background of these appeals, as contemplated by the appellant, are that the parties got married on 14.12.1998 according to Hindu Rites and Ceremonies at Kanpur, U.P. and after marriage, she was taken to Rai Bareilly, U.P., which is her matrimonial home. The marriage was duly consummated and one female child was born out of the wedlock on 23.12.1999.

4. The respondent prior to his marriage with the appellant was a widower and having one daughter from his first marriage who was living with his mother and other family members at his native place at Rae Bareilly, U.P. Also, it was in the knowledge of the parties that appellant having suffered meningitis, was hard of hearing from one ear.

5. The appellant in the present appeal as well as before the learned Family Court averred that at the time of marriage between the parties, her father had given a sum of Rs.13,250/- in cash and a cheque of Rs.22,000/- as gift for purchase of household articles like refrigerator and washing machine. The appellant has alleged that soon after her marriage, upon



reaching Rae Bareli, respondent took all her jewellery articles and rushed to the bank to put in his brother's locker, to which she did not object in good faith.

6. The appellant has averred that after living for a few days in Rae Bareilly, U.P, the respondent took her to reside at Nagda, M.P. by the end of December, 1998, where he was employed and had an official quarter.

7. The appellant whenever asked the respondent to purchase the fridge and washing machine out of the money gifted in the marriage, he informed that the money was already given to someone to purchase those items. However, later she got to know that respondent had made a Fixed Deposit Receipt out of the said amount, due to which she felt shocked and hurt and upon her cross-questioning, the respondent threatened her to go back to her parents house.

8. The appellant has alleged that respondent showed no inclination to develop intimacy with the appellant, nor she was consulted in any decision and was merely treated like an object to do unpaid household chores, including sweeping, swabbing floor, washing clothes, cooking and clearing utensils etc. The respondent even refused to engage a maid for appellant's help.

9. The appellant pleaded that since the inception of marriage, she had been a devoted wife, however, was never respected, cared, or afforded any love and affection by the respondent.

10. The appellant also averred that after she conceived pregnancy in April, 1999, but the respondent did not care for her and made her do all



household chores in such state of health, even though at the relevant time his mother and daughter from first marriage were also staying with them. Despite doctors advise, she was not allowed to take bed rest and made to do all house hold chores. When her parents visited them in July, 1999, they were shocked to see the ill treatment meted out to appellant by the respondent and his family members. Thereafter, respondent left the appellant at her parents' house in Delhi in September, 1999 and all the medical expenses for delivery of the child were borne by her parents and no money was offered by respondent. A girl child was born to the parties on 23.12.1999 and respondent, who wanted son, returned back to Nagda just after three days of child's delivery and did not even bother to ask about their well being for next six months, despite repeated efforts by the appellant.

11. In June, 2000 respondent informed the appellant about ill health of and hospitalization of his father, when she also came to know that he had left his job at Nagda and was living at Rai Bareli. The appellant, along with her daughter and parents rushed to Rai Bareli, however, respondent and his family members ignored them and even the minor child was not given any affection. So, she was left with no option but to return to her parents' house.

12. Upon receipt of information of demise of respondent's father on 12.07.2000, the appellant again rushed to Bareli, however, appellant and his family excluded her from family meetings and made her feel outsider. On *tehrvi* ceremony, respondent did not seem well and so, appellant and his family brought him to Delhi with them and took him to Apollo Hospital for treatment and during the said period of 45 days, respondent stayed with appellant at her parents' house. Even the medical expenses were borne by



her parents. Thereafter, respondent left for Nagda but did not ask the appellant to accompany him and on her much persuasion, he took appellant and their daughter in November, 2000. However, his conduct and behaviour did not change and he showed no love and affection for them. In February, 2001, the respondent brought them back to Delhi as he was unable to maintain them financially. However, on 30.06.2001 respondent took them to Bareilly on the occasion of *barsi* of his father, where she tried to adjust with her in-laws but respondent again left her at her parents house on 20.07.2001.

13. The appellant has alleged the respondent did not inform her about his whereabouts and avoided her but suddenly visited them on 21.12.2002 on the occasion of birthday of their daughter and stayed there for two days but however, again disappeared.

14. According to appellant, in February, 2003, her father took her and her daughter to Rai Bareilly, where she stayed till 24.04.2002 but respondent disappeared on 01.04.2003 and his family members ill treated both of them.

15. The appellant alleged that during her matrimonial period of 12 years, she hardly stayed with respondent-husband for one year and a few months and she made all efforts to save her matrimonial relationship with respondent, who ill treated them. On 14.09.2004 and thereafter on 29.01.2005, the respondent visited them but did not offer to take them back to her matrimonial home.

16. Thereafter appellant filed the petition under Section 13(1)(ia) (ib) of the Act seeking divorce from respondent.



17. On the other hand, the stand of respondent in her written statement is that no demand of cash was made at the time of reception ceremony. The respondent pleaded that the appellant having spent her life in a big city like Delhi, could not adjust with him in small cities like Rae Bareilly, U.P. and Nagda, M.P. The respondent averred that appellant used to call these cities stinking and not of her liking. He further averred that he and his family members belonged to Brahmin family and as it was customary that the delivery of their first child should be at their matrimonial home, but the appellant insisted for her medical tests and delivery at her parental house, even though medical facilities at Nagda were also good. He claimed that their matrimonial life was going well till the visit of appellant's parents at Nagda in September, 1999, who disturbed their peace and harmony and made the appellant to leave for Delhi with them for her pre-natal tests and delivery.

18. Respondent also averred that he had not only visited Delhi at the time of birth of his daughter and taken customary gifts for the child. He claimed to have given one gold ring to the appellant. He also claimed that he had always been a good husband and they all were happy with the birth of a female child and were never obsessed with the desire of having a son.

19. He further claimed that during her visits to Rai Bareilly on account of the illness, and death of his father, the appellant was always given full love and affection and was treated like a family member by him and his family, but she was never willing to stay with them there and hence returned back to Delhi with her parents and the minor child. The respondent claimed that the customary *mundan* ceremony of the child was held at Rae Bareilly, just after



the death anniversary of his father and he had taken the appellant for a pleasure trip for about 20 days.

20. Though the respondent did not deny that the jewellery articles of the appellant were kept in the locker of his brother at Rai Bareilly, but he averred that the same were kept only for the safe custody and did that at the request of the appellant herself, who had earlier lost one necklace at the marriage reception hosted at Delhi and he had to purchase another for her. He further averred that the jewellery articles of the appellant were lying in the same locker and position. He alleged that the appellant was never interested in doing any house hold chores and always pressed for employment of a domestic help or maid for doing the same.

21. The appellant clarified that since this was his second marriage, he was extra cautious in extending his love and affection to the appellant so that he could have a successful marriage. The respondent alleged that it was the appellant who caused cruelty upon him, compelling such circumstances which led to desertion.

22. He also denied his employments and stays at different places in different States and the fact that they were kept secretive or he ever avoided or refused to take the responsibility of the appellant or his daughter by submitting that he regularly sent some amounts to the appellant, e.g. two demand drafts, one in October 2004 and the other in April, 2005, but appellant refused to accept. Also claimed to have given cash amount of Rs,3500/- to the appellant during his visit to Delhi on 14/15.09.2004 but the appellant initiated false and fictitious proceedings under Section 24 of the Act seeking maintenance from him.



23. The learned Family Court, on the pleadings of the parties framed the following **Issues**:-

“1. Whether this court has territorial jurisdiction to entertain and decide this petition?

OPP

2. Whether after the solemnization of the marriage of the parties the respondent has treated the petitioner with cruelty?

3. Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of this petition?

4. Whether the petitioner is entitled to the relief claimed in this petition?”

24. In support of her case, the appellant examined herself as PW-1 and also examined her father as PW2. The respondent appeared as RW- 1 and examined his brother and his bhabhi/sister in law as RW2 and RW3 respectively.

25. The learned Family Court, after considering the testimony of the parties, held that evidence on record did not show that any case was made out for the appellant herein to show that respondent had treated her with cruelty and that she had failed to prove the grounds of desertion for dissolution of marriage.

26. Aggrieved against the aforesaid judgment, the appellant has challenged the same on the grounds that in the total span of 12 years of their marriage, the parties have been living separately for more than 7 years and



there is no scope for them to be living together as husband and wife as they will not be happy together. However, the learned Family Court did not appreciate the mental agony faced by the appellant when her jewellery was taken away from her by the respondent. The appellant has pleaded that respondent's greedy conduct by not employing a domestic help when the appellant was advised bed rest during pregnancy, has not been appreciated by the learned Family Court and the finding returned that the household work cannot be tortuous, is erroneous.

27. On the assertion of respondent that he had sent two demand drafts to show that he did not financially neglect the appellant and their daughter, deserves to be rejected, as the respondent visited the appellant and their child only three times in three years thereby leaving the appellant behind to bear her own and child's expenses which is clear from the fact that he had contested and resisted the maintenance application filed by her under Section 24 of the Act, which awarded only a meagre sum of Rs. 2000 p.m., which shows that he wanted to evade his financial responsibility.

28. The respondent further stated that when he visited Delhi on the birth of his daughter, he expressed the desire of his family to take her as well as the child to his native place at Rae Bareilly, UP for performing some ceremony pertaining to the birth of the child and then to live at Nagda, MP for the proper care, nursing and enjoyment of his family life, but the appellant flatly refused to move out of Delhi.

29. Also, when the respondent's father had fallen sick, he had a desire to see and bless the newly born child as well as the appellant, the respondent



had approached his in-laws at Delhi but the appellant refused to come with him and he had no option but to return.

30. Quoting another incident in July, 2000 when his father was hospitalized, he called the appellant and even though she alongwith her parents visited Lucknow where his father was hospitalized, however returned to Delhi despite persistent requests made by him and his family to stay. On being informed about the death of her father-in-law, the appellant had visited his native place at Rae Bareli, UP but she again returned to Delhi with her parents after performing the *tehrvi* and did not stay back.

31. The respondent reiterated that the appellant had never cared for his or his family's sentiments and rather always kept on provoking and pressurizing him to come to Delhi and stay with her parents as a "*Ghar-jamai*".

32. The appellant in her written statement denied all averments and stated that allegations against her were only a counter blast to the divorce petition filed by her with an intent to harass and traumatize her. She averred that when she visited to see her ailing father-in-law at hospital in Lucknow, she also stayed at the native house of the respondent at Rae Barelli, UP for few days and she returned back to Delhi only because neither the respondent nor his family had asked her to stay back. It was also her case regarding her revisits to Rae Barelli on the demise of her father in-law and subsequently when she had stayed there on request of mother of the respondent, that she had always been willing and interested to settle her matrimony with the respondent but, not at this belated stage when the respondent had already deserted her for the last many years.



33. On the pleading of the parties, the following Issues were framed:-

- “1. Whether the respondent has deserted the petitioner without any reasonable excuse? OPP*
- 2. Whether the petitioner is entitled for decree for restitution of conjugal rights? OPP*

34. In support of his case, the respondent examined himself as PW-1. The appellant herein got herself examined as RW- 1 got examined her parents as RW-2 and RW-3 respectively.

35. After considering the evidence of the parties, the learned Family Court held that appellant had failed to prove on record any reasonable cause or excuse on her part in withdrawing from the society of the respondent and to live separately from him and granted decree of Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 in favour of the respondent.

36. The appellant has challenged the decision of the learned Family Court rejecting her application under Section 9 of the Act on the ground that appellant has not been able to show as to why she withdrew from the society of the appellant. The appellant has asserted that petition under Section 9 was filed after she had filed petition seeking divorce in order to show that he was willing to live with respondent, even though he never cared that for all the years she was forced to live with her parents. The appellant has pleaded that the learned trial court has not appreciated the evidentiary value of the depositions of RW/2A and RW/3A i.e. her parents, who have supported the case of the appellant.

37. Thus, appellant has sought setting aside of impugned judgments dated 13.05.2010 passed by the learned Family Court.



38. It is relevant to note here that in the impugned judgment passed by the learned Family Court rejecting appellant's petition under Section 131(ia) and (ib) of the Act, the learned Family Court has noted that since the petition under Section 9 and the petition for divorce under Section 13(1)(ia) and desertion under section 13(1)(ib) of the Act, 1955 had almost common issues, both the petitions were taken up for disposal together and the evidence and the pleadings of the parties therein were considered in harmony, to avoid any conflicting appreciation of evidence and the conflict in judgments.

39. This Court also finds that the backforth of both the appeals is matrimonial dispute between the parties and so, these appeals are decided by this common judgment.

40. Pertinently, when these appeals came up for hearing before this Court on 20.09.2023, none had appeared on behalf of respondent and so, was proceeded *ex parte*.

41. This Court has meticulously gone through the impugned judgments and material placed before the learned Family Court as well as on record of this Court.

42. The parties in these appeals have raised counter allegations of committing cruelty by one spouse on the other. In a catena of decisions it has been asserted that conflicts arising between the spouses in respect of household work or financial differences are normal wear and tear of married life, however, the behaviour of a spouse towards the other depicts whether the conduct is such which amounts to cruelty.

43. 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.”*

44. In the present case, between the short period from 30.12.1998 till September, 1999 when the parties were residing together before the birth of child, they entered into the marital discord. The issues of conflict between the parties were that the appellant, who claimed to have belonged to the family where for household chores maids were kept, insisted upon



respondent to keep a maid for herself during the period of pregnancy. Upon which the respondent asserted that the appellant was neglectful of household responsibilities and was not ready to contribute to the family responsibilities. The appellant alleged that the respondent never financially supported her and due to this reason, she in the month of September, 1999, went to her parents' house in the advance stage of pregnancy where she gave birth to a female child in 23.12.1999.

45. The appellant has alleged that all the expenses for her delivery and treatment were borne by her parents and the respondent has in his cross-examination asserted that he belonged to a conservative family where the delivery of first child happens at the parental house of the wife. The appellant has asserted that after birth of the child, the respondent visited her and stayed at her parents' place for three days and did not offer her to come back to the matrimonial home. All the above shows that during the pregnancy of the appellant, respondent failed to take care of her and help her in daily chores due to which she had to leave her parents' house and also to become dependent upon her parents for medical and delivery expenses.

46. Even if it is taken that the respondent and his family had arranged a "*Mundan*" ceremony for his child and had given gifts, i.e. gold, etc. to the newly born child, this does not, in any way, absolve the respondent from taking care of the day-to-day requirements of his wife and child.

47. In June, 2000, the respondent informed the appellant about ill-health and hospitalisation of his father and the appellant visited them first at Lucknow where his father was hospitalised and thereafter, also in Rai Bareilly where they lived. This shows that the appellant was concerned



about ill-health of respondent's father and also willing that the grand-father should meet the child of the parties and so, it cannot be said that appellant did not care about sentiments of her in-laws.

48. The afore-noted facts of the present case shows that appellant has been able to establish cruelty committed by the respondent within the meaning of Section 13 1(ia) of the Act, upon her.

49. Again, it is not disputed by the respondent that in February, 2001, the respondent brought the appellant and his child back to Delhi to her parents' house citing financial distress and inability to maintain them. Thereafter, his whereabouts were not known to the appellant for a long time. The respondent did not visit the appellant or their child, which shows that he not only avoided the financial responsibility but also the moral responsibility towards them.

50. The Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah Vs. Prabhavati*** 1956 SCC OnLine SC 15 has observed as under:-

“Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of



conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.”

51. Relevantly, during the married span of 12 years, the appellant had stayed at her matrimonial house only for one year and a few months. The respondent was not in regular employment to bear the responsibility of his wife and child which forced the appellant to leave the matrimonial house and live with her parents but he did not file any application under Section 9 of the Act at the said time, which shows his ill-intention of evading responsibility towards them, however, when the appellant filed a petition seeking divorce, he knocked the doors of the court citing cruelty at the hands of appellant.

52. It is not in dispute that when the appellant preferred the petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, seeking divorce from respondent before the learned Family Court, the respondent preferred petition under Section 9 of the Act seeking restitution of conjugal rights.

53. In our considered opinion, the learned Family Court while allowing the petition of the respondent under Section 9 of the Act lost sight of the fact that it was not the appellant who had deserted the respondent but since respondent was unemployed for a substantial period of time and was not in a position to take appellant's financial responsibility, the appellant was compelled to live with her parents.

54. The pertinent observations of the Hon'ble Supreme Court on the aspect of desertion in *Savitri Pandey (Supra)*, are as under:-



“8. “Desertion”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case.

55. In our considered opinion, by filing petition under Section 9 of the Act, the respondent had in fact taken double standard, on one hand to show that the appellant was cruel toward him and on the other, to show that he was willing to live with his wife. The conduct of respondent noted above clearly demonstrates that he had never made sincere efforts to rejoin the company of appellant. In our opinion, the learned Family Court has ignored the fact that the parties were living separately for quite a long time and despite such differences between the parties, how the respondent expects the appellant to mend her ways or they would successfully revive their relationship, at such belated stage.



56. In view of afore-going narration, which clearly elaborates that the respondent had neglected the appellant and his child in such a way that she was forced to live with her parents, a clear case of desertion by the respondent is made out.

57. Hence, the impugned judgments dated 13.05.2010 passed by the learned Family Court under Sections 13(1)(ia) and (ib) of the Act and Section 9 of the Act, are hereby set aside. The appeals are accordingly allowed and the appellant is granted divorce under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955.

58. Decree-sheet be drawn accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 07, 2024

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