



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th October, 2023

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Pronounced on: 21st March, 2024

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MAT. APP. (F.C.) 92/2021

SAURABH JAIN

..... Appellant

Through: Mr. Pratyush Chirantan Ms. Santosh and
Mr. Mandeep Singh, Advocate with
appellant in person.

versus

NEHA JAIN

..... Respondent

Through: Ms. Rupali Kapoor & Mr. K.D. Sharma,
Advocates with respondent.

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 appeal under Section 19(1) of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as the "Act 1955"*), has been filed by the appellant against the Judgment and decree dated 28.07.2021, passed by the learned Principal Judge, Family Court, Delhi *vide* which the petition filed by the petitioner/appellant for Divorce on the ground of cruelty under Section 13(1)(ia) of the Act, 1955, has been dismissed.

2. Briefly stated, the appellant (*who was the petitioner before the Family Judge*), got married to the respondent, according to the Hindu Customs and Rites on 03.07.2011. No child was born from their wedlock.



3. The appellant had asserted that since the beginning of their married life, he showered love and affection on the respondent and left no stone unturned in making the matrimonial life happy. However, he soon realized that the respondent had an irritable temper and a foul tongue. She would pick up fights on trivial matters, which gave sleepless nights to the appellant. Moreover, she failed to serve food to the appellant when he returned from office and at times would ask him to serve the food to her and throw the food on his face saying that it was not well prepared. She even remarked on reading a newspaper item about a train having run over a person, as to why similar accident did not happen with the appellant.

4. It was asserted that like any married couple, the parties were interested in expanding their family by having children but on account of medical limitations, no natural conception took place and they had to resort to *In Vitro Fertilization (IVF)* treatment. Unfortunately, despite having undergone this IVF procedure on two occasions, the parties were unable to beget a child, due to which matrimonial differences started surfacing in their life. The appellant alleged that the respondent insulted him, in front of her parents, sisters and other family members by alleging that he was impotent, without there being any basis or foundation. One such incident happened on the festival of *Dussehra* in the year 2011, when she discussed her intimate sexual life with the appellant in front of her parents, at her parental home. Further, on 08.03.2012, she again humiliated and insulted the appellant at her parental home, by calling him impotent. The appellant has claimed that false allegations of impotency were levelled against him time and again by the respondent even though he was perfectly fit and capable of establishing physical relationship for mutual co-habitation.



5. It was claimed that when the parties visited St. Stephens Hospital, Delhi in the end of the year 2011, for their regular check-up and the doctors opined that the LH Level of the respondent was too high and therefore, she was unable to conceive a child. It was asserted that the appellant used to take care of her and it was she who was persistent in going through the IVF procedure. They again went to St. Stephens Hospital, Delhi on 06.06.2012 and it was found that the respondent had some lumps in her breast and was advised to undergo Biopsy, despite which the respondent was hell bent upon proceedings with the IVF treatment. The appellant finally succumbed and he submitted his sperm samples on 27.10.2012. The respondent conceived but she was diagnosed with *Right Ectopic Gestation* and the doctors opined that the process of IVF had failed as the fertilized egg had entered into the right fallopian tube of the respondent.

6. She again conceived the second time through IVF process but again she suffered complications and had to be admitted in the hospital on 19.03.2013. She was diagnosed with *Right Cornual Ectopic Pregnancy* wherein the fertilized egg did not develop properly due to having been flung to the right side of the uterus, which could cause devastating haemorrhage.

7. The appellant in order to confirm the correctness of the medical treatment, took the respondent to Sir Ganga Ram Hospital on 03.06.2013, where the doctors corroborated and reiterated that due to the same reasons the respondent was not being able to conceive. The appellant did not say anything to the respondent but she blamed the petitioner for being responsible for the failure of IVF treatment. The appellant has asserted that he incurred an expenditure of Rs.3,00,000/- on her hospitalisation on account of hydration on 03.10.2012 and for IVF treatment. However, the



respondent and her parents made false allegations of the appellant being responsible for the condition of the respondent.

8. Moreover, the respondent always acted on the ill-advise and insinuations of her parents and insisted on leaving separately from the family members of the appellant. She tried to give false threats of committing suicide if he did not accede to her demands.

9. The appellant further alleged that the respondent found reasons to visit her parental home and not come back. She did not celebrate the *Dusherra* festival in her matrimonial home nor did she come at the time of *muhurat* of the new house, but came later on 08.09.2013. It is asserted that she finally left the matrimonial home on 16.10.2023 and took her jewellery and costly clothes and went to her parental home and since then has not returned back to the matrimonial home.

10. A meeting was kept at Qudesia Park, near I.S.B.T. Kashmere Gate, Delhi but it failed as respondent levelled false allegations of impotency against him and on his brother, in front of all the family members. She lodged false complaints against the appellant and his family members at P.S. Bhajan Pura.

11. The appellant took a separate residence in Yamuna Vihar on 26.10.2013 in accordance with the wishes of the respondent, to live separately from the in-laws for the sake of saving his matrimonial life, but she never came to reside with him.

12. The petitioner thus sought divorce from the respondent on the ground of cruelty.

13. **The respondent in her Written Statement** denied all the allegations made in the petition. She asserted that the appellant and his family members



have made it a profession to marry innocent girls and earn by demanding dowry articles and thereafter divorcing them. She was a cultured woman and always considered marriage as a simple stable thread to be continued till death and not to be broken by small trivialities of life.

14. The respondent further denied that she ever humiliated the appellant by calling him impotent in the presence of the parents and other members of the family. She rather alleged that she was criticized, ill-treated and insulted by the family members of the appellant who addressed her as *banjh*. She admitted that they twice tried the IVF procedure for conceiving a child, but both the times it had failed. She also admitted that their meeting for settlement failed and that she made a Complaint dated 16.10.2013 in Police Station: Bhajan Pura.

15. It was claimed that because of the cruelties committed by the appellant, she was compelled to make a complaint on 16.12.2013, Ex-RW-1/2 against the appellant and his family members in CAW Cell, North East District, Delhi, after filing of the divorce Petition.

16. The respondent asserted that she had made efforts for reconciliation and a Petition bearing *Reference No. 1394/HM/RF/2013* was filed on 24.10.2013, before the Delhi Government Mediation and Conciliation Centre of Delhi Government at District Consumer Court, Nand Nagari, Delhi but the appellant failed to appear except on one date and the mediation did not succeed. It is claimed that it is she who has been treated with cruelty and the appellant was not entitled to divorce; the Petition is liable to be dismissed.

17. The sole controversy which had arisen between the parties was framed *vide* Order dated 17.11.2020 as “if the petitioner is entitled to a



decree of divorce on the ground of cruelty as per Section 13 (1) (ia) of the Hindu Marriage Act, 1955, on the allegations pleaded by the petitioner against the respondent.”

18. **The appellant examined himself as PW-1 and PW-2, Mr. Ashok Kumar Jain, his father, in support of his testimony.**

19. **The respondent has examined herself as RW-1.** She also examined RW-2 Ms. Anjali and RW-4 Dr. Pramod Taneja, to prove HSG report of the respondent. PW-3 Dr. Prassan Vij took care of the infertility treatment of the parties at St. Stephens Hospital, Delhi. RW-5 Mr. Liazley Roburt Illias was the record keeper of the St. Stephens Hospital, would prove the medical record of the respondent, since 21.12.2011.

20. **The learned Principal Judge, Family Court,** observed on the basis of the evidence led by the parties, that the allegations of the appellant that respondent inflicted cruelty on him by calling him impotent in front of the family members, were vague and unspecified. It was further observed that admittedly, parties tried to conceive through IVF process twice but it failed both the time. The evidence led on behalf of the appellant, was held to be vague non-specific and held to be insufficient to prove his allegations of being humiliated by calling him impotent. The divorce petition was accordingly dismissed.

21. *Aggrieved by the said judgment, the present appeal has been preferred.*

22. The appellant in his brief Synopsis has challenged the judgment of the learned Principal Judge, Family Court wherein his allegations of being called impotent, have been dismissed. It is argued that the respondent has not cross-examined the appellant on the issue of 'impotency'. She has not



even posed a single question or made a suggestion regarding the allegations of her calling him impotent publicly. Such silence amounts to admission. Reliance has been placed on the case of Deepti Bhardwaj v. Rajeev Bhardwaj 2023 SCC OnLine Del 818; S.A v AA 2016 SCC OnLine Del 1818; Sashanka Naidu W/O. Prakash Naidu v. Prakash Naidu S/O. M. Balkrishna. in Criminal Application (Apl) No. 774 of 2017 decided on 2.11.2018 by the Bombay High Court.

23. It is further argued that there is a complete irretrievable breakdown of marriage of the parties who have been living separately since 2013. Reference is made to the case of Ritesh Babbar v. Kiran Babbar 2022 SCC OnLine Del 726; Reena Devi v. Ravinder (2017) 240 DLT 178; Kirti Nagpal v. Rohit Girdhar 2020 SCC OnLine Del 1466; Naveen Kohli v. Neelu Kohli AIR 2006 SC 1675.

24. Reliance was placed on the case of Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, to assert that the filing of false complaint based on unsubstantiated allegations of dowry harassment, amounts to cruelty.

25. It was asserted that threats to commit suicide also amount to cruelty. Reference was made to the case of Nagendra v. K. Meena (2016) 9 SCC 455, in this regard.

26. **The respondent in her Written Submissions** has asserted that vague allegations of being called 'impotent' have been made by the appellant which are sans any particulars. Further, the alleged threats to commit suicide are also vague and hence, cannot be said to constitute cruelty. Reliance was placed on the case of Suman Singh v. Sanjay Singh (2017) 4 SCC 85 and Shivshankara & Anr. v. H.P. Vedavyasa Char 2011 SCC OnLine SC 1609.

27. It is asserted that the complaint was filed by the respondent to the



CAW Cell on 16.12.2013, i.e. after the divorce petition was filed and as such there was no occasion for the appellant to have asserted that it as a ground of cruelty. Reliance is placed on the case of Mangayarkarasi (Supra), and Ravinder Kaur v. Manjeet Singh (2019) 8 SCC 308, in this regard.

28. It was argued that long absence of physical company cannot be a ground for a divorce particularly when no effort for reunion has been made by the appellant. Reliance has been placed on the case of Ravinder Kaur (Supra); Mangayarkarasi (Supra).

29. **Submissions heard.**

30. The parties entered into matrimonial relationship on 03.07.2011 and separated finally on 16.10.2013. Their marriage survived for about two years but much against their expectations of entering into the best phase of their life by having found their soulmate for their lifetime, their short period of togetherness was marred with anxiety and uncertainty in which providence had some role to play.

31. In order to substantiate his claim of being treated with cruelty, the first set of allegations made by the appellant against the respondent was that she was of irritable temper and foul tongue and that she would pick up fights on trivial matters. It was also alleged that she behaved in most a *typical, aberrant, freakish and abnormal manner* and failed to discharge her household chores in so much as she refused to serve food and at times would throw the food served by him by claiming that it was not cooked well. These allegations are general and vague as has been rightly held by the learned Principal Judge and do not warrant any interference by us.

32. The basic allegation of the appellant was that he was constantly being



humiliated by being called *an impotent by the respondent* in front of his and her family members. Barely after some months of their marriage, on the occasion of *Dussehra* in the year 2011, the respondent had discussed about their sexual relationship with her family members, much to the humiliation of the appellant. This was again repeated on the occasion of Holi in the year 2012, when there were discussions about the same aspect.

33. *To evaluate the truth of the allegations, any reasonable person would first question why such discussions of sexual relations between the newly married couple crept up merely after three months of marriage.*

34. This question considered by the learned Principal Judge, Family Court, Delhi, who discredited the claim of the appellant that such allegations were made by the respondent, on the ground that such discussions are unlikely to happen so soon after the marriage. However, this aspect of the conduct of the parties cannot be dismissed or discarded lightly as in the Indian traditional households, it is not unnatural for the family members to start looking forward to the birth of a child soon after the marriage. For this reason, to hold that such conversations could not have crept up within about six months after the marriage, may not be the correct approach.

35. To analyse the reason behind such discussions it is pertinent to note that PW-1, the appellant, as well as, PW-2, the father of the appellant, had deposed that the appellant had got himself tested and was found perfectly fit and capable for establishing physical relationship and of mutual co-habitation. The appellant and the respondent had consulted the Fertility Department of St. Stephens Hospital, Delhi. As per the OPD record of St. Stephens Hospital dated 21.12.2011, Ex-RW-5/1, it was mentioned '*Normal Cycles, Normal Coitis, Normal Erection, No Problem*'. On the basis of what



was disclosed by the respondent, to the concerned Doctor, the history given by the respondent in OPD Card, Exhibit RW-5/1, clearly establishes that they both were having normal sexual life. The appellant had deposed that despite he being physically fit and capable of establishing physical relationship, false allegations of impotency were being levelled against him.

36. At this juncture, we consider it pertinent to mention that *the sterility* and *impotency* are two independent concepts. While *impotency* implies that the appellant suffers from *Erectile Dysfunction* and is unable to establish sexual relationship, whereas *sterility* implies lack of sperms in the male for the purpose of conceiving of the child by the lady.

37. In the present case, while the parties were capable of having a healthy sexual relationship as has also been proved from the evidence of the respondent, the complications in their lives arose because of the sterility of the appellant, which in the lay language was being termed as 'impotency'. It has emerged from the evidence of the parties that the parties soon after their marriage, *faced the difficulty of conceiving a child and* after six months of their marriage, they started consulting the doctors about conceiving a child. In the month of December 2011, the parties had visited the local Gynaecologist, Dr. Nisha Garg/Gupta, who as per the appellant's testimony, had informed him that LH level of the respondent was high and either there was no formation of ova or their quality was not proper. The initial report by a local Gynaecologist stated that there was a difficulty with the respondent and the parties were referred to St. Stephens Hospital.

38. Accordingly, they approached the St. Stephens Hospital in June 2012, where both of them were examined for the purpose of infertility treatment. The *Semen Analysis Report* dated 04.06.2012, is exhibited as R-1 (Ex.RW-



3/1). RW-3 Dr. Prassan Vij from St. Stephens Hospital, has deposed that on investigations of the appellant, he was found to be having a condition called "*Azoospermia*", which is a technical term meaning that there were no sperms in the semen. After preliminary examination and detection of this condition which was the apparent cause for infertility, *testicular aspiration* was performed to look for sperm presence in the testes. The procedure revealed sperms which could only be used for *Assisted Reproductive Techniques* like *Intra Cytoplasmic Sperm Injection (ICSI)*. This technique involved retrieval of Eggs from the wife and manual injection of sperms into the Eggs under High Resolution and High Precision Microscopes and Equipment. This procedure was followed in the hospital and Embryo was made from the respondent's Eggs and appellant's sperms. The first attempt of IVF was made in July 2012. The respondent was brought to St. Stephens Hospital, Delhi on 27.10.2012 where she was found to be suffering from *Tubal Ectopic Pregnancy*. The surgery had to be performed to avoid life threatening consequences. The first attempt at Embryo transfer failed as it resulted in *Tubal Ectopic Pregnancy*.

39. RW-3 Dr. Prassan Vij has explained in his cross-examination that *Ectopic Pregnancy* (where embryo implants outside the uterus, in this case fallopian tube) can occur in normal course/pregnancy as well as in IVF pregnancies. The occurrence is not a result of wilful intention of the couple; in the present case of the appellant and the respondent. He further clarified that the consummation of marriage had nothing to do with the pregnancy and that the appellant was capable of consummating the marriage.

40. The parties despite the failure in the first IVF procedure, did not lose hope and they again tried the IVF the second time but it failed and the



respondent had to be admitted in the hospital on 19.03.2013 and was diagnosed with *Right Cornual Ectopic Pregnancy*, which implies that the first fertilized Egg could not develop properly due to having been flung to the right side of the uterus and could result in devastating haemorrhage. The respondent again had to undergo the surgery for getting the pregnancy aborted.

41. The appellant in order to confirm the medical treatment being given to the respondent at St. Stephens Hospital, took the respondent to Sir Ganga Ram Hospital on 03.06.2013, where she was examined by Dr. Kamal Gujral, who corroborated and reiterated the reasons for which the respondent was unable to conceive however, it is not proved that the respondent was the one who had complications due to which they could not conceive. In fact, it is proved that the appellant was unable to conceive due to the condition of "Azoospermia". It is quite evident from the respective testimony of the parties that when the appellant was being termed as impotent, it was implied in the sense of he not being capable of giving birth to a child, and this is the reason why such discussions of sexual relations could have taken place in front of the family of the respondent. The public humiliation which the appellant suffered by the knowing/ unknowing acts of respondent in terming him *impotent* while it was a medical condition of *sterility* cannot be overlooked. Rather than respecting the privacy of the appellant and being a little more discrete, such public disclosures by the respondent even if to the family members are a source of humiliation.

42. In the Case of *Dr. N.G. Dastane vs. Mrs. S. Dastane* AIR 1975 SC 1534, it has been explained by the Apex Court that while determining whether the misconduct complained of constitutes cruelty, the test to be



applied is not whether it is cruel to a reasonable person but to the party/aggrieved spouse in the litigation.

43. In the light of above discussion, we conclude that the to be openly humiliated and being called as impotent by his wife, in front of others and for the respondent to discuss their sexual life in the presence of family members, can only be termed as an act of humiliation causing mental cruelty to the appellant.

44. The appellant had claimed that despite such conduct of the respondent he continued to take care of her. In this regard, it would be pertinent to refer to the testimony of the respondent, who has admitted in her cross-examination that every time, the hospital expenditure was being met by the appellant. She was also admitted that in October 2012, she was admitted in the hospital on account of dehydration and that on all the three occasions of hospitalization, it was the appellant, who had paid for all the medical expenses. The admissions of the respondent, have not been able to show that the appellant had ever disregarded her or failed to discharge his matrimonial obligations.

45. The respondent has levelled allegations of being harassed for dowry time and again, since her marriage. She has deposed that no occasion was missed by the appellant and his family members, to taunt her for not having brought a car in dowry. However, admittedly if such was the unhappiness of the appellant and his family members towards the respondent, the appellant would not have made all efforts for taking care of the respondent during the IVF procedures that were undertaken. Whosoever may have been biological deficit, but it required the co-operation of both the parties and from the admissions of the respondent, it emerges that the appellant did not shy away



from taking care of her during her hospitalisation or meeting the expenditure. All the expenditure of St. Stephens Hospital and Sir Ganga Ram Hospital, were borne by the appellant. The appellant had claimed that he had spent about Rs.3,00,000/- on the treatment, which has not been denied by the respondent in her cross-examination. From her own admissions, there is nothing to show that the appellant ever fell short of his obligations as a husband.

46. However, aside from bare allegations, there is no cogent evidence produced by the respondent, to corroborate her allegations of dowry harassment. She has not been able to prove any conduct of the appellant or his family members from which it could be inferred that she has been subjected to cruelty on account of having brought less dowry. However, it needs to be mentioned that as soon as the Divorce Petition was filed by the respondent, it was countered by the respondent by filing of a Complaint dated 16.12.2013 Ex.RW-1/2 in CAW Cell, after the filing of the Divorce Petition, which eventually resulted in FIR No. 854/2014 under Sections 498A and 406 Indian Penal Code (IPC). The family members of the appellant were discharged under Section 406 IPC, though the trial under Sections 498A IPC against the appellant had continued. The fate of the said trial is not known nor has it been disclosed but while the allegations of cruelty may be considered in the Criminal trial, but the respondent has not been able to prove any cruelty at the hands of the appellant on account of dowry harassment in the present proceedings. It cannot be overlooked that she has also made allegations of dowry harassment, which she has not been able to substantiate in the present proceedings. Making frivolous and false allegations against the appellant, is another act of cruelty, as has been held in



the case of Raj Talreja v. Kavita Talreja, (2017) 14 SCC 194 wherein while relying on the case of Ravi Kumar Vs. Julmidevi (2010) 4 SCC 476, the Apex Court has categorically held that “reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society” and it amounts to ‘cruelty’. Similar observations were made by the Coordinate Bench of this Court in the case of Rita Vs. Jai Solanki (2017) SCC OnLine Del 907.

47. The respondent No. 1 has deposed that on 16.10.2013, when she reached her parents' home, she was informed by her father that the family members of the appellant had raised a quarrel. She called the PCR at No. 100 and they were referred to Delhi Government Mediation and Conciliation Centre of Delhi Government at District Consumer Court, Nand Nagari, Delhi for 24.10.2013.

48. The entire testimony of the parties, establishes that there were no serious concerns *inter se* the parties except that incapacity of the appellant to beget the children became an issue and after two failed IVF procedures, the respondent became disgruntled and went away to her parental home on 16.10.2013. No cogent explanation is given by the respondent to explain her withdrawal from the company of the appellant. She thereafter, did not make any effort of re-conciliation; instead filed a Complaint in CAW Cell on 16.12.2013 Ex-RW-1/2.

49. The only inference from the conduct of the respondent that can be inferred is that she detached herself from the appellant, on account of his incapacity and decided to leave him and snapped their matrimonial relationship. Such withdrawal of the respondent from the matrimonial relationship unilaterally without any reason or basis thereby depriving the



appellant of conjugal bliss, since October 2013 till date, can only be inferred as an act of cruelty, as held in the case of *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511.

50. We, on the appreciation of the entire evidence as led by the parties, are compelled to conclude that the appellant had been subjected to cruelty. Accordingly, the impugned Judgment dated 28.07.2021 dismissing the Divorce Petition, is hereby set-aside and the divorce is granted to the appellant on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.

51. The appeal is accordingly allowed.

52. The decree-sheet be prepared.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

MARCH 21, 2024/RS