



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

% ***Reserved on: September 25, 2023***

Pronounced on: March 19, 2024

+ **MAT.APP.(F.C.) 183/2022**

SANJAY ANAND Appellant

Through: Mr. M.P. Chaudhary, Advocate

Versus

SMT. RITU ANANDRespondent

Through: In person with Mr. Bhupinder
Mehtani, Advocate

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 Courts Act, 1984 has been filed by the appellant-husband against the judgment dated 06.07.2022 passed by the learned Principal Judge, Family Court, Dwarka in HMA No.2836/2018, whereby his petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, seeking dissolution of marriage with the respondent-wife on the ground of cruelty and desertion, has been dismissed.

2. The marriage of the appellant with the respondent was solemnised on 08.12.2008 in accordance with Hindu Rites and Ceremonies. One female child was born from this wedlock on 25.11.2014.

3. The appellant, in the present case, has averred that since inception of



their marriage, the respondent's behaviour was not good towards him. The respondent never trusted the appellant, who was earning less salary than her. The appellant has alleged that the respondent knowingly concealed the factum of her pregnancy and when the appellant enquired from her that since 25.03.2014 till 04.04.2014, *i.e.* the day when she left her matrimonial home, why she did not disclose the appellant about her pregnancy; she did not give any satisfactory reply. Further alleged that on 22.03.2014, the respondent had demanded Rs.10 lacs from the appellant to divorce him and she deliberately left his company on 04.04.2014 by deserting him and since then, she has been residing with her parents.

4. The appellant, in his petition filed before the learned Family Court, averred that the conduct of the respondent towards him and his family members was inhuman and she did not co-operate with them despite that he loved her and provided her with all the facilities as per his income and financial capacity.

5. The appellant narrated that he alongwith the respondent used to live on the ground floor of the house and his two brothers with their families and mother lived on the first floor. After his elder brother shifted to another accommodation in March, 2009, the respondent started pressurising the appellant to live separately and to have a separate kitchen, at the instigation of her parents. The mother of the appellant happily agreed and separated their kitchen in the year 2009.

6. According to the appellant, his mother started living with them on the ground floor after sometime. However, the respondent did not like her staying with them and she started misbehaving, quarrelling and abusing with the appellant and his mother. The appellant's mother was forced to call the



respondent's parents to tell her to mend her behaviour. However, the parents of the respondent threatened her of dire consequences by stating "*tu janti ha na ki mein kon hu or m kya kr skti hu, m home ministry m kam karti hu, m kuch bhi kar skti hu isliy agar tu shanti s rahna chahti h to jo meri beti kh rhi h whi kr nhi to tera jina mushkil kr dungy*". The respondent pressurised the appellant to throw his mother out of the house.

7. The appellant averred that on 09.05.2010, he lost his job and due to continuous taunts of the respondent, the appellant vacated the ground floor and started living on the third floor of the house separately with his mother. However, the respondent's behaviour did not change and the respondent quarrelled on the pretext that she wanted to live on the ground floor only. The appellant has alleged that the respondent's misbehaviour was to the extent of spitting on the face of his mother and also once, she slapped his mother on her face.

8. The appellant alleged that under the pressure of her parents, the respondent forced him to buy a separate accommodation at some place away from his mother's house and the appellant booked a flat in the society meant for the persons working in Home Ministry, as the respondent was working there. The appellant claims to have transferred an amount of Rs.4 lacs to the account of the respondent towards purchase of the said property.

9. The appellant has alleged that on 02.01.2014, the respondent abused and misbehaved with the appellant and pushed his mother in such a manner that her head got struck against the wall and she fell on the floor. The appellant called the parents of the respondent, who surprisingly extended threats to him and to his mother. The appellant requested them for some time to arrange a rented accommodation, since the flat booked was not yet



allotted to him. However, the respondent's mother refused to it by stating that their daughter will stay only in their matrimonial house.

10. In an effort to convince the respondent to come back to the matrimonial home, the appellant claims to have gone to Dwarka to meet her outside the school where she was working, the respondent convinced him by saying that she will soon come to the matrimonial home but she failed to do so. The appellant once again claimed to have convinced her to come back to her matrimonial home but she put a condition that his mother should be out of the matrimonial home and other terms and conditions should also be incorporated on stamp paper.

11. According to the appellant, on 05.06.2014, the respondent informed him about her pregnancy but refused to join his company until he takes a rented accommodation at a place away from his mother's house. On her asking, the appellant arranged a rented accommodation. However, again the respondent refused to join his company on the pretext that he shall solely bear the household expenses. Even though the appellant, who has been bearing all the household expenses since their marriage, again convinced her to bear the expenses so that she joins him back to the matrimonial home. However, she did not come back.

12. On 08.07.2014, the appellant again went to meet the respondent at her parental home, however, the respondent and her parents refused, stating that she will not go back to her matrimonial home until certain terms and conditions are agreed, however which were never told to the appellant.

13. On 19.11.2014, during her telephonic conversation, the respondent disclosed her delivery date and the appellant went to her parental home to bring her back to the matrimonial home but her parents did not let her go.



On 25.11.2014, the respondent delivered a female child at MAX Hospital. The appellant alleged that the respondent's mother did not permit him to meet her or the child nor did inform him about her discharge from the hospital and she directly went to her parental home after discharge.

14. According to the appellant, on 11.01.2015, the respondent expressed her desire to live with the appellant but told him that since he was earning less and could not afford rented accommodation, she could not join his company in the matrimonial home.

15. The appellant, in his petition before the learned Family Court, averred that he had showed all his love to the respondent. However, she was only concerned about money, gifts and separation from his parents. The respondent was in the habit of picking quarrels on petty matters and used to create scenes even in front of public. The respondent never respected the appellant and his family members and insulted him before his friends and relatives. On the aforesaid grounds, the appellant prayed for decree of divorce under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 before the learned Family Court.

16. In reply to the appellant's pleadings, the respondent-wife, in her written statement, averred that her parents had spent approximately Rs.20 lacs on her wedding and given sufficient dowry articles as per the demands of the appellant and his family members. However, she was subject to various mental and physical cruelties.

17. The respondent alleged that the appellant and his family did not come forth with clean hands for the marriage proposal as they did not disclose the correct age of the appellant and tried to deceive the fact that he was of the same age as the respondent but actually he was three years elder than her.



The respondent also alleged that her mother-in-law used to treat her like a slave to do household chores and even her sister-in-law (Jethani) used to pick fights with her on petty matters.

18. The respondent alleged that her mother-in-law was involved in some superstitious activities like *kaala jaadu* and *totka* and one day in July, 2009 when she returned from her school she found two half burnt red chillies near her bed and upon asking, her mother-in-law mischievously evaded to answer her. The respondent alleged that her mother-in-law always instigated the appellant to quarrel and beat the respondent and was in a habit of using Hindi language for abusing her. In another incident of 02.01.2014, the mother-in-law of the respondent on minor issue of preparing food in the evening, got into a quarrel with her and thereafter instigated the appellant to beat her due to which she suffered great mental pain and agony in addition to the physical abuse.

19. The respondent alleged that on 25.11.2014, a baby girl was born to her. However, the appellant and his mother did not give any care or attention to her during her pregnancy and even after birth of her child the appellant once came to visit her for five minutes. The respondent alleged that the appellant never bothered to bear the expenses of the hospital nor he was present at the time of her discharge to do his duties. The respondent alleged that her mother-in-law used to abuse her and on 09.03.2014 she deliberately called her parents to threaten them that if she did not agree to the manner they live, she would be throwing their daughter out of the house. The respondent averred that her parents tried to pacify the situation.

20. The respondent alleged that in another incident of 04.04.2014, the appellant demanded Rs.1.5 lacs from her and gave her merciless beatings by



threatening her that either she should give money or should leave the house. On the same day, she threw her out of the house by stating that “*Mujhe Apni Shakal Mat Dikhana Jab Tak Tu 1.5 Lakh Rupeye Na Le Kar Aaye*”.

21. The respondent averred that she was left with no option but to leave her matrimonial home and since then she has been living with her parents, alongwith her daughter. The respondent pleaded that in the initial years, she felt that some good sense would prevail upon the appellant and he would take them back to the matrimonial home. However, he made no efforts to reconcile their marital disputes. The respondent pleaded that in such circumstances, she was forced to leave the appellant’s company and live with her parents even though he himself has been living a luxurious life, by completely avoiding his responsibilities towards her and their daughter.

22. On the pleadings of the parties, the learned Family Court framed the following issues:

1. *Whether the respondent has exercised cruelty the petitioner after solemnization of marriage between the parties?* *OPP*
2. *Whether the respondent has withdrawn from the society of the petitioner without any justifiable cause for not less than period of two years preceding the date of filing this petition?* *OPP*
3. *Whether the petitioner is entitled for decree of divorce as against the respondent as prayed for?* *OPP*
4. *Relief.”*

23. The appellant got himself examined as PW-1 and the respondent got herself examined as RW-1 before the learned Family Court.

24. The appellant (PW-1) in his evidence by way of affidavit re-iterated



his pleadings. In his cross-examination, the appellant admitted that the respondent was initially having dispute with his mother and the disputes started in the year 2012. The appellant admitted that he had never paid the bills of the hospital after the birth of his daughter. However, he denied that his mother even instigated him to quarrel with the respondent; or that he abused or tortured the respondent; or that he or his mother pressurised the respondent to bring more dowry; or that he had never made any effort to bring her back to the matrimonial home.

25. The respondent in her evidence by way of an affidavit denied the claims of the appellant. She in her cross examination answered that the marriage was solemnised in a banquet hall and around 400 persons attended the marriage. She admitted that alongwith the appellant they were residing on the ground floor of the property but stated that they were having kitchen with other family members. However, she denied that she was not beaten by the appellant or his mother or that she had cooked up story of dowry demand against the appellant and his family as no complaint has ever been lodged; or that the appellant was not financially capacitated; or that she had ever refused to live with him; or that he had ever come to her parents to bring her back to the matrimonial home. She also denied that on 04.04.2014, she had left her matrimonial home of her own free will and no such incident as alleged by her has ever happened and for this reason, she had never reported the police nor has taken any legal action against him or his family.

26. Learned Family Court premised upon the pleadings of the parties, observed and held that the conduct of the appellant was always extremely unreasonable and he never discharged his moral and legal obligations towards the respondent and their minor child.



27. Learned Family Court further observed that the assertion of the appellant that he had made efforts to bring the respondent back to her matrimonial home has not been substantiated by any evidence and observed that he had not filed petition under section 9 of the Hindu Marriage Act, 1955 to show his keenness for restitution of conjugal rights.

28. By observing above, the learned Family Court held that there were trust issues between the parties but the appellant had failed to prove the ground of cruelty and desertion and consequently, dismissed the appellant's petition under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955.

29. The appellant before this Court has challenged the impugned judgment on the ground that the learned Family Court while dismissing his petition seeking divorce from the respondent has not appreciated that the respondent of her own free will, had left the matrimonial home on 04.04.2014 and had thereafter never returned.

30. The appellant has claimed that he always wanted to have peaceful married life with the respondent but however she was dictating her own terms and conditions and that he or his mother has never raised demand of dowry or cash from her or her family, which the learned Trial Court has failed to consider.

31. The submissions advanced by learned counsel representing both sides were heard at length and the impugned judgment as well as other material placed on record, has been carefully perused by this Court.

32. The undisputed fact of the present case is that parties to the present case got married on 08.12.2008 and they got blessed with a female child, on 25.11.2014. It is also admitted that since 04.04.2014 *i.e.* the day when the respondent left her matrimonial home, the parties have been living



separately. The appellant in the present appeal has sought divorce from respondent on the grounds of cruelty as well as desertion.

33. What is cruelty has been spelt out by the Hon'ble Supreme Court in *Chetan Dass Vs. Kamla Devi* (2001) 4 SCC 250 while observing as under:-

“14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of “irretrievably broken marriage” as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.”

34. In the present case, the appellant has alleged that out of span of their marriage of fourteen years till the date of impugned judgment, the parties have lived together for six years and that too, respondent had been frequently leaving the matrimonial home to live with her parents. The



appellant averred that the respondent concealed the factum of her pregnancy and on 04.04.2014, left the matrimonial home to go to her parental home and thereafter, never returned.

35. The respondent on the other hand alleged that the appellant was irresponsible towards his duties qua her and he never took care of her. Also alleged that behaviour of appellant and his mother was cruel towards her, who used to abuse her and beat her and so, she was forced to stay at her parental home.

36. This Court finds that even though respondent has alleged that the appellant and his mother used to manhandle her and on many occasions, she was given beatings by them. However, she did not file any complaint under the Protection of Women from Domestic Violence Act, 2005 against appellant or mother-in-law. Also, the respondent did not lead any evidence to substantiate allegations of beatings or harassment by the appellant or his family. Even if it is taken that respondent was scared or not interested in making a complaint to save her marriage, her parents, who were concerned with her well being and that of the child of the parties, also did not make a complaint, which brings their allegations of torture under the clouds.

37. The respondent has alleged that her father spent a huge amount of Rs.20 lacs on her marriage and given sufficient dowry articles. However, the appellant and his mother still taunted her for bringing insufficient dowry and raised more such demands. The respondent has not uttered a word as to what kind of demand was raised from her or from her parents. Therefore, the allegation of demand of dowry seems to be general in nature. Moreover, respondent did not lodge any complaint with the police against the appellant and his family seeking relief under Section 498A IPC.



38. Relevantly, in matrimonial relationship, “Mental Cruelty” cannot be defined under any strait jacket formula and it has to be ascertained based upon acts and behaviour of one spouse for the other.

39. On the aspect of raising false and frivolous allegations against a spouse, the Hon’ble Supreme Court in ***Raj Talreja v. Kavita Talreja*** (2017) 14 SCC 194 has observed and held as under:-

“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short “the Act”). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.

40. In our considered opinion, the respondent in the present case has raised false allegations of torture at matrimonial home and dowry demand, which are not substantiated and has thus, committed cruelty upon the appellant.

41. The appellant, in his cross-examination, has fairly admitted that he



was not having a direct dispute with the respondent but with his mother, which aggravated in the year 2012 when his mother shifted to live with them. The appellant, on asking of the respondent, had also booked a flat in a society which was meant for employees of Ministry of Home Affairs and it is not even denied by the respondent that a sum of Rs.4 lacs was paid by the appellant towards its initial payments.

42. In view of the fact that the respondent's relation with the appellant's mother was constrained, it cannot, thus, be denied that since the respondent was not in good equation with appellant's mother, she had forced the appellant to live in a separate accommodation. Also, the appellant agreed to arrange a separate accommodation, which shows his *bona fide* intention to continue his matrimonial relationship with respondent. Whereas, the respondent chose to continue to live with her parents, thereby depriving him his rights of conjugal relationship.

43. At this stage, it is relevant to note that on 04.04.2014, the respondent had left her matrimonial home after an altercation with the appellant, and the child of the parties was born on 25.11.2014 meaning thereby the substantial period of her pregnancy was spent at her parental home. In such circumstances, the appellant had no opportunity to take care of her. Even if it is taken that the appellant deliberately neglected his duties and did not make efforts to take her back to the matrimonial home, the recourse under Section 9 of the Act for Restitution of Conjugal Rights, was always available to her, which she did not opt for. This shows that the respondent had made herself comfortable at her parental home and was herself not willing to go back to the matrimonial home. It is not the case of the respondent that she had tried to go to the matrimonial home but she was not



allowed to enter.

44. The respondent, in her pleadings, has also stated that she had come to know through someone that the appellant was working as an Assistant in a Multi National Firm and was earning more than Rs.1,00,000/- and also admitted that he had made contribution towards purchase of the flat, and also he had rental income from the parental home. It shows that the appellant was a man of means and could have easily borne the expenses of the respondent and their child. However, the respondent has deliberately not joined his company. This shows deliberate desertion on the part of respondent.

45. In our considered opinion, the observation of the learned Trial Court that since the appellant had not taken recourse to Section 9 of the Act, it shows that he was not willing to take her back to the matrimonial home, is contrary to the facts of the case and is thus, set aside.

46. This Court is of the opinion that the respondent had withdrawn herself from the company of the appellant and abandoned her matrimonial relationship and made no effort to reconcile the disputes and resume matrimonial relationship, which is an act of cruelty, as is held in the case of ***Samar Ghosh Vs. Jaya Ghosh*** (2007) 4 SCC 511.

47. Also, by staying at her parental house before and after birth of the child, the respondent has deprived the appellant of his fatherhood rights. This Court finds that by depriving the appellant of his conjugal rights and love for his child, the respondent has created immense mental cruelty upon the appellant.

48. 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 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.

49. The Hon'ble Supreme Court in *Bipinchandra Jaisinghbhai Shah (Supra)* has further observed that *once it is found that one of the spouses has been in desertion, the presumption is that the desertion has continued and that is not necessary for the deserted spouse actually to take steps to bring the deserting spouse back to the matrimonial home.*

50. In the light of afore-noted facts and circumstances of the present case, this Court finds that respondent had deprived the appellant of his conjugal rights and love for his child and has wilfully deserted which entitles him to grant of divorce by this Court.

51. The present appeal is accordingly allowed and the impugned judgment dated 06.07.2022 is set aside. The appellant is granted divorce under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955.

52. Decree sheet be drawn accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 19, 2024

uk/r