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

% *Date of decision: August 11, 2023*

+ **MAT.APP.(F.C.) 175/2017**

..... Appellant

Through: Mr. Nikhil Palli and Mr. Kshitij
Pal, Advocates along with
appellant in person.

versus

..... Respondent

Through: Mr. R.S. Kela, 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 (oral)

1. By way of present appeal, appellant seeks setting aside of the impugned judgment and decree dated 18.08.2017 passed by the learned Principal Judge, Family Courts, North District, Delhi whereby the petition filed by the appellant under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955 was dismissed while observing as under:

“79. In support of his case, however stated that since she wanted to save her matrimonial marriage, she had chosen the peaceful path of separation without bickering and she stayed at her parental home. There is nothing on record to prove that the respondent had left the company of the petitioner without any reasonable cause. There is also nothing on record as to whether the petitioner had filed any petition for Restitution of Conjugal Rights under Section 9 of Hindu Marriage Act, 1955 and the respondent had



refused to stay with him. There is nothing on record to show that the petitioner has been trying to support the respondent or the minor children during the course of their separation. There is nothing on record that he is voluntarily to help the children financially and even if, the respondent has not filed any case for maintenance against the petitioner. The respondent had not filed any complaint with the hope that filing of case may spoil the future conciliation and was hopeful that they will stay together. To prove desertion as per law as I have already discussed above, the parties seeking divorce on the ground of desertion. The petitioner has failed to prove "animus deserendi" on the part of the respondent.

80 In the present petition, I have already observed that it is a case of deadlock and not desertion between the spouses. Therefore, in view of my discussion made above, the petitioner is not entitled to get the relief of dissolution of marriage with the respondent. From the evidence on record, the fault of desertion sought against the petitioner has not been proved on the ground of desertion also."

2. The appellant, being aggrieved by the dismissal of his divorce petition, has filed the present appeal.
3. **The facts in brief** are that the parties got married on 18.11.2000 at Prashant Vihar, Delhi according to the Hindu Rites and Ceremonies. Two children, namely, Baby Shreya Juneja and Master Swayam Juneja were born on 25.03.2002 and 27.09.2003 respectively from the said wedlock.
4. The appellant/husband has asserted various acts of cruelty against the respondent/wife, namely: -
 - (a) That the respondent/wife is a quarrelsome lady and did not pay respect to the elders at the matrimonial home.
 - (b) That the respondent/wife did not do household work.



- (c) That the respondent/wife wanted to lead luxurious and extravagant life and she used to spend the entire income of the appellant/husband on cosmetics and costly clothes.
- (d) That the respondent/wife insulted the appellant and his family members in front of other people thereby causing humiliation to the appellant.
- (e) That the respondent/wife insisted the appellant/husband to reside separately from the parents, to which the appellant did not agree.
- (f) That the respondent/wife frequently went to her matrimonial home and refused to return.

5. Only after much cajoling and request, out of court settlement reached between the parties and she joined the matrimonial home, but she did not mend her ways. She left her matrimonial home on 20.07.2007 and failed to join back the matrimonial home. It was claimed by the appellant that he was subjected to cruelty and the respondent/wife deserted him. The marriage has completely broken down and there was no chance of reconciliation and he sought grant of divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955.

6. The petition was contested by the respondent who submitted in her Written Statement that she faced extreme hardship and was subjected to torture by the appellant and his family members since the day of her marriage and she finally left the matrimonial home on 20.07.2007. The respondent had asserted that she was earlier also made to leave the matrimonial home on 22.03.2004, but she had again joined the appellant, however, he continued to abuse, torture and beat the



respondent.

7. One such incident happened on 20.07.2007 in which she suffered injuries. The respondent/wife was medically examined *vide* MLC No. 1172 dated 20.07.2007 at AIIMS, New Delhi and both the appellant and his father were arrested under Section 107/151 of the Code of Criminal Procedure, 1973 for insulting and beating the respondent. The respondent was then compelled to leave the matrimonial home on 20.07.2007, to take shelter at her parental home.

8. The respondent/wife also made a complaint to SHO, Police Station Malviya Nagar, Delhi on 02.09.2007 detailing the torture committed upon her by the appellant. It is submitted that conciliation efforts did not yield any fruitful results between the parties.

9. The learned Principal Judge, Family Court, recorded the evidence of the parties. On appreciation of the testimony of the witnesses, it was found that the appellant had merely repeated the allegations of respondent using abusive language and not respecting him and his parents. It was concluded that the testimony of the appellant did not reveal any act of the respondent which could be termed as physical or mental cruelty and the incidents alleged were reflecting normal wear and tear of day-to-day life. Because no cruelty was proved on the ground of desertion, the petition was dismissed.

10. Likewise, it was observed that there was nothing on record to establish that the respondent/wife had left the company of the appellant/husband without any reasonable cause. The appellant/husband failed to prove *animus deserendi* on the part of the respondent. Therefore, the petition under Section 13(1) (i-b) of the Hindu Marriage



Act, 1955 seeking divorce on the ground of desertion was dismissed.

11. Submissions heard.

12. It is not in dispute that the parties got married on 18.11.2000 and eventually separated on 20.07.2007. The appellant in his testimony had claimed that there was no respect being given by the respondent/wife to him and his family members. She used to shirk from discharging family obligations and to take care of the appellant and his family members. She often left the matrimonial home and went to her parental home without informing.

13. It is not disputed that she had left the matrimonial home on 28.04.2003 and when the appellant along with his sister went to the parental home of the respondent, the parents of the respondent refused to send her back unless they live separately from the parents of the appellant. It was pursuant to a petition under Section 9 of the Hindu Marriage Act, 1955 that an out of Court of settlement was reached between the parties and the respondent joined the matrimonial home. However, she again left the matrimonial home on 20.07.2007.

14. The Apex Court in case of Narendra v. K.Meena (2016) 9 SCC 455 had observed that it is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife. The son, brought up and given education by his parents has a moral and legal obligation to take care and maintain the parents when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where upon getting married or attaining majority; the son gets separated from the family. In normal



circumstances, the wife is expected to be a part of the family of the husband after her marriage. She becomes integral to and forms part of the family and husband and normally without any justifiable strong reason, she should never insist that her husband should get separated from the family and live with her separately.

15. It was further observed by the Apex Court that in a Hindu society it is the pious obligation of the son to maintain the parents. If the wife makes an attempt to deviate from the custom prevalent in the society, she must have some justifiable reason for that. Normally, no husband would tolerate and would like to be separated from his parents and other family members. The persistent efforts of respondent wife to constrain the appellant to be separated from the family would be torturous for the husband and would constitute an act of cruelty.

16. In the present case as well the respondent has not been able to show any justifiable reason for her insistence to have separate residence, however, this is brought forth from an out-of-court settlement which the parties have entered into to live separately but thereafter, she went back to live in the matrimonial home with other family members. The only inference that can be drawn is that her insistence to live separately from the other family members was whimsical and had no justifiable reason. Such persistent insistence can only be termed as an act of cruelty.

17. The appellant has stated that there was constant bickering and abuse and that she wanted to live a luxurious life and insulted the appellant and his family members, refused to do her household work and was quarrelsome with the family members. Such incident as narrated by the appellant may seem innocuous when considered



individually, but when considered collectively, it shows that there was no peace in the matrimonial home and there was constant bickering amongst the parties.

18. An acrimonious atmosphere at home cannot be a conducive environment for the parties to forge a cordial conjugal relationship. Such prevailing atmosphere in the home on account of lack of coordination and illusive conduct of the wife over a period of time is bound to be a source of mental cruelty.

19. Admittedly, the respondent had made a Complaint dated 10.09.2007 **Ex.PW1/X3** with the CAW Cell for dowry demand, but the matter was settled between the parties. However, the said complaint was reopened in the year 2013.

20. The respondent/wife had levelled various allegations of cruelty and dowry demand in her complaint lodged with CAW Cell, but she failed to substantiate those allegations in the matrimonial proceedings by leading cogent evidence in her testimony. It has been held in the case of Nishi v. Jagdish Ram 233 (2016) DLT 50 that the filing of false complaint against the husband and his family members constitutes mental cruelty. In the case of K. Srinivas v. K. Sunita (2014) 16 SCC 34. the Hon'ble Supreme Court held that filing of the false complaint against the husband and his family members also constitutes mental cruelty for the purpose of Section 13 (1) (ia) of the Hindu Marriage Act.

21. Similarly, it has been held by the Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposed them to criminal litigation.



Ultimately, if it is found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground.

22. Furthermore, it is also not disputed that since 20.07.2007, the respondent/wife has failed to resume her matrimonial obligations and the appellant has been denied conjugal rights, such prolonged deprivation of conjugal rights coupled with the statement of the respondent in the Court that she has no intention to join the company of the appellant and has no objection to the grant of divorce, not only reinforces that such deprivation has resulted in mental cruelty to the appellant, but also reveals that the respondent/wife has no intention whatsoever to resume the matrimonial relationship. The Divorce Petition was filed on 04.12.2009 i.e. after more than two years of separation.

23. It has been held by the Apex Court in Rakesh Raman v. Kavita (2023) SCC Online SC 497 that

“20. ..Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty”

24. Moreover, the respondent appears in person with her counsel Mr. R.S. Kela and submits that there is no possibility of her staying together with appellant-husband herein. She further submits that she has no objection, if the present appeal is allowed.



25. Accordingly, in view of above, the marriage between the appellant and the respondent is hereby dissolved on the ground of cruelty and desertion under Section 13(1)(i-a) & (i-b) of the Hindu Marriage Act, 1955.

26. The decree sheet be prepared accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 11, 2023

S.Sharma