



\$~20

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

% *Date of decision: 11th September, 2023*

+ **MAT.APP.(F.C.) 86/2018**

SEEMA Appellant

Through: Appearance not given.

versus

VIJAY KUMAR Respondent

Through: Mr.Vijay Kinger, Mr.Ashwani
Gehlot, Ms.Roopaa Nagpal and
Mr.S.C.Kashyap, Advocates.

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. Aggrieved by the grant of divorce on the ground of 'Cruelty' under Sections 13(1)(ia) and 'Desertion' under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (*hereinafter referred to as the 'Act, 1955'*) vide the Judgment and Decree dated 24.01.2018, the present Appeal has been preferred by the appellant/wife under **Section 19 of the Family Court Act, 1984.**

2. **The facts in brief** are that the parties got married according to the Hindu customs and rites on 10.05.2004 and no child was born from their wedlock. The respondent-husband in his petition for divorce had claimed that from the very first night, he found that the appellant-wife was behaving abnormally and did not respond to his sexual overtures. She called her brother who took the appellant to her parental home and informed that she was not feeling well and would return in 2-3 days. The respondent went to



the parental home of the appellant to bring her back but she stated that she was not interested to live with him. She however, came to the matrimonial home but again returned back to her parental home without informing the respondent or his family members. She was again brought back but she misbehaved and openly declared that she was not happy with the marriage and was not inclined to stay in her matrimonial home. She maintained an indifferent attitude towards the respondent and did not speak to the family members and showed complete disrespect to the parents and other family members of the respondent.

3. On 15.05.2004, she humiliated the respondent for not purchasing new gold bangles. She created a scene and insisted on being dropped back to her parental home. In the evening of 16.05.2004, she locked herself in the room and threatened that she would commit suicide or she may be dropped at her parental home. The respondent informed her parents about the behaviour of the appellant but they told him that the appellant was very close to her parents and would eventually get adjusted in the matrimonial home. On 17.05.2004, the appellant returned to her matrimonial home but she shouted at the aged grandmother of the respondent who was aged 80 years and cursed her. The grandmother came under a great shock and started crying.

4. On 18.05.2004, the respondent requested her to prepare a Tea for brother and sister but she abused his family members and again left the matrimonial home. It is asserted that this was the routine of the appellant and she would frequently go to her parental home. Eventually, in the last week of May, 2004, she went back to her parental home and did not return back. No efforts were made by the family members of the appellant to send her back to the matrimonial home.



5. The respondent had further asserted that in November, 2005, he was served with the summons from CAW Cell where the appellant had filed a complaint for dowry harassment. She along with her brother and father, came to his house and attacked them. An FIR bearing No. 400/2006 at Police Station Prashant Vihar under Sections 498-A/406/34 IPC was eventually registered against the respondent and his family members. The appellant also filed a complaint under Section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance in which the Order for payment of maintenance was passed by the learned M.M. Because of marital discord, the mother of the respondent severed the relationship with him and published an advertisement in this regard on 06.03.2006 in the newspaper 'Statesman'. Because of the turmoil, he was forced to live in the rented accommodation at Balbir Nagar, Shahdara, Delhi. The respondent thus sought divorce from the appellant-wife on the grounds of Cruelty and Desertion.

6. **The Divorce Petition was contested by the appellant/wife** who claimed that the respondent cannot be allowed to take advantage of his own wrongs. She asserted that she stayed in the matrimonial home till 15.06.2004. On the request of the respondent, her parents had taken her to the parental home. On 04.12.2004, Sh. Mata Deen, President of Rohilla Samaj, Shahdara came for the meeting but none came from the side of the respondent-husband. Again, an effort for reconciliation was made in second week of January, 2005 when her brother and father went to house of Sh.Krishan Lal, President of Rohilla Samaj, Sagar Pur, Delhi who visited the house of the respondent, after which, he informed the appellant and family members that the respondent was not willing to keep the appellant-wife. It



is claimed that another effort for reconciliation was made on 13.02.2005 when Sh. Krishan Lal along with Ramesh Kumar went to the house of Sher Singh at Sirsa with the request to intervene in the matter but he also expressed his helplessness stating that the respondent and his family members were not open to any discussion. It was further asserted that the present Divorce Petition was a counterblast to the petition for maintenance under Section 125 CrPC that was preferred by the appellant.

7. All the averments of cruelty made by the respondent against the appellant-wife were denied. It was claimed that the respondent and his parents were not satisfied with the dowry and wanted more cash and on this account, were not willing to let her remain in the matrimonial home. She claimed that the respondent never made any efforts to take her back to the matrimonial home. She asserted that the respondent-husband was not entitled to any divorce.

8. On the pleadings, **the issues were framed** by the learned Principal Judge, Family Courts on 03.09.2009 as under:

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

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

3. Whether the petitioner is entitled to a decree of divorce on the grounds as prayed for? OPP.

4. Relief”.

9. The respondent-husband examined himself as PW-1, his neighbour as PW-2 and two other witnesses as PW-3 and PW-4 in support of his



assertions.

10. The appellant-wife appeared herself as RW-1 and examined five other witnesses in support of her defence.

11. The learned Principle Judge, Family Courts on the basis of evidence concluded that despite all the efforts made by the appellant and the family members, the respondent was not inclined to keep the appellant in the matrimonial home. So much so, the respondent admitted in the proceedings before CAW Cell that he did not want to accept the appellant in the matrimonial home. It was thus, concluded that the appellant had every intention to join back the matrimonial home but all her efforts were defeated by the respondent-husband and thus the respondent failed to prove the ground of 'Desertion' by the appellant-wife.

12. The learned Principal Judge, Family Courts further observed that the evidence on record established that the appellant-wife did not permit the respondent-husband to consummate the marriage which was evident from there being no specific averments in her affidavit of evidence Ex.RW-1/A that their marriage was consummated. So much so, in her complaint made before CAW Cell, she had mentioned that there was no relation as husband and wife between her and the respondent-husband. It was concluded that such deprivation of conjugal relationship to the respondent-husband amounted to cruelty and thus, granted divorce.

13. Aggrieved by the grant of divorce on the ground of 'Cruelty', the present Appeal has been preferred by the appellant.

14. **Submissions heard.**

15. The parties have entered into their marriage on 10.05.2004 in a hope of having a blissful and happy life. Unfortunately, it was not so for the



parties as it has been established from the evidence on record that the appellant had hesitation to establish physical relationship with the respondent-husband. According to the respondent-husband, on the first night, her behaviour was abnormal and she did not let him touch her. The respondent-husband in his affidavit had categorically deposed that their marriage which lasted for barely two months never got consummated. It is evident that on account of hesitation and reluctance of appellant towards physical intimacy, differences arose between the parties. It has also come in evidence of the respondent-husband that he was informed by the parents of the appellant that she was close to her parents and eventually would get adjusted in her matrimonial home. It is evident that on account of not being able to adjust in her new role of a wife, she and the respondent-husband resided together for a period of barely two months. Their marriage had a rocky start and unfortunately, differences and the mistrust which got generated in the beginning did not let their relationship flourish further.

16. Further, these differences resulted in immediate filing of a complaint by the appellant in CAW Cell in November, 2005 which further complicated the relationship between the parties. No doubt, the appellant had deposed and had also examined witnesses to depose that efforts for reconciliation were made through the Presidents, Rohilla Samaj but they did not bear any fruits and were not successful. The learned Principal Judge, Family Courts in detail considered the testimony of the parties and the witnesses examined by them to conclude that they resided together only for about 20 to 35 days.

17. It cannot be however overlooked and ignored that a FIR under Sections 498-A/406/34 IPC had been registered against the respondent and his family members who are facing trial. While *per se* filing a criminal case



for dowry demand cannot be termed as an act of cruelty but the appellant has not been able to prove any act of cruelty against the respondent-husband or his family members. There is no cogent evidence led by her in the present case that the demands were being made for dowry by the respondent-husband or his family members or she was harassed or physically tortured.

18. In the case of K.Srinivas vs.K.Sunita X (2014) SLT 126, the Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

19. Similarly, it has been held by the Supreme Court in Mangayakarasi vs. M.Yuvaraj (2020) 3 SCC 786 that it cannot be doubted that in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

20. Further, the Supreme Court in the case of Ravi Kumar vs. Julmidevi (2010) 4 SCC 476 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 9078 and Nishi Vs. Jagdish Ram 233 (2016) DLT 50.

21. Making allegations of dowry harassment resulted in registration of a FIR and the trial to follow can only be termed as an act of cruelty when the appellant has failed to prove even one incident of dowry demand.

22. However, as has been observed by the learned Principal Judge, Family Courts, the marriage is proved from the evidence to have not been consummated on account of resistance by the appellant. We concur with learned Principal Judge, Family Courts that no serious or grave facts could be brought on record from where it could be concluded that this marriage was not workable within such short period.

23. In the case of Rajeev Chadha Vs. Shama Chadha Nee Shama Kapoor (2012) 188 DLT 313, this Court observed that the marriage without sex is an anathema and denial of sex in marriage has extremely unfavourable influence and there is nothing fatal to marriage than disappointment in sexual relationship.

24. In Shakuntala Kumari Vs. Om Prakash Ghai AIR 1983 Delhi 53, it was observed that wilful denial of sexual relationship by a spouse amounts to cruelty, especially when the parties are newly married and this itself is a ground for grant of divorce.

25. In Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, the Apex Court laid down various acts which may amount to mental cruelty and one such illustration was unilateral decision of refusal to have intercourse for considerable period of time without there being no physical incapacity or valid reason.

26. In the present case as well, not only did the marriage between the



parties subsist for barely 35 days but failed completely on account of deprivation of conjugal rights and consummation of marriage. It may also not be overlooked that such deprivation over a period of more than 18 years itself amounts to mental cruelty as has been observed in the case of Samar Ghosh Vs. Jaya Ghosh (supra). The learned Principal Judge, Family Courts has rightly concluded that though the desertion has not been proved but the conduct of the appellant-wife towards the respondent-husband amounted to cruelty, entitling him to the decree of divorce under Section 13(1)(ia) of the Act, 1955.

27. In view of the discussion above, we find no infirmity in the impugned Judgment of the learned Principal Judge, Family Courts.

28. The Appeal and the applications, if any, stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 11, 2023

akb