

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

**DB :- HON'BLE SHRI ANAND PATHAK &
HON'BLE SHRI HIRDESH, JJ
FIRST APPEAL NO. 1781 OF 2023**

SMT. GIRJA ALIAS POOJA

Versus

AVINASH SINGH

Appearance:

Shri R. K. Shrivastava- learned counsel for appellant- wife.

Shri S. N. Seth- learned counsel for respondent-husband

Reserved on : 15-01-2025

Pronounced on : 21.01.2025

JUDGMENT

Per Hirdesh, J:-

The instant first appeal under Section 19 of the Family Courts Act has been preferred by appellant (wife) challenging the judgment and decree dated 26th of July, 2023 passed by Principal Judge, Family Court, Bhind (MP) in Case No.156/2021 (HMA) whereby application filed by respondent (husband) under Section 13(1)(i-a) of Hindu Marriage Act [in short "HM Act"] seeking a decree of divorce on the ground of "cruelty" has been allowed.

(2) It is not in dispute that marriage of appellant with respondent was solemnized on 9th of June, 2011 at Welcome Garden, Bhind Road, Gwalior as per Hindu rites and rituals.

(3) The facts, in a nutshell, are that respondent submitted divorce application, *inter alia*, alleging that after marriage, as long as appellant stayed with him, efforts were made to keep her happy, all her wishes were fulfilled

and she was never harassed, she was always willing to stay at her maternal home in Gwalior, due to which, no cohabitation took place. Appellant did not return from her maternal home even after conciliation held at Police Counselling Centre on 24-10-2017. It is further averred that he had filed an application for restitution of conjugal rights under Section 9 of HM Act in which, a decree was passed in his favour on 13-12-2019, but appellant did not turn up. Then, he filed an agreement for execution of decree, in which, the said agreement was rejected on 25-03-2021, as appellant is not living with him even after mediation proceedings. Appellant deliberately does not want to live with him without any valid reason, due to which, he was bound to file divorce application.

(4) In reply, appellant refuted allegations of respondent. It has been averred by her that she faithfully fulfilled all her marital duties as wife but respondent and his family members used to demand rupees two lac more as additional dowry everyday. They used to harass her physically and mentally and due to non-fulfillment of dowry, respondent used to deprive her of cohabitation, due to which she could not have any child. When she went to her in-laws house with her brother in compliance with decree passed on 13-12-2019 consequent to application for restitution of conjugal rights, they were not allowed to enter the house of respondent. Now, she is ready to live with her husband-respondent, but respondent does not want to keep her with him without any reason. The divorce application has been filed on the basis of wrong facts. Hence, prayed for its dismissal.

(5) On the basis of pleadings of both the parties, the Family Court framed issues and passed the impugned judgment and decree in favour of respondent by allowing divorce application filed by respondent under Section 13(1)(i-a) of HM Act on the ground of "cruelty". Therefore, appellant is before us.

(6) It is contended on behalf of appellant that learned Family Court has passed the impugned judgment and decree in favour of respondent without

going through evidence available therein. Respondent and his family members used to beat and harass her with regard to demand of dowry and she was ousted from her in-laws house. In compliance of decree dated 13-12-2019 passed by Family Court consequent to application under Section 9 of the HM Act for restitution of conjugal rights, appellant was not allowed to enter the house of respondent and whenever she goes to the house of respondent, respondent does not allow her to enter house. Respondent and his family members used to harass her for dowry, as a result of which, she is residing with her mother in her parental home since 2017. Even otherwise, in compliance of order of this Court dated 07-01-2025, appellant again went to the house of respondent, but she was not allowed to enter the house of respondent and was abused by respondent and his family, therefore, she returned. She is not living separately on her free will and is still ready and willing to live with her husband, if her husband- respondent keeps her at separate place, other than where her in-laws reside because she has fear of threat to life with her father-in-law and mother-in-law.

(7) It is further contended that the Family Court has committed an error in rejecting claim of appellant filed under Section 24 of HM Act *vide* orders dated 11-11-2019 and 29-04-2022, with a finding that she is working with the HDFC Bank and is able to maintain herself. It is further contended that she was never employed as employee of HDFC Bank, on the contrary, she was only working as Agent of HDFC Life Insurance and she has left her job. She is suffering from tuberculosis and has no source of income to maintain herself; and occupied no property in her own name. In support of contention, she has filed documents in the shape of IA No.3354 of 2024. Respondent has left her for the last seven years although he has legal obligation to maintain her. She has also filed interim maintenance application under Section 125(3) of CrPC and Family Court *vide* order dated 22nd of March, 2024 in MJCR No.227 of 2021 granted interim maintenance of Rs.8,000/- per month which is not just and

proper, therefore, she has filed an application under Section 24 of Hindu Marriage Act in the shape of **IA No.1185 of 2024** before this Court and has also filed an application under Section 25 of the HM Act in shape of **IA No.1183 of 2024** for grant of permanent alimony to the tune of Rs.59,40,000/- on the ground that respondent is earning Rs.30,000/- per month from his business and having two homes in District Bhind; 20 bigha of ancestral agricultural land; and is living higher standard of life.

(8) It is further contended that she has always been ready and willing to stay with respondent and complied with orders of this Court passed on various occasions, but respondent is flouting orders of the Court. Under these circumstances, she is residing separately on sufficient cause of ill-treatment and harassment by her in-laws on the demand of dowry, so that the impugned judgment and decree passed by Family Court in favour of respondent, deserves to be set aside. In support of contention, appellant has relied on judgment of Hon'ble Apex Court in the matter of ***Rina Kumari alias Rina Devi alias Reena vs. Dinesh Kumar Mahto alias Dinesh Kumar Mahato and Another, 2025 INSC 55.***

(9) Learned counsel for respondent, on the other hand, by supporting the impugned judgment and decree, contended that after solemnization of marriage on 9th of June, 2011, appellant left matrimonial home without any valid reason and refused to live with respondent even after conciliation at Police Counselling Centre held on 24-10-2017. Respondent along-with his relatives on 25-01-2018 went to house of appellant to bring her back, but she refused to come. Various efforts were given to appellant in compliance of decree passed on 13-12-2019 consequent to the application under Section 9 of HM Act for restitution of conjugal rights filed by respondent. Even after passing of execution of decree, appellant directly refused to reside with respondent, therefore, execution proceeding was rejected *vide* order dated 25th of March, 2021. It is further contended that the Family Court has rightly rejected

application of appellant filed under Section 24 of HM Act *vide* order dated 11-11-2019 and 29-04-2022 respectively on the ground that she is working with the HDFC Bank and is able to maintain herself. The Family Court has rightly passed a decree of divorce on the ground of "cruelty" in favour of respondent. There is no complaint of dowry demand after passage of more than seven years of separate living and only false and frivolous allegations of harassment have been made by appellant with regard to demand of dowry, which has not been found proved by Family Court itself.

(10) It is further contended that appellant is a well-qualified and Post Graduate Engineer pursuing Ph.D and is having huge ancestral property i.e. 50 bigha of agricultural land. Besides that, there are three ancestral houses in name of mother of appellant; one house at Hanuman Nagar and a two-storeyed building is being constructed at Hanuman Nagar and two houses also belonged to her mother are situated in Amaltas Colony, Gwalior and all these facts have been suppressed by appellant at the time of filing of application under Section 25 of the HM Act, therefore, she is not entitled for any permanent alimony. Under these circumstances, he prayed for dismissal of first appeal.

(11) Heard Counsel for the parties and perused the impugned judgment and decree, as well as documents available on record.

(12) The pivotal question for consideration of instant appeal is that after solemnization of marriage as to whether appellant has treated her husband-respondent with mental cruelty in the light of provisions enumerated under Section 13(1)(i-a) of the HM Act or not ?

(13) Concept of "mental cruelty" has been elaborately discussed by Hon'ble Apex Court in the matter of **Dr. Narayan Ganesh Dastane Vs. Mrs. Sucheta Narayan Dastane, AIR 1975 SC 1534** whereby relevant extract of the said judgment is reproduced as under:-

"The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the

acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."(1) The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures. As said by Lord Reid in his speech in *Gollins v. Gollins* (2) *ALL ER* 966

"In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

(14) The above-said judgment of **Dr. Narayan Ganesh Dastane** (supra) still holds the field and is source of wisdom time and again in respect of "mental cruelty". The aforesaid decision was referred to with approval in the cases of **Praveen Mehta Vs. Inderjit Mehta AIR 2002 SC 2582, Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, Manisha Tyagi Vs. Deepak Kumar (2020) 4 SCC 339, Vishwanath Agrawal Vs. Sarla Viswanath Agrawal (2012) 7 SCC 288 and U. Sree Vs. U. Srinivas (2013) 2 SCC 114.**

(15) Now, examining the case at the touchstone of principles of law laid down by Hon'ble Apex Court in the above-cited cases, suffice to say that the evidence led by appellant-wife clearly demonstrates that after marriage between the couple in the year 2011, the appellant lived with her husband-respondent for a shorter period of time and most of time, she has been living at her parental home and left house of her husband in the year 2017 without any reason and did not turn back even after passing of decree during proceedings

took place consequent to application under Section 9 of HM Act moved by respondent in respect of restitution of conjugal rights. Several opportunities were given to the appellant for turn home back, but she was adamant to live with her husband- respondent and as it appears from her evidence that she anyhow intends to live with her husband only on a condition that if respondent agrees to accompany her at separate home. Due to rupture of marital cord, no child was born and respondent was tortured physically and mentally. Therefore, the Family Court after considering the evidence of both the parties, concluded that appellant did not intend to live with her husband- respondent. The meditation proceedings held in between the parties also could not bear fruitful result. Appellant anyhow was not seen to have established her marital relationship. The evidence of witnesses recorded by the Family Court also in one breath stated that allegation raising demand of dowry is totally absurd. In fact, the respondent made all possible efforts to bring back her wife-appellant but she was not agreed and levelled false and vague allegations to anyhow break her matrimonial fold.

(16) It is also a matter on record that at the first instance, when this Court passed an order on 21-12-2023 on mutual agreement of parties to reside together as husband and wife, the appellant did not obey the direction and avoided to come to her husband's house. The affidavit filed on 27-12-2023 regarding unwillingness of appellant to join the hands of respondent has been filed by respondent, is on record. It was not the first instance, but thereafter on so many dates/occasions, the Court directed to settle the scores between the parties, but it appears that she denied the directions. The conduct of wife, therefore, is apparent that she does not want to live with her husband-respondent. She wants to live with her husband only on a condition that if respondent keeps her at separate place. The motive of appellant is apparent that she wants to live with her husband, not with her in-laws family. Her allegation, therefore, appears to be false regarding raising of demand of dowry and it

seems that false story has been made with an intention to implicate her in-laws including husband in civil proceedings.

(17) Taking all these narration of facts into consideration, *prima facie*, there appears that respondent has been subjected to mental cruelty at the hands of his wife- appellant and she was desperate to live on her own terms and conditions. The Family Court, therefore, cannot be said to have approached wrongly in recording a finding which is well-merited, calling no interference by this Court under appellate jurisdiction. Accordingly, the judgment and decree dated 26th of July, 2023 passed by Principal Judge, Family Court, Bhind (MP) in Case No.156/2021(HMA) is affirmed. The instant first appeal fails and is hereby **dismissed**.

(18) In the conspectus of above discussion, where this first appeal preferred by appellant assailing the decree of divorce dated 26th of July, 2023 passed by the Family Court is dismissed, there is no question of allowing applications (**IA No.1185 of 2024 & IA No.1183 of 2024**) which have been moved on behalf of appellant seeking enhancement of maintenance amount as well as permanent alimony respectively. Both the applications are, therefore, rejected finding no merit.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE