2024:DHC:6007-DB

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

% ***Judgment Reserved on: 02.08.2024***
Judgment Pronounced on: 13.08.2024

\+ **MAT.APP.(F.C.) 261/2023 & CM APPL. 46373/2023**

.....Appellant

Through: Dr Ashutosh, Ms Swati Gupta, Ms Monal and Ms Fatima, Advocates with appellant in person.

versus

.....Respondent

Through: Mr Sumit Kumar Khatri, Advocate with respondent in person

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.

1. The present appeal has been filed impugning the judgment dated 4th March, 2023, passed by the learned Judge, Family Court, East District, Karkardooma Courts, Delhi (hereinafter, "the Family Court"). *Via* the impugned judgment, the petition filed by appellant wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter HMA), seeking divorce on the ground of cruelty was dismissed.

2. Brief facts which led to the filing of the present petition are enumerated hereunder:

2.1 The appellant entered into matrimony with the respondent/husband on 27th April, 2008, in accordance with Hindu rites and ceremonies. At the time of the marriage, the appellant was working as a teacher in an MCD school.

2.2 Subsequently, on account of matrimonial disputes between the parties, the appellant left the matrimonial house on 25th April, 2012.

2.3 No child was born from the said wedlock.

2.4 On 8th November, 2012, the appellant filed a petition, being HMA No.201/2018 under Section 13(1)(ia) of the HMA seeking dissolution of marriage on the ground of cruelty.

2.5 In the aforesaid petition, the appellant alleged various instances of cruelty, *inter alia*, including:

i. The respondent was a habitual drinker and was involved in illicit activities such as gambling.

ii. The family members of the respondent were quarrelsome and abusive towards the appellant.

iii. The respondent and his family members pressurised the appellant and her family to provide dowry in the form of gifts and cash.

iv. The respondent spent the salary earned by the appellant in gambling and settling his old debts. In this regard, the appellant has also filed a complaint case being CC No.260/2013, against the respondent under Sections 406/420/120B of the Indian Penal Code, 1860, (IPC) which is still pending trial.

2.6 The respondent, in the Written Statement filed before the Family Court, denied all the aforementioned instances of cruelty.

3. The Family Court after hearing both sides and appreciating the evidence placed on record on behalf of the parties, held that the appellant

could not prove the allegations of cruelty made in the petition and hence, dismissed the petition *via* the impugned judgment.

4. The present appeal has been filed by the appellant challenging the impugned judgment of the Family Court and seeking dissolution of the marriage between the parties.

5. Notice in the present appeal was issued by the predecessor Bench on 6th September, 2023.

6. The appeal came before this Bench on 1st March, 2024, and with the consent of the parties, the matter was referred to the Delhi High Court Mediation and Conciliation Centre [hereinafter the "Mediation Centre"] to attempt a settlement in the matter *via* mediation.

7. On 9th May, 2024, it was noted that the mediation proceedings between the parties had failed. Accordingly, the parties were directed to file written submissions in support of their arguments, which have been duly filed by both sides.

8. Counsel appearing on behalf of the appellant has made the following submissions:

I. The parties have been residing separately for the last twelve years and the marriage between the parties has broken down beyond repair on account of the said prolonged separation as well as acts of cruelty on behalf of the respondent. Therefore, no purpose would be served by keeping the parties bound in a marital relationship.

II. The respondent had agreed to the grant of divorce by mutual consent, however, the respondent subsequently resiled from the same. Reliance in this regard has been placed on an email dated 15th March, 2022 sent by the respondent to the appellant.

III. There is no child born from the wedlock and therefore, dissolution of the present marriage would not adversely affect any party.

IV. The appellant does not press for grant of maintenance or alimony and is only seeking divorce from the respondent.

9. *Per contra,* counsel appearing on behalf of the respondent has submitted that both parties have been in contact from 2nd February, 2020 to 30th January, 2024 and therefore, a possibility of restoration of the marital relationship still exists. It is also submitted that after the impugned judgment was passed, the respondent has filed a petition under Section 9 of the HMA seeking restitution of conjugal rights. It is further submitted that new facts have been alluded to in the present appeal, which were not pleaded before the learned Family Court.

10. We have heard the counsel for the parties and perused the material on record. Both sides have also filed written submissions in support of their arguments.

11. The undisputed facts that have emerged from the record of the present case are that the parties were married on 27th April, 2008 and lived together only till 25th April, 2012. Subsequent thereto, the appellant left the company of the respondent and instituted divorce proceedings [HMA No.201/2018] on 8th November, 2012, which came to be decided by the impugned judgment.

12. A perusal of the impugned judgment shows that the Family Court delved into various instances of cruelty and came to the conclusion that the said allegations could not be proved by the appellant by adducing cogent evidence in support of her pleas. The findings returned by the Family Court in this behalf are set out below:

> "*74. Thus to summarize, it is a case where the petitioner has been unable to discharge the burden of proof regarding her averments of Cruelty at the behest of the respondent and his family members in the manner alleged. Merely because a fact is alleged, it can not be construed as cruelty without evidence in support as what may be an act of cruelty for one, it might not be for someone else. In the instant case, even the oral testimony of the petitioner could have prevailed, had she produced oral evidence in accordance of her pleadings. However, her truncated affidavit in evidence restricted her examination in chief thereby omitting various aspects and thus making her testimony prone to contradictions and improvements. It is also observed that the respondent has led evidence even when the onus had never shifted on to him while the petitioner withheld best evidence.*"

13. In ***Samar Ghosh* v. *Jaya Ghosh***, (2007) 4 SCC 511, the Supreme Court has extensively delved into the question as to what constitutes "mental cruelty". In the said case, the Supreme Court noted that the parties had been living separately for sixteen and a half years and in this period, they did not spend any time together. After analyzing various judgments of the Supreme Court as well as foreign jurisprudence on the subject, including judgments from England, United States of America, Canada and Australia, the Supreme Court arrived at the following conclusion:

> "*95.* ***Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties****.*
>
> *96. Law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; Divorce Courts are presented with concrete instances of human behaviour as bring the institution of marriage into disrepute.*"
>
> [Emphasis is Ours]

14. The Supreme Court in ***Samar Ghosh*** (supra) also enumerated an illustrative list of instances to be considered while dealing with cases involving "mental cruelty". The extracts from the said judgment relevant for the adjudication of the present case are set out below:

> *"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:*
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> …
>
> ***(xiv) 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.***"
>
> [Emphasis is Ours]

15. In light of the above and taking into account that the couple had been living separately for more than sixteen years, without any interaction, the Supreme Court upheld the decision of the Trial Court dissolving the marriage between the parties.

16. The aforesaid principles elucidated in ***Samar Ghosh*** (supra) were followed by the co-ordinate bench of this court in ***Vandana Singh* v. *Satish Kumar***, 2022 SCC OnLine Del 19 and ***Ritesh Babbar* v. *Kiran Babbar***, 2022 SCC OnLine Del 726. In ***Vandana Singh*** (supra), while granting divorce on the ground of cruelty under Section 13(1)(ia) of the HMA, the co-ordinate bench observed that due to long period of separation between the parties, the matrimonial bond had broken beyond repair and its continuation would constitute mental cruelty. Similarly, in ***Ritesh Babbar***

(supra), the divorce was granted under Section 13(1)(ia) of the HMA as the parties had lived separately for twelve years and there was no chance of reconciliation. It was further observed that continuation of the matrimonial relationship would amount to inflicting further cruelty on the parties.

17. The judgment in ***Samar Ghosh*** (supra) was also followed by us recently in ***Simran Batra @ Lata Batra* v. *Davinder Kumar Kapoor***, 2024:DHC:5813-DB, wherein the parties were granted divorce taking into account the long period of separation, while observing that "***long continuous separation is a facet of mental cruelty; severing ties, in the long run, may do more good than bad to the couple's psychosocial health***".

18. In ***Simran Batra*** (supra), it was also observed that the entire approach of the Family Court so as to determine which party was at fault, was erroneous. In this regard, reference may be made to the following extract from the said judgment, which has been set out below:

> "*15. As is evident upon reading the two extracts, the learned Family Court Judge asked himself the wrong question and therefore, in our opinion arrived at the wrong conclusion.* ***The learned Judge, after recognizing the fact that the couple had not cohabited for twenty (20) years, posed the wrong question, i.e., who was at fault? Life experience shows that relationships are complex and involved and therefore, at times, it is not easy to determine who is at fault.***"
>
> [Emphasis is Ours]

19. The impugned judgment in the present case, despite making a reference to ***Samar Ghosh*** (supra) and the extracts set out hereinabove, failed to apply the same to the facts of the present case. The Family Court

overlooked the fact that the parties had been separated for a continuous period of more than ten years and the marriage was beyond a point of repair.

20. In our view, the Family Court ought to have considered the following facts and circumstances obtaining in the present case:

i. The parties have been living separately since 25th April, 2012, during which the parties have been embroiled in litigation.

ii. There is a complete trust deficit between the parties, which is evident from the fact that the appellant was constrained to file a complaint case against the respondent which, admittedly, is still under adjudication; a clear indicator that the marriage is beyond repair.

iii. The appellant has not made any demands for maintenance and alimony and only seeks grant of divorce.

iv. Since there is no child born from the said wedlock, no person would be adversely affected by the said divorce.

21. Counsel for the appellant has drawn our attention to an email dated 15th March, 2022, sent by the respondent to the appellant, attaching therewith a draft of the petition seeking divorce on mutual consent. The respondent admits sending this email. However, he submits that he changed his mind subsequently, which he was entitled to do. In this regard, the respondent has placed reliance on ***Rajat Gupta* v. *Rupali Gupta***, 249 (2018) DLT 289(DB). There can be no cavil with the proposition that the respondent was entitled to change his mind, however, the respondent does not proffer any explanation as to what made him change his mind. The aforesaid email clearly indicates that the respondent had also contemplated seeking a divorce based on mutual consent.

22. In the written submissions filed by the respondent, the justification given for resisting the grant of divorce is that it would bring "dishonour" and "stigma" upon himself and his family. We fail to appreciate this submission. In our view, in the present times, there can be no "dishonour" or "stigma" brought upon the contesting spouses or their families upon the grant of divorce. In the present case, both parties are well educated[1] and therefore, it is difficult to digest the argument that grant of divorce would be stigmatic for either of the spouses. On the contrary, the persistent mental agony and trauma that a sour marriage causes upon the parties and their families, is much heavier to bear.

23. It is relevant to mention here that even in these proceedings, an attempt was made to redeem the marriage by referring the parties for mediation. The report of the Mediation Centre stated that "***the parties are adamant at their respective stands and are not interested in continuing the mediation proceedings***" and therefore, the proceedings were a "***non-starter***". This amply demonstrates that the marriage between the parties is beyond repair.

24. In our view, any further continuation of the marriage would cause trauma to the parties and would amount to perpetuation of mental cruelty.

25. In view of the discussion above, the present appeal is allowed and the impugned judgment is set aside. Resultantly, the marriage between the appellant and the respondent shall stand dissolved under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

[1] The appellant is a teacher in an MCD School, while the respondent has an MBA and has worked for corporations such as DELL India Pvt. Ltd. and Genpact India Pvt. Ltd.

26. The Registry is directed to prepare a decree accordingly.

27. The appeal, along with the pending applications, shall stand disposed of.

AMIT BANSAL
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

AUGUST 13, 2024
ds