



* IN THE HIGH COURT OF DELHI AT NEW DELHI
 % Reserved on: 29th August, 2023
 + Pronounced on: 20th December, 2023
MAT.APP.(F.C.) 254/2019 & CM APPL. 43815/2019

PREM KUMAR

..... Appellant

Through: Mr. Pankaj Pandey, Advocate.

versus

KALPANA KUMAR

..... Respondent

Through: Ms. Stuti Gupta, 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

NEENA BANSAL KRISHNA, J.

1. An Appeal under Section 19 of the Family Courts Act, 1984 has been preferred on behalf of the appellant/husband against the Judgment dated 20.04.2019 passed by the Principal Judge, Family Court, Central District, Tis Hazari, Delhi dismissing the petition for divorce filed by the respondent/husband under 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter to be referred to as "HMA"*).

2. Briefly stated, the parties got married on 05.10.1998 and two children namely Prateek and Kartik were born from their wedlock on 07.08.1999 and 07.08.2004 respectively. The appellant/husband in his petition filed before the learned Judge claimed that he at the time of marriage was working in LIC and was residing in a small one room flat allotted by his



employer. The marriage was dowry less and no gifts were asked or taken in the marriage.

3. The appellant asserted that since the beginning the respondent/wife was a greedy, quarrelsome and a jealous lady. She was indifferent towards his financial capacity and often demanded and quarreled for larger amounts for her personal needs. He took great care of her, and delivery of both the children took place in a highly reputed and well equipped hospital i.e. Jeevan Nursing Home, New Rohtak Road, Delhi. He always made an endeavor to fulfill her wishes and spent beyond his means on the education of the children as well as he got them admitted in a reputed private school. He also took them for vacations.

4. The appellant asserted that despite his discharging all his matrimonial obligations, the respondent was most disrespectful to his old widowed mother and would treat her as an enemy. She never allowed the children to be with the grandmother. She also never allowed his mother to enter the kitchen. In the fourteen years of matrimonial life, he was mentally tortured and all his endeavors to maintain peace and harmony failed. There was so much hatred in the respondent for his mother that she always tried to prevent him from performing his duties as a son towards his mother. For this reason his mother went away to reside alone in a rented accommodation at Rohini, Delhi for about ten months.

5. The appellant further asserted that when the elder son was 3½ years old, the respondent left the matrimonial home without any cause and without any intimation. He approached her to bring her back, but was humiliated by her and her parents. With great persuasions he brought her back after 1½ years. However, she was always suspicious of the appellant and would



check the mobile details and SMS. In April, 2010 the appellant had gone to the stationary shop to buy items for his elder son, but he got slightly late in returning back home. The respondent created a scene and caused him great humiliation as she went back to the stationary shop to confirm if he indeed had visited the shop.

6. Lastly, the appellant asserted that the respondent would instigate the children against him, provoked them to watch TV till late in the night and play computer games. On 05.03.2012 he was in his office, when she along with the children, left the matrimonial home without any right, reason or intimation. Thereafter, she filed a petition under Section 125 Cr.P.C for maintenance which was dismissed in default on 25.02.2016. She also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 based on false and fabricated facts, purely to harass him and his widowed mother. The appellant asserted that the respondent had no interest in matrimonial life and thereby sought divorce on the ground of cruelty.

7. The respondent in her **Written Statement** denied all the allegations made against her by the appellant. She explained that the two children were born in the private hospital because of the health benefit extended to the appellant by his employer i.e. LIC. However, the big share of the delivery expenses were paid by her parents and the health benefit/ reimbursement from the Department was pocketed by him. She denied that she had any disrespect for the mother-in-law or ever tortured her in any manner. She admitted leaving the matrimonial home for 1½ years but claimed that she was compelled to leave the matrimonial home because of the domestic violence committed by the appellant upon her. She returned on the



assurance given by the appellant that he would leave drinking alcohol and would not torture her.

8. She further asserted that on 19.02.2012 the appellant had abused her on the pretext that she was sleeping with other people outside the marriage, given her beatings and her mother-in-law had pulled her hair and kicked on her stomach. Seeing her being beaten mercilessly, the elder son intervened and caught hold of the Appellant from behind. The neighbours also gathered. She submitted that the children on their own stopped interacting with the appellant as they were terrified after this incident.

9. The respondent asserted that she was compelled to leave her matrimonial home because of the atrocities committed upon her by the appellant and his mother. She, therefore, denied that there exists any ground for grant of divorce.

10. The issues on the pleadings were framed on 15.03.2018 as under:

- (i) *Whether the petitioner husband has been treated with cruelty by the respondent wife, as detailed in the petition? OPP*
- (ii) *Relief.*

11. The appellant appeared as PW1. He also examined PW2 Shri Rakesh Yadav, SJA, Record Room, Sessions, Tis Hazari Court and PW3 Shri Ghanshyam, JJA from Record Room Sessions, Tis Hazari Courts, Delhi, who produced the record pertaining to Criminal Appeal No.24/2015.

12. The respondent examined herself as RW-1 in support of her assertions.

13. The **learned Principal Judge, Family Court** considered the testimony of the respective parties and observed that in the 14 long years of marital life there was no specific instance proved by the appellant to



establish intolerable cruelty at the hands of respondent/wife. He was unable to prove that the respondent/wife was extravagant or spent money beyond the financial capacity of the appellant. It was also not proved that she defaulted in performing her household obligations or to take care of the family. It was concluded that the appellant has failed to prove any acts of cruelty and the petition for divorce was dismissed.

14. Aggrieved by the said judgment, the present appeal has been preferred.

15. **Submissions heard and the record perused.**

16. Admittedly, the parties got married on 05.10.1998 and were blessed with two sons. Their matrimonial life continued for 14 years and the respondent walked out of the matrimonial relationship on 05.03.2012.

17. The appellant in his testimony had deposed that after some time of marriage, the respondent started quarrelling on trivial issues frequently though he always tried to underplay in order to maintain the peace. The respondent being a greedy, quarrelsome, jealous and sceptical kind of woman always found some reason to quarrel. The appellant though claimed that respondent was quarrelsome and would fight on trivial issues, but has not been able to demonstrate his assertions by referring to the specific incidents. He deposed that he discharged all his obligations towards the respondent/wife and the children. There is no denying that the two children were born in a reputed hospital and also that the appellant had got them admitted in a good school. There is also no evidence to establish that the appellant as a father ever defaulted in his obligations towards the wife or the children. The learned Principal Judge, Family Court rightly concluded that there is no evidence led to prove that the respondent defaulted in her



household obligations or refused to perform the household chores or to take care of the children or made demands beyond the financial capacity of the appellant.

18. We find that while apparently there were no serious issues between the respondent and the appellant, but the real reason was the alienation of the appellant from his mother. The appellant had deposed that the respondent had little respect for his mother and would always try to alienate the children from interacting with his mother. She served the food to the mother-in-law through the children, while she would always remain occupied in her room with the children and would not permit the mother-in-law to enter her room. So much so, that she created a scene about the temple being in the Hall and set up one small temple in her own room. She also prevented the mother-in-law from entering into the room. The appellant claimed that her intolerance towards the mother-in-law was to such an extent that she would create scenes to dissuade the appellant from performing his duties towards his mother. Sometimes, she even went to the extent of threatening him with false implication in criminal cases and even threatened to self harm and put the blame on the appellant and his mother. Scared by these threats, he continued to tolerate the conduct of the respondent. He also tried his best to resolve the issues between the respondent and his mother in order to maintain peace in the family. The mother of the appellant in fact, went away to live separately in a flat for ten months in Rohini. Further, the respondent along with the children, admittedly went away from the matrimonial home for about 1½ years. According to the appellant it was with much cajoling and persuasion of the maternal uncle of the respondent that he was able to bring back the



respondent back home. This is corroborated by the testimony of the respondent who admitted that she returned only after assurances were given by the appellant.

19. There is no significant cross-examination of the appellant on these aspects.

20. What thus emerges from the testimony of the petitioner is that the bone of contention between him and the respondent since the inception of marriage, was the mother-in-law who was residing with him. The wife had difficulty in adjusting with the mother-in-law and by her conduct dissuaded or was not happy with the appellant taking care or giving any attention to his mother. Such dislike or incompatibility between the wife and mother-in-law became a constant source of trauma for the appellant who despite his best efforts to strike a balance between the two, did not succeed. That was the reason why the respondent left the matrimonial home for 1½ year, but was persuaded to return. The respondent on her part has not been able to explain the reason of leaving the matrimonial home for 1½ year except making general allegations of being subjected to cruelty by the appellant and his mother.

21. In the matrimonial life spread over 14 years, the appellant may not be able to specify every big and small incident to explain this all pervasive stress, trauma and discomfort in the house on account of the incompatibility between the respondent and his mother. However, such constant stress is obviously bound to create mental trauma to the appellant who was put in a precarious situation of balancing the competing expectations of the respondent and his obligations as a son towards the mother.

22. In this respect, we may refer to the testimony of the respondent who



appeared as RW1. She, in her entire testimony, has deposed that despite the allegations made by the appellant in the divorce petition, she had always been optimistic that his attitude would change to what he was at the time of marriage and their marriage would settle down. She deposed that she never could considered leaving the appellant or ending her matrimonial association with him. She considers the marriage as a sacrament and that she could never imagine any person other than the appellant as her husband. She was being treated with cruelty, but she “harbors no grudges against him” for his acts, as his acts were always “*under the influence of his mother and sister and not because of his own free will.*” She does not see any future for herself in the absence of the petitioner and firmly believed that the appellant would realize his fault and the family would be united. She asserted that “*petitioner is dancing to the tunes of his sister and mother who want him to get rid of me and the children and he is on the verge of ending his marriage under their influence without considering the fate of his own marriage*”.

23. From the testimony of the respondent, it is reinforced that she had no issues with the appellant and had no complaints about his conduct except that she had issues with the mother-in-law and the sister-in-law.

24. Lastly, one may note that the respondent admittedly left the matrimonial home permanently on 05.03.2012. She has vaguely claimed that she has lodged a complaint with the Police Station. However, she has failed to explain the circumstances for her leaving the matrimonial home permanently. It was alleged that she had been forced to leave the matrimonial home, after being given beatings. The respondent aside from claiming that she was beaten and subjected to cruelty, has not been able to explain any reason for having left the matrimonial home. As discussed



above, we find that she only had problems with the mother-in-law who was residing with them and with whom she had adjustment issues.

25. Lastly, we may observe that the appellant/wife had left the matrimonial home on 05.03.2012 and since then, she has not made any conciliatory efforts or attempted to return to the matrimonial home. It needs no reiteration that the bedrock of any matrimonial relationship is cohabitation and conjugal relationship. For a couple to be deprived of each other's company, proves that the marriage cannot survive, and such deprivation of conjugal relationship is an act of extreme cruelty. This long separation and withdrawn conduct of the respondent/wife when considered in the light of the facts as discussed above, clearly leads to only one conclusion that she had rejected and abandoned her matrimonial relationship. Such long separation, with no effort by the respondent/wife to resume matrimonial relationship, is an act of cruelty as is held in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511.

“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 and can be termed as mental cruelty.”

A dead relationship only brings pain and agony and we find that the Court cannot be a party to perpetuation of such mental cruelty. The marriage ties which keep lingered on account of protracted litigation only brings more cruelty and acrimony.



26. Learned Principal Judge, Family Court has apparently been swayed by the fact that the petition under Domestic Violence Act that was filed by her, was allowed granting maintenance of Rs.30,000/- per month for herself and the children. We may observe that the acts which became the basis of grant of relief under D.V. Act, have not been proved in the present case. Moreover, we may observe that without the specific incidents being proved by the respondent, it may not be possible to conclude that the appellant has been cruel towards her making it impossible for her to reside in the matrimonial home. The parameters of assessing “Domestic Violence” are not the same as for cruelty under the HMA. Moreover, the relief that she had sought under the Domestic Violence Act was essentially in respect of maintenance. Interestingly, she had claimed a right of residence in the same house, though the same had been declined as the appellant was residing in Government accommodation. However, the very fact that the respondent wanted to stay in the same house coupled with her own admissions that she had no complaints against the behaviour of the appellant further reaffirms the averments of the appellant that the respondent for no reasons left the matrimonial home. Pertinently, the respondent in her testimony deposed that she was still willing to live with the appellant.

27. We thus, conclude from the evidence as led by the parties that the appellant never defaulted in his matrimonial obligations but was tormented by the intolerance that the respondent had developed towards the mother-in-law which essentially became the bone of contention between the two to such an extent that she eventually left the matrimonial home on 05.03.2012.

28. We observe that such acts of the respondent spread over more than fourteen years, were a constant source of mental agony and trauma



constituting cruelty entitling the appellant to a decree of divorce. We, therefore, allow the appeal and set aside the impugned judgment dated 20.04.2019.

29. The Decree of divorce is granted under Section 13 (1)(ia) of HMA.
30. The petition along with pending application stands disposed of.
31. Decree sheet be prepared.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 20, 2023/va