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

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Date of decision: 03rd October, 2023

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MAT.APP.(F.C.) 149/2023 & CM APPL. 27557/2023 (Stay)

..... Appellant

Through: Mr. Ashok Kumar Sharma, Sr. Advocate with Mr. Durgesh Gupta, Mr. Kamal Pundir, Mr. Kshitiz Mudgal & Ms. Anshul Rajora, Advocates.

versus

..... Respondent

Through: Mr. Rashid Hashmi, 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)**CM APPL. 27556/2023 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

MAT.APP.(F.C.) 149/2023

3. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dated 09.05.2023 granting divorce under Section 13 (1)(ia) and (ib) of Hindu Marriage Act, 1955 (hereinafter referred to as "Act") in a petition filed by the respondent/husband against the appellant/ wife.
4. The parties got married on 15.01.2012 according to Hindu Customs



and Rites. Though, the marriage was consummated, but no child was born from the said wedlock. The respondent took the appellant to Mauritius for Honeymoon on 15.02.2012 where they stayed till 22.02.2012. However, the appellant was only interested in shopping and again did not permit any physical relationship. After coming back from Mauritius, the appellant insisted for going back to her parental home and was taken back by her brother. On 25.02.2012 when the respondent went to her parental home, she again misbehaved and put a condition that she would not return unless the respondent gave in writing that he would arrange a separate accommodation within one month. The father of the respondent even proposed to set up a separate residence in Deputy Gunj, but the misbehaviour of the appellant continued.

5. The respondent asserted that the behaviour of the appellant was adamant. She misbehaved and insisted for getting a separate accommodation. Her misbehaviour continued even on 26.01.2012 when they had gone to the house of his uncle for lunch. The appellant and the respondent went to Mussoorie on 30.01.2012, but the appellant did not allow any physical relationship there or after their return. The appellant made adverse comments and she was non sympathetic towards the ailing grandfather of the respondent who was bedridden and used to say “*Is Budhe Ki Khansi Kab Khatam Hogi*”. The appellant started demanding to visit her parental home frequently and when the mother of the respondent tried to reason, she shouted and misbehaved with her. The appellant used to get up late in the morning at about 10 A.M despite the requests of the respondent to get up early for breakfast with the family members and to see off the respondent to his office.



6. On 04.03.2012 the respondent took his father to the hospital for operation, but the appellant prevented the respondent from accompanying him and insisted that he should take her to her parental home. On 06.03.2012 the appellant went to her parental home and after two days i.e. on 08.03.2012 the respondent went to bring her back, but her father misbehaved and made a demand for separate accommodation for her daughter. This demand was repeated by the father of the appellant telephonically on 15.03.2012. When the respondent expressed his inability to set up a separate residence, appellant's father threatened him by saying "*Mujhe Ungli Tedi Bhi Karni Aati Hai, Soch le Sare Pariwar se Chakki Piswa Dunga*".

7. The respondent claimed that the appellant used to quarrel on petty issues and left for her matrimonial home with her brother on 13.04.2012. When asked by the respondent for her reason to leave the matrimonial home, she informed that she would live with him only when a separate accommodation is provided. Their marriage lasted for barely three months.

8. The appellant then filed a complaint before the CAW Cell on 17.09.2013 and also filed a case under Protection of Women from Domestic Violence Act, 2005 and a case under Section 125 Cr.P.C. The anticipatory bail application was filed by the respondent which was opposed by the appellant, despite which he was granted anticipatory bail. He, therefore, sought divorce on the ground of cruelty and desertion.

9. The **appellant in her Written Statement** controverted all the allegations of the respondent. She asserted that the petition was based on false, frivolous, baseless, self created and uncorroborated story merely to harass her and her family members so as to create pressure to make them



succumb to the illegal demands of the respondent and his family for money, etc. It is claimed that it is the appellant and her family members who repeatedly made a request to the respondent to take her to the matrimonial home, but he deliberately refused to do so only for the lust of money. The allegation of demand for separate accommodation was claimed to be baseless and far from reality.

10. The appellant asserted that she was God fearing and tried to find her parents in her in-laws but they committed atrocities and cruelty upon her within a span of three months of her marriage. The incidents as claimed by the respondent never took place and he deserted her for the lust of money. She still desires to join the matrimonial home and has made several requests, but it is the respondent who has refused to take her back.

11. The appellant claimed that their marriage got finalized through newspaper. When her family members met the family members of the respondent, they gave a rosy picture of the respondent having properties and lucrative business. It was also stated that the respondent is the only son and would inherit all the properties. Convinced by his financial stability her father spent a huge amount of money in her marriage and even gave her a Volkswagen Car. On the fourth day of marriage, Smt. Mohini Jain mother-in-law took away her entire jewellery in her own custody. After seven days, when she entered the kitchen instead of praising the food cooked by her, the mother and sister of the respondent remarked “*chalo ab naukrani ko hataa dete hai*”. They even taunted that the respondent was their only son and at least a Mercedes should have been given in the wedding. The appellant further claimed that their honeymoon at Mauritius was not that of a happy couple. The respondent used to enquire about the properties of her father



and made casual remarks of not having been given cash, gold and car as per the status of his family.

12. The appellant asserted that she used to do all the household chores and even washed clothes of all the male members despite which her work used to be criticised. She was forced to eat rice without dal and was tortured in every possible manner. Somewhere on 10.04.2012, the respondent in connivance with his parents and brother-in-law created a scene in the house and gave her beatings thus creating circumstances which compelled her to leave the matrimonial home in her bare clothes on 13.04.2012. Her father tried to sort out the issues and was assured by the father of the respondent that they had sent her only for a change and would bring her back within fifteen days. However, when no response was received even after 20-25 days, her mother contacted the mother of the respondent who stated that he had gone out for some property matter. In December, 2012 the parents of the appellant visited her matrimonial home, where they found all the family members available. Again in the third week of August, 2013 the family of the respondent used abusive language and also demanded Rs.50 lakhs. She also claimed that her sister-in-law Parul Jain and her husband though married, used to interfere in the family affairs of the respondent and instigate him to demand the property from the appellant. She was, therefore, compelled to file a complaint in CAW Cell. She denied that she had committed any cruelty or had deserted the respondent.

13. On the basis of pleadings, **issues were framed on 13.02.2018** as under :

1. Whether the respondent/ wife Anshul has treated the petitioner/ husband Nitin Jain with cruelty? OPP



2. Whether petitioner Nitin Jain is entitled for the grant of divorce on the ground of cruelty, as set out in the petition? OPP
3. Relief.
14. The **respondent appeared as PW1** and tendered his evidence by way of affidavit reiterating the allegations as contained in the petition. He was partly cross-examined by the appellant, but thereafter despite several opportunities, the appellant failed to complete the cross-examination and the right to further cross-examine the respondent was closed.
15. The **appellant also failed to lead her evidence** despite several opportunities and her evidence was closed on 19.12.2022.
16. The learned Principal Judge, Family Court considered the evidence in detail and observed that the marriage between the parties lasted only for three months and even during this period, instances as narrated by the respondent established that she had treated the husband with cruelty. Moreover, it was also established that the appellant had deserted the respondent *firstly* by denying physical relationship and *secondly* by leaving the matrimonial home on 13.04.2012 and failed to return to the matrimonial home despite efforts of the respondent; rather, she put the condition of living separately from the parents of the respondent. It was thus, established that the respondent had been treated with cruelty and had also deserted by the appellant. Consequently, the petition was allowed and the divorce was granted on the ground of cruelty and desertion under Section 13 (1)(ia) and (ib) of the Act.
17. Aggrieved, the appellant/ wife has filed the present appeal.
18. **Submissions heard from the learned counsel for the parties and also perused the written submissions filed on behalf of the respondent.**



19. Admittedly, the parties have got married on 15.01.2012, but their marriage did not last for even three months and they separated on 13.04.2012. The respondent/ husband claimed that he was subjected to cruelty on the ground that though the marriage was consummated, but the appellant did not permit him physical intimacy on their honeymoon to Mauritius or even thereafter. She therefore, failed to discharge her matrimonial obligations of conjugal relationship. The appellant though refuted those allegations, but she failed to challenge the testimony of the respondent by way of cross-examination or assert her defence by way of her evidence. The testimony of the respondent to this effect has remained largely uncontroverted.

20. 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 repercussions and there is nothing more fatal to marriage than disappointment in sexual relationship.

21. 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.

22. 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.

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



parties subsist for barely 3 months but failed completely on account of deprivation of conjugal rights. It may also not be overlooked that such deprivation over a period of more than 12 years itself amounts to mental cruelty as has been observed in the case of Samar Ghosh Vs. Jaya Ghosh (supra).

24. The second set of acts of cruelty as claimed by the respondent was that the appellant refused to settle in the matrimonial home where his parents were residing with him and she since beginning started making a demand for separate accommodation.

25. A claim of a wife to have a separate accommodation if the circumstances so justify, cannot be termed as an act of cruelty. There may be myriad situations such as differences with the in-laws, her own work commitments or difference of opinion which may make her demand for separate accommodation justified for survival of the marriage. Where there exist certain justifiable reasons, claim for a separate residence per se cannot be termed as an act of cruelty. However, in the Indian context where the respondent/ husband has chosen to be in a joint family with his parents, he cannot be forced to separate from the first day of his marriage merely on the whims of his wife. A person has equal responsibility towards his parents and his spouse which requires a delicate balance to be maintained between the two. The appellant herein has not been able to justify her claim for separate residence.

26. The appellant has alleged that demands for dowry were being made from her, but no evidence has been led to prove how and in what manner the demands were being made and how she was being compelled and harassed on this account. She admittedly, separated from the husband on 13.04.2012



i.e. barely in three months. The matrimonial relationship needs nurturing, care, compassion, cooperation and adjustments before it can bloom into a full conjugal relationship. Here is a case where barely in three months the appellant decided to walk out of the matrimonial home. None of the grounds as claimed by her have been proved by any evidence whatsoever.

27. The appellant immediately after leaving the matrimonial home filed a complaint in CAW Cell which ultimately resulted in registration of FIR under sections 498A/ 406 IPC, wherein not only was the respondent roped in but also his aged parents were made the accused. They were, however, discharged under Section 498A IPC and the charges were framed only under Section 406 IPC. The Criminal Revision Petition No.592/2019 filed to challenge the discharge of the in-laws under Section 498A IPC was also dismissed by the learned Sessions Judge vide Order dated 16.01.2023.

28. Merely filing of complaint under Section 498A IPC cannot be termed as an act of cruelty. However, the allegations of harassment on account of dowry should have been proved in the present case to establish the alleged cruelty committed by the respondent and his family members on the appellant. Incidentally, no cogent evidence has been led to prove the alleged cruelty. Making such false and frivolous allegations which are not even supported by evidence only leads to the conclusion of the respondent having been subjected to cruelty.

29. This Court in the case of Nishi Vs. Jagdish Ram 233 (2016) DLT 50 held that the filing of false complaint against the husband and his family members constitutes mental cruelty. Similar observations were made by the Apex Court in the case of K. Srinivas Vs. K. Sunita (2014) 16 SCC 34.

30. Similarly, it has been held by the Supreme Court in Mangayakarasi v.



M. Yuvaraj (2020) 3 SCC 786, that 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.

31. The respondent had thus, been able to prove that he was subjected to cruelty by the appellant. The conclusion of learned Principal Judge, Family Court granting divorce on the ground of cruelty under Section 13 (1)(ia) of the Act does not warrant any interference by this Court.

32. In so far as **divorce on the ground of Desertion is concerned**, we on the perusal of the pleadings and the evidence find that admittedly the appellant left the matrimonial home on 13.04.2012. According to the respondent she left without any reason. The onus was on the appellant to have established the circumstances which compelled her to leave the matrimonial home; sans any evidence explaining the circumstances for quitting the matrimonial home; the assertion of the respondent that the appellant left without any reason has to be believed.

33. Though, the respondent had asserted that her parents had contacted the parents of the respondent in December, 2012 and August, 2013 to sort out the matter, but no evidence whatsoever has been led to this effect; so much so even the evidence of the respondent has not been subjected to any cross-examination. We find that the only conclusion in the circumstances that can be drawn is that the appellant withdrew from the company of the respondent from 13.04.2012 without any reason and that she had no intention of resuming her relationship with the respondent.



34. We, therefore, find the conclusions of learned Principal Judge that the appellant had deserted the respondent to be justified and find no reason to interfere with the divorce on the ground of Desertion under Section 13 (1)(ib) of the Act.

35. We find no merit in the appeal, which along with the pending applications, if any, is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 03, 2023

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