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

% ***Reserved on: 3rd August , 2023***
Pronounced on:16th August, 2023

\+ **MAT. APP. (F.C.) 92/2019 with CM APPL.13891/2019 & 13893/2019**

[redacted] ..... Appellant
Through: Mr. Sameer Nandwani, Advocate (through V.C.)

Versus

OM PRAKASH MANDAL ..... Respondent
Through: None.

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. The present Appeal under **Section 19 of the Family Courts Act, 1984** has been filed by the appellant Lata Kumari against the Judgment dated 28.01.2019 vide which the Divorce Petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the ground of 'cruelty' filed by the respondent/husband, has been allowed.

2. **Facts in brief**, are that the marriage between the parties was solemnized on 10.03.2009 at Dumka, Jharkhand as per Hindu Rites and Ceremonies. One daughter Ashima Mandal was born on 26.12.2010 from the said wedlock. The respondent herein *(petitioner/husband in the*

Divorce Petition) claimed that he was subjected to various acts of 'cruelty' which were as under:-

(i) That the appellant herein *(respondent/wife in the Divorce Petition)* used to pick quarrel on trivial issues and always remained adamant on her unjustified acts. She used to leave the home at times for 15 days to 1 month without any reason and without the consent of the respondent herein.

(ii) The appellant/wife did not allow the respondent/husband for physical relations, sometimes for a span of 1 to 2 months.

(iii) The appellant tried to poison the respondent in the month of January 2016. She tried to jump from the balcony but was saved by the respondent on time. She also attempted to kill the parents of the respondent in the year 2012-2013 by giving poison but they were able to thwart the attempt of the appellant who was thereafter sent to her parental home. Parents of the appellant/wife were also informed about the incident but instead of counselling the appellant, they put the blame on the parents of the respondent/husband.

(iv) The appellant also levelled allegations that the respondent was having illicit relations with other woman.

(v) There has been no cohabitation since 29.03.2016 and they have been living separately since then.

3. The appellant was proceeded ex-parte before the learned Judge, Family Courts on 13.03.2018. Thereafter, she entered appearance with her counsel namely Sh. Kumar Shivam, Advocate. The parties were referred to counselling but it did not yield any result. The appellant thereafter moved an application under Order IX Rule 7 of the Code of

Civil Procedure, 1908 for setting aside the ex-parte proceedings but the same was dismissed vide Order dated 16.01.2019, by observing that the sole ground given in the application was that she had been misguided by a lawyer at Dumka which was not accepted as any cogent explanation in view of the fact that the summons were duly served upon the father Sh. Umesh Pd. Sah of the appellant. The appellant had even put her appearance in the Court thereafter.

4. No written statement was filed on behalf of the appellant in the Divorce Petition to rebut the allegation made against her. The averments made in the Divorce Petition were duly proved by the respondent herein by way of affidavit of evidence Ex.PW-1/A. The marriage photograph and other documents relied upon by him were exhibited as Ex.CW-1/1 to CW-1/5.

5. The learned Judge, Family Court observed that that the acts as narrated by the respondent herein amounted to 'mental cruelty' and granted the divorce vide the impugned Judgment dated 28.01.2019.

6. Aggrieved by the decree of divorce, the present appeal has been filed by the appellant (*respondent in the Divorce Petition*).

7. **The main grounds agitated** in the appeal are that the impugned judgment was against the Principles of Natural Justice as the appellant did not get the opportunity to participate in the proceedings and lead her evidence. Her application under Order IX Rule 7 of the Code of Civil Procedure, 1908 was erroneously dismissed which took away her valuable right to bring the true facts on record. She being a lady living in far remote corner of Jharkhand, was not having enough financial capacity to contest the petition. It is asserted that the learned Judge, Family Courts erred in

concluding that the service upon father of the appellant was a proper service. No personal service was effected on the appellant and she had been wrongly proceeded ex-parte. Moreover, the learned Family Judge vide order dated 04.02.2017 had issued fresh Notice to the appellant on the address mentioned on envelope purportedly sent by her father which shows that the Court was also not satisfied that the summons had been duly received on behalf of the appellant or else, fresh notice on the address mentioned on the envelope would not have been directed to be issued. It is asserted that because she has been wrongly denied an opportunity to defend the petition, the true facts could not be brought on record and the decree of divorce has been made ignoring the principles of natural justice and therefore, is liable to be set aside.

8. Learned counsel on behalf of the respondent has submitted that despite due service, the appellant had chosen not to appear and contest the divorce petition. She had subjected the respondent for cruelty by the various acts as narrated in the divorce petition and considered by the learned Judge, Family Courts. There is no merit in the appeal which is liable to be dismissed.

9. **Submissions heard.**

10. The first ground of challenge to the Divorce Decree on behalf of the appellant is that she was never served personally and the service to her father was not in accordance with the provisions of the Code of Civil Procedure. It is argued that because she was not served properly, she was proceeded ex-parte and was unable to place on record her defence to contest the facts as pleaded by the respondent herein.

11. The assertion of the appellant that she was not served, is erroneous.

Order V of the Code of Civil Procedure provides for issue and service of summons. Order V Rule 15 CPC provides that where in any suit, the defendant is absent from his residence at the time when the service of summons is effected on him at his residence and there is no likelihood of his being found at the residence within the reasonable time, the service may be made on any adult member of the family. There is no denial that the summons were received by the father of the appellant who directed that, they may be served upon the defendant at the given address. The service through father is therefore, valid service.

12. Further, she had put in appearance on 11.01.2019. The defect in the service if any, was inconsequential on account of her having knowledge of the proceedings and having participated in the proceedings. **Proviso to Order IX Rule 13** of the Code of Civil Procedure provides that the ex-parte decree shall not be set aside on the ground that there has been any irregularity in the service of summons; if it is satisfied that the defendant had the notice of date of hearing and had sufficient time to appear and answer the claim of the petitioner. In the present case, since after service of appellant, she had put in appearance in the Court, irregularity if any, becomes inconsequential. Moreover, the appellant subsequently was referred to Mediation Centre where parties could not arrive at any settlement. Thereafter, appellant chose not to appear. Her application under Order IX Rule 7 CPC filed thereafter, did not give any cogent explanation. The only explanation given was that she was misguided by the lawyer at Dhumka, even though she was assisted in this proceeding by an advocate from Delhi. The application under Order IX Rule 7 CPC was dismissed. Even after dismissal of application under Order IX Rule 7

CPC, she had a right of limited participation which she chose not to avail. There is no explanation for her non-participation in the trial and she cannot claim denial of Principles of Natural Justice.

13. Now coming to the **merits of the case**, admittedly, the parties got married on 10.03.2009 and one daughter Ashima Mandal was born on 26.12.2010 from the said wedlock. The respondent had claimed that he was subjected to various acts of cruelty as narrated in his affidavit of evidence and finally, the appellant left the matrimonial home on 29.03.2016.

14. The question of determination of mental cruelty was answered in the case of *Shobha Rani vs Madhukar Reddi* (1998) 1 SCC 105. The Apex Court observed that the enquiry of mental cruelty must begin with the nature of the cruel treatment and subsequently, the impact of such treatment on the spouse must be examined. It must be seen whether such actions caused reasonable apprehension that it would be harmful or injurious to live with the other spouse. It was further observed that the same is a matter of inference to be drawn from the facts and the circumstances of the case.

15. The unrebutted testimony of the respondent/husband has proved that the appellant/wife used to pick quarrel on trivial issues and adopted adamant attitude even though the respondent tried to make her understand and reason with her. She used to leave the matrimonial home for 15 days to 1 month at times without informing the respondent. She did not permit the respondent to cohabit at times for 1 or 2 months.

16. It is a known fact that the bedrock of any matrimonial relationship is the conjugal relationship of which co-habitation forms a very strong

basis. There is no reason to disbelieve the testimony of the respondent that the appellant used to go away for a period of 15 days to 30 days at times without informing the respondent/husband and that she also withheld herself from cohabitation. Any denial of cohabitation by other spouse amounts to severe cruelty. This conduct was compounded by appellant's frequently leaving the matrimonial home. Regular quarrels may be trivial when considered individually, however, collectively, these quarrels on a regular basis can not only disrupt the mental peace but also become a source of mental agony.

17. The respondent/husband has deposed that the appellant/wife left the matrimonial home on 29.03.2016. Soon thereafter, the Divorce Petition was filed and had been allowed vide judgment dated 28.01.2019. There is nothing on record to show that the respondent even during the Divorce Petition ever made any effort to join the company of the petitioner i.e. respondent herein. In fact, during the pendency of the Divorce Petition, the parties were referred for counselling to crease out their differences but again, there is nothing on record to show that there was any endeavour made by the appellant to join the matrimonial home. The withdrawal of the appellant from the matrimonial relationship reflects that she had no intent to discharge her matrimonial obligations and continue in the conjugal relationship.

18. According to the respondent/husband, these were not the only acts but the appellant/wife herself attempted to commit suicide by attempting to jump from the balcony but she was saved with great efforts by the respondent. Moreover, the respondent had deposed that the appellant had tried to poison the respondent in January 2016 and prior to this, in the year

2012-2013 when she was residing with the parents of the respondent, she attempted to poison them but he and the parents repeatedly were able to save themselves. When the parents of the respondent took the appellant to her parental home and tried to explain the incident to her parents, they instead of counselling the appellant, put the blame on the respondent's parents. These constant threats of suicide by the appellant or of poisoning the respondent and his parents may not have been successful, but there cannot be a bigger mental torture than to be in a continuous fear or threat to security and life of the appellant and the respondent. The threat of suicide not only took a toll on the respondent but also impacted the conjugality of a matrimonial relationship.

19. The repeated threats to commit suicide and the attempt to commit suicide was held to be an action amounting to cruelty by the Supreme court in the case of *Pankaj Mahajan vs Dimple* (2011) 12 SCC 1. It was further observed that cruelty postulates a treatment of a spouse with such cruelty that it would be harmful or injurious to live with the other spouse.

20. Similarly, in the case of *Nagendra vs K. Meena* (2016) 9 SCC 455, the Supreme court observed that the action of the Respondents such as locking herself in the bathroom and pouring kerosene so as to commit suicide amounted to mental cruelty. It was further observed that had she been successful in her attempt to commit suicide, it was the husband who would have been put in immense difficulty because of the law and had his life ruined. Such an act of mental cruelty could not be looked upon lightly by the courts and was sufficient to entitle the husband to a decree of divorce. The court referred to the case of *Pankaj Mahajan vs Dimple* (Supra) to arrive at this conclusion.

21. In light of the above discussion, it is evident that the attempt of the Respondent to commit suicide by attempting to jump from the balcony squarely amounts to mental cruelty.

22. These assertions have been further buttressed by the allegation of illicit relationship made by the appellant against the respondent. No evidence whatsoever had been led to establish that respondent ever had any illicit relationship. This is almost like a final nail in the matrimonial relationship.

23. Such assertions of illicit relationship made by a spouse have been held to be acts of cruelty by the Supreme Court in the case of *Vijay Kumar Ramchndra Bhate vs Neela Vijaykumar Bhate* (2003) 6 SCC 334. While deliberating on the accusations of unchastity and extra-marital relationships levelled by the husband, the Court observed that such allegations constitute grave assault on the character, honour and reputation and health of the accused and amount to the worst form of cruelty. Such assertions made in the Written Statement or suggested in the course of cross-examination, being of a quality which cause mental pain, agony and suffering are sufficient by itself to amount to the reformulated concept of cruelty in matrimonial law.

24. Placing reliance on this judgement, the Supreme Court, in the case of *Nagendra vs K. Meena* (supra), observed that unsubstantiated allegations of the extra-marital affair with the maid levelled by the wife against the husband, amount to cruelty. When there is a complete lack of evidence to suggest such an affair, the baseless and reckless allegations are serious actions which can be a cause for mental cruelty warranting a decree of divorce.

25. Thus, false allegations of illicit relationship are the ultimate kind of cruelty as it reflects a complete breakdown of trust and faith amongst the spouses without which no matrimonial relationship can survive.

26. The learned Judge, Family Court has rightly relied upon all these incidents discussed above, to conclude that it was a case of immense mental cruelty, entitling the respondent/husband to a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. We find that the impugned judgment is well reasoned and is based on the cogent grounds. Therefore, there is no reason to interfere with the impugned judgment.

27. The appeal is hereby dismissed.

28. The pending applications are also disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

AUGUST 16, 2023
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