



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

% ***Reserved on: October 04, 2023***

Pronounced on: March 19, 2024

+ MAT.APP.(F.C.) 4/2023

..... Appellant
Through: In person with Mr. G.C. Rawal,
Advocate

Versus

.....Respondent
Through: None

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been preferred by the appellant-husband against the judgment dated 29.11.2022 passed by the learned Family Court, Delhi in (HMA OLDNO.325/2016 AND NEW NO.1353/2018), whereby his petition under Section 13(1) (ia) of the Hindu Marriage Act, 1955 seeking divorce from respondent-wife, was dismissed.

2. The brief facts of the case are that the marriage between the appellant-husband and respondent-wife was solemnised on 06.05.2011 as per Hindu Rites and Ceremonies and a son was born out of the said wedlock on



01.01.2023.

3. The appellant in the present appeal has alleged that his marriage has been strained right from its inception due to respondent's indifference/disrespect towards him and his family. He alleged that the respondent was of quarrelsome nature and was not cooperative, as she neither participated in the day-to-day chores nor contributed financially to the house-hold expenses despite being employed. He claims that the respondent often acted as per her whims and fancies and used to spend more time at her maternal home. It is evident from the fact that out of a total of four years and 10 months of their marriage, they had hardly spent a year and a half together, which shows her absolute disregard for their matrimonial relationship.

4. It is asserted by the appellant that their marital bond further deteriorated after the birth of their son due to respondents' extreme possessiveness towards their child and her recurring visits to her maternal house. He further claims that the respondent would often leave their son at her parents' house while at work as she was apprehensive of leaving him alone with his parents, depriving him and his parents the company of their son. He has alleged that even the first birthday of their son was celebrated at her maternal home, in his absence, robbing him of the joys of parenthood.

5. As per the appellant, the respondent had gone to her matrimonial home with their son on 15.06.2013 and his every request to bring them back, was adamantly refused. It is asserted that his attempts to reach out to her on 30.06.2013 at her workplace too met with aggression where she smashed his phone in a fit of rage. He further claims that instead of resolving the conflict,



the respondent made visits to his relatives with mock allegations in order to tarnish his reputation and ostracize his family from their relatives, thereby, causing great mental agony to him and his family.

6. After multiple failed attempts to bring her back to the matrimonial home and reconciliation, the appellant filed a petition for Restitution of Conjugal Rights under Section 9 bearing (HMA NO. 1023/2013 (later numbered as 1670/14) on 08.10.2013. The respondent in her written statement dated 06.02.2014 showed her willingness to join company of appellant at her matrimonial home, following which both parties were referred for counselling.

7. It is alleged by the appellant that the respondent remained disinclined to any proposition made during the counselling and subsequently, she went on to contest the said petition. However, during the pendency of the said petition, the respondent reached out to him on 24.04.2014 at his work place showing remorse and requesting to resume their conjugal relationship, to which he agreed on the condition of peaceful co-existence at her matrimonial home. Thereafter, the respondent came back to her matrimonial home to join company of the appellant but did not bring their son to the matrimonial home, whom she had left at her parents' house. The appellant claims to have made repeated requests to bring the child back to home and ultimately, at his insistence, after 11 days she hesitantly agreed to bring the child back to their home.

8. The appellant claims that on 05.05.2014 he along with his wife and parents, went to respondent's parents home to bring back the son where his father-in-law i.e. father of respondent was not only hesitant to send their son back but also threatened him of dire consequences on the pretext of ensuring



safety of his daughter and grandson. The appellant asserts that his father-in-law was assured by him and his parents, who then agreed to take the child home. However, on their way back, the respondent got into a heated altercation with the appellant in the car and owing to her past precedents, he was apprehensive of her creating a ruckus at home and so, to maintain tranquillity at home, he was constrained to drop the respondent and their son back at her parental home. However, the respondent out of spite, created a scene in the neighbourhood and called the police making false allegations of physical abuse against him and his parents. The appellant and his parents were taken to the police station and the respondent was sent for MLC. They were detained in custody till 3: 00 AM without disclosing report of MLC of respondent, until they agreed to sign a Compromise Deed dated 05.05.2014 put forth by the respondent, where she along with their son was taken to their home despite apprehensions of her behaviour. The appellant claims that there was no change in respondent's behaviour despite least interference by his parents.

9. Respondent again left for her matrimonial home with their son on 02.06.2014 on the assurance of returning the next day but returned after two weeks, on 16.06.2014. On the same night, the respondent is said to have again got into an altercation with the appellant and called her parents as well as the police. He asserts that the respondent's father manhandled him even in front of the police and respondent refused to get her MLC done. However, on the advice of the police, the matter was resolved there itself.

10. Thereafter on 05.07.2016, the respondent again got into a heated argument with the appellant him and despite efforts of his mother to calm her down, she remained stubborn and even resorted to physically fighting



with them due to which appellant's mother called the police. The police took both the parties to the Police Station Mandawali, Delhi and recorded their statements and the issue was resolved. Immediately after their return from the police station, the respondent with her clothes, other goods and even the I-10 car, which was gifted at their wedding, left the matrimonial house.

11. The appellant has averred that on 20.08.2015, when parties appeared before the learned Family Court where Section 9 petition was pending, the respondent stated that she wanted to live with him and so, the court listed the matter for arguments on maintainability of the petition, even though such assertion of respondent was only to befool him as she was simultaneously pursuing her complaint dated 06.07.2014 addressed to the Commissioner of Police Delhi, which fact she did not disclose to the Family Court.

12. Appellant claims the learned Family Court after perusal of the said complaint dated 06.07.2014 preferred by the respondent, permitted him to withdraw his petition under Section 9 of the Act vide order dated on 06.02.2016, which he was actually constrained to withdraw for the well-being of his aged parents.

13. Additionally, another criminal complaint under Section 12 of Domestic Violence Act, 2005 was also filed by the respondent on 26.10.2015 against him and his parents, about which he was unaware until served with the notice on 13.02.2016.

14. The appellant alleged that despite making best efforts at his end, the respondent was not only disrespectful, malicious and consistently reluctant to cohabit with him but also relentless in her pursuit to implicate him and his parents in false cases and thereby, inflicted mental cruelty.



15. The appellant thereafter on 16.03.2016 filed petition under Section 13(1)(ia) of the Act seeking dissolution of his marriage with respondent.

16. The respondent, in her written statement filed before the learned Family Court in divorce petition, averred that it was the appellant who had subjected her to cruelty by regularly mistreating and humiliating her. Even his parents harassed her with illegal dowry demands that persisted even after the birth of their child due which she suffered grave mental agony.

17. The respondent averred that at the time of marriage of the parties, her parents had given one I-10 car, LCD TV, Double Bed as well as gold articles to him and to his relatives in dowry, despite which she had to bear their hurtful taunts such as "*Hamare sath dhokha ho gaya, tere baap ne kuch khass dahej nahin diya*" and recurring demands for more dowry even after the birth of their son when her mother-in-law is said to have remarked as "*Bacha hone pe bhi tere baap ne 2 lakh ka sagan nahin diya*".

18. The respondent averred that despite being a working professional, she had fulfilled her matrimonial duties and took care of her share of the household work. She has averred that even during her pregnancy, she was made to do the house-hold chores and was forced to travel by public transport alone for 54 kms to her place of work in Najafgarh despite being gifted a car by her father. She asserted that on her repeated requests to temporarily shift closer to her work-place during her final stages of pregnancy, the parties though shifted to Najafgarh but the appellant spent most of his time at his parents' house, leaving her alone to fend for herself. She further averred that there was no improvement in her condition as immediately after her delivery, she was forced to do all the work without any assistance.

19. The respondent denied appellant's allegation of her unreasonable



visits to her maternal home and submitted that she was strictly averse to her maintaining any relations with her parents. She stated that initially after birth, their child had developed health complications, toward which appellant remained callous and unbothered due to which she was constrained to seek help from her parents on 19.01.2013. She has asserted that no efforts, were made by the appellant to bring her back until he hesitantly agreed to take her back on 29.03.2013 but even after she joined his company at the matrimonial house, he lived separately at his house.

20. The respondent further denied allegations of her disrespectful misconduct at her matrimonial home stating that she had to tolerate habitual crude criticism and also physical abuse by appellant and his parents. She narrated a few instances, one of which when their son was ill in April, 2013, and she was boiling water in kitchen, the parents of appellant threatened to throw hot water on her and her father-in-law even tried to slap her to discourage her from complaining about the said incident. Further instance where her in-laws locked-up themselves with her child despite the child was crying and she repeatedly asked them to open the door and give her the child. The respondent alleged that appellant and his family had created a stressful environment for her at the matrimonial home and the appellant was unsupportive when confronted with this behaviour of his parents.

21. The respondent has averred that for the sake of her child, she endured immense trauma and abuse at the hands of the appellant and his parents until she was ultimately thrown out of her matrimonial home on 15.06.2013 and before that all her dowry articles, including her jewellery on the pretext of keeping it safe in locker, were retained by them.

22. The respondent also averred that she was reluctant to have conjugal



relationship with her husband due to his infidelity and for this reason only, he was seeking a divorce from her. She averred that on 24.06.2013 the appellant had called up her mother to inform that he wants a divorce from her as he had developed intimacy with a colleague at work and was only interested in the custody of child. Since the appellant did not answer her calls, she was constrained to visit him at his workplace to resolve their difference but the appellant remained stern on his stand and declared to have moved forward in life with other woman. Even when her father spoke to appellant's father to persuade him, he clearly stated that they were already looking for prospective matches for the appellant. She averred that finding no hope, they were constrained to reach out to appellant's relatives for reconciliation and mediation, however, could not be fruitful.

23. Respondent further asserted that another attempt was made by her and her father on 12.10.2013 to settle her in her matrimonial home which too was futile as the appellants refused to even let her inside their house. As per the respondent, it was due to the appellant's extramarital relations at his workplace that caused his neglect towards her and their child. She claimed that he even failed to fulfil his obligations as a father as he provided no financial assistance for the needs and education of their son.

24. The respondent averred that the Section 9 petition filed by the appellant was without merit, as he never intended to resume their marital relationship. She claimed that when the learned Family Court referred them for counselling, he agreed to reconcile their difference but later refused to cohabit with her because of which she was forced to seek help from an NGO and could enter her matrimonial home on 25.04.2014. Respondent further averred that on 05.05.2014, she was physically assaulted due to



which she called the police and her MLC was conducted but she did not pursue the said complaint further in order to save her marriage. However, she claimed to have been subjected to physical and mental abuse even after police intervention as the appellant took advantage of the fact that she would not pursue the complaint due to her desperation to save her marriage.

25. The appellant-husband in his rejoinder reiterated and reaffirmed the claims stated in his petition.

26. The learned Family Court based on pleading of parties framed the following Issues for adjudication:

i. Whether the petitioner was treated with cruelty by the respondent after solemnization of the marriage? OPP

ii. Relief.

27. In support of his case appellant-husband examined himself as PW-1 and respondent-wife examined herself as RW-1 and her father as RW-2.

28. Based upon the pleadings of the parties, testimony of witnesses and other material on record, the learned Family Court decided Issue No.1 in favour of the respondent and against the petitioner and thereby, dismissed his petition seeking divorce on the grounds of cruelty.

29. Aggrieved by the impugned judgment, the appeal has been preferred by the appellant on the ground that the learned Family Court has failed to appreciate that the respondent had treated him with cruelty and therefore, rejection of his petition is bad in law. The appellant contended before this Court that the respondent had not only filed a complaint dated before the Commissioner of Police on 06.07.2014 but had also filed a petition under the provisions of DV Act, 2005, which fact she not only concealed from him



but also from the learned Family Court in proceedings under Section 9 of the Act, which shows her *mala fide* intention to represent that she was willing to continue in matrimonial relationship even though she was trying to rope in appellant and his family members into different litigations.

30. The appellant has averred that the parties got married on 06.05.2011 and have been living separately since 15.06.2013. Meaning thereby, they have lived together only for a short span of one and a half year, that too during the said period, they suffered several marital discords. Further contended that their marriage has irrevocably broken down due to cruelties committed by the respondent upon him and his family. Lastly submitted that in the present case, all the ingredients of the mental cruelty as well as desertion are made out and so the impugned judgment rejecting appellant's petition under Section 13(1)(ia) of HMA deserves to be set aside.

31. On perusal of record of this case, we find that none had been appearing on behalf of respondent and, therefore, she was proceeded *ex parte* on 04.10.2023.

32. The submission advanced by learned counsel appearing on behalf of the appellant were heard at length and the impugned judgment as well as trial court record has been carefully perused.

33. Upon going through the testimony of the respondent-wife, we find that she in her cross-examination has admitted that she was working in Chaudhary Brahm Prakash Ayurved Charak Sansthan, Najafgarh and used to travel through metro till Dwarka. She has admitted that for catching a metro, either her husband or her father-in-law used to drop her to the Metro Station Laxmi Nagar and thereafter, she used to take a private cab for going to the hospital. She has also accepted that there was a maid servant hired for



the purpose of cleaning and mopping the floor and that she had a separate private room. She also admitted that she had a single name salary account in her name. Also admitted that she had visited the workplace of appellant on 30.06.2013 to have a word with him, however, refuted having entered into any heated arguments with him.

34. The respondent has also accepted in her cross-examination that on 24.04.2014, she had gone to Rockland Hospital where appellant was working but with an intention to settle the disputes with the help of his family and NGO. She has accepted that the disputes were reconciled and she joined company of her husband and went back to her matrimonial home on 24.04.2014 itself, however, she did not take their son to the matrimonial home and left him at her parents' house. She has also accepted that on 05.05.2014, she along with her husband and her in-laws went to her parents' house to bring back the child to the matrimonial home and that neither the appellant nor his parents went to her parents' house but waited outside and that her parents came outside the house with the baby child and belongings so that they could go back to their matrimonial home.

35. The respondent has further admitted that on their way back on 05.05.2014, they entered into an altercation and thereafter she made a call at No.100 to the police and a compromise dated 05.05.2014 was entered into between them. The respondent also admitted having filed an online complaint on 06.07.2014 to the police during pendency of petition under Section 9 of HMA. She also accepted to have made an admission before the learned Family Court in Section 9 proceedings showing her willingness to join company of her husband at her matrimonial home. She also accepted that she had filed a petition under Section 12 of DV Act before withdrawal



of the Section 9 petition by the appellant.

36. The father of respondent (RW-2) supported the case of RW-1 asserting that respondent had made all sincere efforts to harmoniously settle her matrimonial life. In his cross-examination, RW-2 admitted that an I-10 Car given as a dowry gift in the marriage, was in possession of the respondent from 05.07.2014.

37. Upon scrutiny of the examination and cross-examination of the parties recorded by the learned trial Court, we find that the parties had got married on 06.05.2011 and they were blessed with a child in January, 2013. Subsequent, upon birth of the child, several disputes arose between the parties. The respondent on the pretext of taking care of the baby, frequently visited her parents' house for a longer period thereby depriving the appellant and his parents of their love for the child. The respondent has though claimed that she was forced to live with her parents because the infant child needed care and she herself was forced by her in-laws to do household chores immediately after delivery of the child, but in her cross-examination, respondent has admitted that there was a maid servant at her matrimonial home to take care of the household responsibilities.

38. In our opinion, when a wife indulges herself to do house hold chores, she does it by affection and love for her family. However, if her health or other circumstances do not permit her to do so, forcefully asking her to do house hold chores would certainly be cruelty. But in the present case, it is admitted by her that a maid servant was already hired, we find that she was not forced upon and thus, her allegations deserves to be rejected.

39. The respondent has also admitted that even during the period of her pregnancy, either her husband or her father-in-law used to drop her to Metro



Station Laxmi Nagar which shows that they took care to make commutation of respondent comfortable. Not only this, at her asking parties had temporarily shifted closer to her work-place during her final stages of pregnancy, to ensure that respondent is not required to travel long distance from Laxmi Nagar to Najafgarh during her pregnancy. The plea of respondent that she was left to fend for herself because the appellant made frequent visits to his parents deserves to be rejected as being the son, he also has moral responsibilities towards his aged parents, who also could not have been left to survive alone.

40. The respondent has by her own admissions in the cross-examination demolished her allegations that she was not treated with humanity by the appellant or his family.

41. With respect to the allegation of the respondent that appellant and his family members had raised demand of dowry during marriage and also after the marriage ceremony, this Court finds that respondent's father (RW-2) in his cross examination has admitted that respondent had taken her car back to her parental home when she left matrimonial home on 05.07.2014. It is not the case of the respondent that she was made to hurriedly leave the matrimonial home, instead even after the dispute was compromised by the police, on the same day she chose to leave her matrimonial house. Moreover, she did not file any complaint under Section 498-A IPC for recovery of her *istridhan* or jewellery articles, which allegedly were in possession of appellant, which shows that she had decided to quit in a planned manner.

42. It is undisputed fact that respondent along with the baby boy had left the matrimonial home on 05.07.2014 and did not join appellant's company



thereafter. Even though the learned trial Court in the impugned judgment has taken note of various e-mails sent by the respondent to the appellant to show that the respondent was making efforts to connect with the appellant between the period 21.10.2013 till February, 2014, however, it is worthy to note that in one such effort, she had admittedly visited Max Hospital, where appellant was working and entered into heated arguments, creating a melodrama in front of the colleagues of the appellant and smashing his phone.

43. The respondent has also raised the allegation that appellant was having an affair with one of his colleagues at his workplace and she had gone there to confront him. She has also alleged that the appellant had called her mother that he was in relationship with another woman. But to substantiate such allegations, no evidence has been placed on record.

44. The Hon'ble Supreme Court in ***Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate (2003) 6 SCC 334*** has observed and held as under:-

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an



*educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. **That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court.** On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”*

45. In our considered opinion, such kind of allegations which assassinate the character of the spouse amounts to highest level of cruelty, which no doubt shall shake the foundation of their marriage. In the present case, the respondent by levelling allegations of appellant having extra marital affair, has committed immense cruelty upon him.

46. In the considered opinion of this Court, by tarnishing the public image of appellant and his family, at his work place and also in their relatives, amounts to damage of their respect and it is obvious for the spouse at the suffering end to lose trust and respect for the other.

47. Even though the respondent claimed that she had been trying to meet



the appellant one way or the other to persuade him to live with her to save their matrimonial bond, yet she did not prefer petition under Section 9 of the Act seeking Restitution of Conjugal Rights. Even when the appellant preferred petition under Section 9 of the Act before the learned Family Court, the respondent though showed her willingness to join the company of appellant but behind his back, made complaint to the Commissioner of Police on 06.07.2014 which fact she did not disclose to the learned Family Court. In her cross-examination, the respondent admitted that as on the date of withdrawal of Section 9 petition by the appellant on 06.02.2016 for safety and well being of his parents, her complaint under Section 12 of DV Act, 2005 was also pending.

48. It is noteworthy that in Section 9 proceedings, the respondent had shown her willingness to accompany the appellant at her matrimonial house but she was simultaneously processing her complaints against the appellant and her family members, which shows her ill-intention to harass the appellant and his family by roping them in different litigations. The Hon'ble Supreme Court in decisions in *Ravi Kumar Vs. Julmidevi* (2010) 4 SCC 476 and *K. Srinivas Vs. K. Sunita* (2014) SLT 126, has been held that unsubstantiated allegations if levelled, amounts to mental cruelty and is a ground for divorce under Section 13 (1) (ia) of the Act

49. It is apparent that respondent in public, treated the appellant in such a manner which caused loss to his respect, due to which appellant has suffered immense cruelty at the hands of respondent. It is not only that respondent raised hue and cry at appellant's workplace but also went to his relative's place to tarnish his image. Also, respondent did not come with clear hand before the learned Family Court in proceedings under Section 9 of the Act,



which brings her intention into clouds.

50. In the light of afore-going narration, we find that the rejection of appellant's petition under Section 13 (1) (ia) of the Act by the learned Family Court is devoid of merits and thus, the impugned judgment dated 29.11.2022 deserves to be set aside.

51. Consequently, the present appeal is allowed and the marriage between the parties is dissolved under the provisions of Section 13 (1)(ia) of the Hindu Marriage Act, 1955.

52. Decree sheet be prepared accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 19, 2024

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