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

% **Decided on: 15.12.2017**

\+ MAT.APP.(F.C) 161/2017

D ..... Appellant

Through: Mr. Vijay Malik, Advocate with Mr. Jogminder Rana, Advocate.

Versus

P @ R ..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA

1. The appellant/husband has assailed the order dated 04.08.2017 of the Family Court, dismissing his petition for dissolution of marriage under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the HM Act").

2. The admitted facts of the case are that the marriage between the appellant/husband and the respondent/wife was solemnized on 07.11.2011, according to the Hindu rites, customs and ceremonies. Out of this wedlock, a male child namely, Kartik was born on 15.08.2012.

3. The appellant has alleged in his divorce petition that the marriage was solemnized without taking any dowry; that on the very first day of their marriage, the respondent/wife had shifted all her belongings to the first floor of the house; that she had refused to serve the parents of the appellant; that a fraud was played upon him by her parents as well as the mediator who had concealed the correct age of the respondent who was 35 years of age at the time of the marriage, while he was just 25 years old, i.e. ten years younger to her.

4. It was further contended that the respondent/wife never had any respect for the family members of the appellant/husband and had extended threats and used filthy and abusive language for him and his family members and had also threatened them of dire consequences; that she is a lady of quarrelsome nature who neglected their child and did not allow the appellant/husband to play with him; that she had failed to perform her domestic duties like cooking food, cleaning the house, washing clothes etc; that she frequently used to visit her parental home, without informing the appellant. It is alleged that this behavior of the wife had caused mental pain, and tension to the appellant and had vitiated the atmosphere in the house. Her abusive language and quarrelsome nature had resulted in his father

suffering a heart attack after three months of their marriage. The respondent/wife had left the matrimonial home on 10.09.2012 along with their son and has taken away all the gold and other jewellery items without the consent and permission of the appellant/husband or his family members. Thereafter, the respondent/wife allegedly filed a false complaint at P.S. Sultanpuri, on 30.09.2012 implicating the appellant/husband and his family members. On the above grounds, the dissolution of his marriage with the respondent was sought by the appellant.

5. The respondent/wife had duly contested the said petition. She had denied that the marriage was without demanding any dowry and alleged that various items of dowry were given at the time of the marriage, as was desired by the appellant/husband and his family members and an amount of Rs.8,50,000/- (approx) was spent by her parents on the marriage function; that she had duly performed all her household chores but was never treated with respect or dignity by the appellant/husband and his family members; that she was abused and beaten by her mother-in-law; a demand of car and cash was raised by the appellant/husband and his family members who threatened her that on her failure to fulfill their demands, they will turn her out of the matrimonial house.

6. The respondent/wife had further contended that when she had conceived, she was forced to abort the child but she retained the child and gave birth to their son. On discovering that a male child was born, the appellant/husband and his family members were happy and they celebrated it. The respondent/wife claimed that in December 2011, she was badly beaten up by her husband and his mother and sister and they had left her at her parental home and did not provide her any medical care. Initially, efforts for reconciliation were made with the help of local persons but the appellant/husband had refused to take the respondent back in the matrimonial home and it was only then that she had filed a complaint at P.S. Sultanpuri. Subsequently, the matter was resolved between the parties and they reconciled their difference and the respondent started living at her matrimonial home. An intimation of such a reconciliation was given to the SHO, PS Sultanpuri on 02.10.2012. The behavior of the appellant/husband, however, remained cruel towards the respondent/wife and he refused to cohabit with her. She was again forced to go back to her parental home. Thereafter on 09.01.2013, the respondent approached the ACP Women Cell, Sector -3 Rohini, Delhi. It was contended that the appellant/husband cannot

be allowed to take advantage of his own wrong i.e. of the cruelty that he had committed on her and is therefore, not entitled to a decree of divorce.

7. On the basis of the pleadings of the parties, the learned Family Court had framed the following issues on 05.08.2013:-

> ***"1. Whether the respondent has treated the petitioner with cruelty, as alleged, after the solemnization of the marriage? OPP***
>
> ***2. Whether the petitioner is entitled to the decree of dissolution of marriage u/s 13 (1) (i-1) of HMA? OPP***
>
> ***3. Relief."***

8. On examining the evidences led by the parties, considering the case laws cited by both the parties and on appreciating the proposition of law laid down by the Supreme Court in the cases of ***V. Bhagat vs. D. Bhagat, 11 (1993) DMC 568 (SC), A. Jayachandra vs. Aneel Kaur (2005) 2 SCC 22, Naveen Kohli vs. Neelu Kohli, AIR 2006 SC 1675, Vinita Saxena vs. Pankaj Pandit, (2006) 3 SCC 778*** and ***Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511,*** the learned Family Court arrived at the conclusion that the appellant/husband had failed to prove on record, the element of cruelty, a necessary concomitant for dissolution of marriage and resultantly, dismissed his petition.

9. We have heard the arguments addressed by learned counsel for the appellant and perused the record.

10. It was argued by learned counsel for the appellant/husband that the Family Court has failed to consider that the marriage of the parties had irretrievably broken down and there were no chance of reunion and they cannot live as a husband and wife due to the magnitude of cruelty committed by the respondent/wife. He contended that all the acts which constitute cruelty were committed by the respondent/wife within the four walls of the house, so neighbours were not aware of such instances of cruelty and therefore, they could not have appeared as the appellant's witnesses and that the appellant is the best witness in this case and his evidence has been wrongly discarded by the Family Court. Learned counsel submitted that the parties have been living separately for the past five years and the matrimonial bond has broken down beyond repair, as the marriage has become a fiction, only supported by a legal tie and in the circumstance of the case, the said legal tie is required to be formally severed.

11. Dissolution of marriage is sought by the appellant/husband on the ground of cruelty. Although cruelty is one of the grounds for dissolution of marriage under Section 13 (1) (a) of the HM Act, the expression 'cruelty'

has not been defined under the Act. The meaning of the expression, *'cruelty'* necessary for dissolution of marriage under Section 13(1)(a), has been defined by the Supreme Court in several judicial pronouncements. In the case of ***Shobha Rani vs. Madhukar Reddi, (1988) 1 SCC 105,*** the Supreme Court had clearly held that '***the word 'cruelty' has not been defined***". The Court had subsequently observed that ***"it has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other."*** It was further held that ***"cruelty may be mental or physical, intentional or unintentional'.*** The Supreme Court was of the opinion that where cruelty meted out is mental, firstly, an enquiry must begin as to the nature of the cruel treatment and its impact on the mind of the spouse is required to be ascertained on the basis of the behavior of the parties so to decide as to whether it had caused reasonable apprehension that it would be harmful or injurious for the wronged spouse to live with the other. It is such cruelty which makes the ground for grant of divorce under Section 13 (1) (a) of HM Act. The Court had further held that *"**Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the***

complaining spouse.*"*

12. The very same principle was reiterated by the Supreme Court in ***V. Bhagat vs. Mrs. D. Bhagat, (1994) 1 SCC 337,*** where it was clearly held that ***"Mental cruelty in Section 13 (1) (a) can broadly be defined as that conduct which inflicts upon the other party, such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together.****"* In ***Praveen Mehta vs. Inderjit Mehta, (AIR 2002 SC 2582),*** it was held as under:-.

> *"21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living.* ***The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will***

> ***not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. <u>The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."</u>*** *(emphasis supplied)*

13. In ***<u>Jayachandra vs. Aneel Kaur,</u> AIR 2005 SC 534***, the Supreme Court had again reiterated the above principles by observing that *"****….legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other."*** In the case of ***Jayachandra (supra),*** the Supreme Court had observed that the cruelty should be ***"grave and weighty"*** and that too of such a nature that ***"the petitioner spouse cannot be reasonably expected to live with the other spouse".*** The Court had further observed that ***"…It must be something more serious than "ordinary wear and tear of married life"*** *and* ***"..The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law."*** The aforesaid principles were highlighted by the Supreme Court yet again in the case of ***<u>Naveen Kohli vs. Neelu Kohli,</u> AIR 2006 SC 1675.***

14. The settled proposition of law is that the normal behaviour and conduct of a spouse is not sufficient to constitute cruelty. It must be something more than that. The behavior and conduct of the spouse is guided by their social status, educational qualifications, physical and mental condition and the cultural and social background. The behavior of a spouse might cause anguish, disappointment, frustration or agitation to the wronged spouse, but that by itself, is not sufficient. The party who approaches the court is expected to furnish the particular facts which according to him/her are of such a nature that would have caused mental cruelty of such an intensity that it is impossible for him/her to continue to live with the other spouse. It is legal cruelty which is required to be proved in order to succeed. The behavior and conduct of response should be so acute and of such a grave nature and magnitude that would make it difficult for the wronged spouse to continue in the relationship. The court should be able to deduce therefrom that it is not in his/her welfare to continue with such a relationship. The wronged spouse needs to prove all these facts which creates such a apprehension in his/her mind. An inference must be drawn by the court from the attending facts and circumstances which need to be pleaded elaborately and specifically in the petition.

15. In the background of this settled proposition of law, the facts as proved on record are to be examined to ascertain if the appellant/husband was able to prove by preponderance of probabilities that the conduct of the respondent/wife was so *"grave and weighty"* that it was impossible and unreasonable to expect him to continue living with the respondent. An inference has thus to be drawn from the conduct of the respondent/wife which the husband/appellant ought to have proved on record. When we examine the conduct of the respondent/wife herein which the appellant/husband has pleaded has caused him immense mental pain and anguish, we find that the instances pleaded are of a very general nature and quite vague, with no specific dates or time given of the alleged conduct of the respondent/wife. Rule 7 of Delhi High Court Rules, 1967, prescribes as to what should be the contents of a petition filed under the HM Act and states that as follows:-

> *"7.* ***Contents of petition****-In addition to the particulars required to be given under Order VII Rule 1 of the Code and Section 20(1) of the Act, all petitions under Section 9 to 13 shall state:*
> *(g) The matrimonial offence or offences alleged or other grounds, upon which the relief is sought, setting out with sufficient particularity the time and places of the acts alleged, and other facts relied upon, but not the evidence by which they are intended to be proved, e.g.:*
> *(i) xxx xxx xxx*
> *(ii) xxx xxx xxx*

(iii) xxx xxx xxx
(iv) ……in the case of cruelty, the specific acts of cruelty and the occasion when and the place where such acts were committed."

16. Not only has the appellant/husband herein failed to specify any instance of cruelty, he has failed to prove the pleas taken by him in his petition. The appellant had pleaded that his wife never respected his family members and she extended threats to them, used filthy and abusive language and had threatened him of dire consequences and that she is lady of quarrelsome nature who neglected their child and did not allow the appellant to play with him and failed to perform her domestic duties like cooking food, cleaning of house, washing clothes etc. The very nature of pleas noted above are devoid of any specific act of cruelty. Nor has the appellant/husband disclosed the time and place when such a quarrel had taken place or a threat extended or abuses hurled. No specific instance or incident has been pleaded to show that the respondent/wife had quarreled with his family members or threatened them or abused them, as has been averred in the petition.

17. It was argued by learned counsel that the appellant/husband had suffered immense mental pain and agony when he had learnt that the actual age of the respondent/wife had been concealed from him. He stated that the

date of birth of the appellant/husband is 23.01.1986, while that of the respondent/wife is 23.04.1978, but an incorrect "kundli" (Birth Chart) was fraudulently given to them by the family of the respondent/wife prior to the marriage. This fact has however been vehemently denied by the respondent/wife. After examining the evidences of the parties on this point, the learned Family Court observed as under:-

> *"……..However, it has not been proved on record in case the kundlis as relied by the petitioner had been furnished on behalf of the respondent or her family members as even the name of the mediator through whom the said kundli had been forwarded, has not been disclosed and no independent witness to the aforesaid extent has been examined. The mere production of photocopy of kundlis do not prove the fact that the same had been given on behalf of the respondent prior to marriage thereby concealing the age of the respondent. It may also be noticed that petitioner is 12th pass while the respondent is 10th fail and normally prior to marriage the documents relating to the education having been seen by the parents of the parties alongwith kundali cannot be ruled out. Herein the photocopy of kundli produced is merely a hand prepared document and a computer generated printout without reflecting the name of person who may have prepared the same. The mere production of photocopies does not prove if the same had been handed over by parents of the respondent.* ***As such, the factum of concealment of age by the respondent/family members has not been proved. It may also be observed that despite difference in age, the marriage between the parties for their own reasons is not uncommon. Further, even in case there was difference of age,*** *petitioner admitted during cross-examination that he had pardoned his wife regarding her misconduct. It may further be observed that the fact that the respondent was older than the petitioner was known to him within a week of the marriage as admitted by him during cross-examination but the still be continued the relationship*

and a son was born out of the wedlock on 15.08.2012 after about 09 months of the marriage." *(emphasis supplied)*

18. It is thus clear from the above that the appellant/husband has failed to prove the facts in support of his contention that a fraud had been played upon him. On the contrary, he has himself admitted that he had condoned the said act and had continued the relationship. An act of alleged cruelty once condoned, cannot be taken as a ground of cruelty subsequently, for seeking divorce in view of Section 23 (1) (b) of HM Act which reads as under:-

> *"23.* ***Decree in proceedings*** *- (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that:-*
>
> *(a) xxx xxx xxx —*
>
> *(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and……."*

19. Another instance of cruelty which the appellant/husband alleges is that the respondent/wife had shifted all her belongings to the first floor and had flatly refused to serve his parents in any manner. In the impugned judgment, the learned Family Court has observed as below:-

> *"…It may be noticed that qua shifting of the respondent after marriage, it was stated by the petitioner in the cross-*

examination that some articles brought by the respondent were kept in another room due to paucity of space available in the bedroom. It cannot be ruled out that shifting of the respondent and petitioner in a separate room in the same premises may have been on account of paucity of space and to given them privacy. The same is further to be seen in the light of the background that statement of the petitioner was recorded by ld. Predecssor u/s 165 Evidence Act on 05.08.2013 after filing of the petition wherein he stated that he had two married and two unmarried sisters aged about 23 years and 17 years besides his parents and his father was a fourth class employee in DDA. As such, shifting of the respondent in a separate room in the same premises does not appear to be for purpose of separation as claimed by petitioner."

20. The appellant/husband has, therefore, failed to prove the fact that the respondent/wife had shifted her belongings to the first floor against his wishes. He had himself stated that some articles, which respondent had brought with her, were kept in a separate room due to paucity of space. Although, the appellant/husband alleges that the respondent/wife and her four brothers had extended him threats, no specific date or time of circumstances in which such threats were extended have been pleaded; nor has any complaint against them been lodged by the appellant or proved. It remains a bald statement of a general nature, unsupported by any material on record.

21. His contention that due to a tense and vitiated atmosphere created by the wife, the appellant's father had suffered a heart attack within three

months of his marriage and an angiography had to be done on him, is of no consequence especially when he has failed to plead any specific incident that had caused tension and the atmosphere in the house had become so vitiated that it had led to his father suffering a heart attack. Simply because one of the family members had developed some medical problem, the cause of the same cannot be attributed to other family members. Nothing has been placed on record to justify the appellant's claim that his father had developed such an ailment that needed an angiography within three months of his marriage. Angiography is generally done for addressing heart blockages. It cannot be urged that his father had developed heart blockages of such a magnitude within three months from the date of his marriage with the respondent. These conditions take a long time before they manifest. The said plea of the appellant/husband has no merit especially when no specific instances of the respondent/wife creating a tense atmosphere in the house, has been mentioned.

22. The appellant/husband has also contended that the frequent visits of his wife to her parental home without intimating him and his family members has caused him mental pain and anguish. Again, he has not pleaded any specific date or month or circumstance in which the respondent

had left for her parental home, without seeking his permission on intimating him. He has simply made a bald statement that she used to frequently visit her parental home. A wife is certainly entitled to visit her parents' home and such a visit *per se,* cannot be the reason for a husband to complain. The Family Court has noted that the respondent/wife in her cross-examination had clearly deposed *"that she stayed at the matrimonial home from date of marriage till 10.09.2012"* and even in her cross–examination, the appellant did not point out any date or the period during which she had left the matrimonial home without his or his family members' consent and had remained at her parental home. Filing of a criminal complaint by the respondent/wife on 30.09.2012, cannot be construed as cruelty for grant of divorce specially when the difference between parties had been sorted out later on and the respondent/wife had joined the company of the appellant and they had started living together. Admittedly, an intimation of such a reconciliation was also given to the SHO, P.S. Sultanpuri on 02.10.2012.

23. In view of the above discussion, we are firmly of the opinion that the appellant/husband has miserably failed to prove on record, cruelty of such a nature that would entitle him for a decree of divorce. Learned counsel has failed to point out any illegality, infirmity or perversity in the impugned

order for interference. The appeal is meritless and is accordingly dismissed *in limine*.

DEEPA SHARMA
(JUDGE)

HIMA KOHLI
(JUDGE)

DECEMBER 15, 2017/*ss*