

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

% *Judgment Reserved on: September 07, 2016*
Judgment Delivered on: September 09, 2016

+ **MAT.APP.(F.C.) 95/2016**

KAMINI SONDHI Appellant
Represented by: Mr.Kaushhal Mohal, Advocate
with Mr.S.C.Chawla, Advocate

versus

KAPIL SONDHI Respondent
Represented by: Ms.Monika Arora, Advocate
with Mr.Kushal Kumar
Sharma, Advocate with
respondent in person.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

CM No.25294/2016

1. For the reasons stated in the application 28 days' delay in filing the appeal is condoned.
2. Application is disposed of.

MAT.APP.(F.C.) 95/2016

1. The appellant/wife has preferred this appeal impugning the judgment and decree dated April 01, 2016 whereby her marriage with the respondent/husband has been dissolved on the ground of cruelty.
2. The respondent/husband filed a petition under Section 13(1)(ia) of Hindu Marriage Act, 1955 seeking dissolution of marriage citing various

instances which had resulted in causing mental cruelty of the level that it was not possible for the spouses to live together with such conduct.

3. At the time of marriage of the parties, while the respondent/husband was 37 years old and a divorcee, the appellant/wife was 35 years old and unmarried at that time. The matrimonial alliance was arranged through Sh.Madan Suji – Uncle of the appellant/wife, who was in the knowledge of the respondent/husband being a divorcee. It being a case of remarriage of the respondent/husband, the marriage was simple except some customary gifts given by the family of the appellant/wife. The ring ceremony was solemnised on July 08, 2007. Thereafter whenever he tried to meet the appellant/wife, she would give some excuse and also informed him that the Tailor working at her shop for 10-12 years was threatening her not to get married to anyone else except him. He advised the appellant/wife to report the matter to the police but she was reluctant claiming the Tailor to be her good friend for the last many years. Even two days before the marriage, relations of the appellant/wife came to his house and informed about the ugly scenes created by the said Tailor. The police was not informed even at that time. The marriage was solemnised on November 21, 2007 at Pran Nath Mandir and function was held at Community Centre of the said Mandir which is a charitable bhawan. The marriage ceremony was attended by about 80-100 persons. After the marriage ceremony when they returned to the matrimonial home at about 5 O'Clock in the morning, the husband received a call on his mobile and the caller was claiming himself to be lover of his wife and threatened him with dire consequences. When he discussed the issue with his wife she suspected the Tailor might be the caller.

4. As per the respondent/husband, the marriage could not be consummated for the reason that the appellant/wife pretended to be suffering

from some medical problem. The respondent/husband continued receiving calls from the said Tailor and discussed the issue with his wife. She always insisted not to make any complaint to the police against the Tailor. On being persuaded by the respondent/husband, though she accompanied him to *Shirdi* on November 24, 2007 but she was not happy there and compelled him to return. She even did not enter the temple and they returned to Delhi on December 01, 2007. Thereafter the appellant/wife left for her parental home and returned only after 1½ month that too after lot of persuasions. On January 25, 2008 they left for Shimla for honeymoon but there also she did not allow the marriage to be consummated and threatened to raise alarm or jump from the balcony in case any attempt was made by the appellant/husband to touch her. After the failed honeymoon, they returned to Delhi and again she left for her parents' home and returned after about three months. Her behaviour towards the appellant/husband and his old mother was also insulting and humiliating. She did not want to assist in the household work saying that she was running a Boutique and not knowing the household work. She also visited the office of the respondent/husband in the year 2009 and levelled certain false allegations and created a scene. She even went to the residence of his boss and cried in front of him. She also threatened to humiliate him in front of his colleagues at his work place.

5. The respondent/wife also filed a complaint before CAW Cell after about two years of separation which resulted into registration of FIR No.321/2011, PS Shalimar Bagh, Delhi. Due to all these incidents he had to leave his job and went into depression.

6. The divorce petition was contested by the appellant/wife. She pleaded harassment by the respondent/husband and his family on account of dowry demand. Explaining the reason for non-consummation of marriage,

she pleaded as under:

'8.....The real fact is that the petitioner use to drink heavily and inflict cruelty on body, mind and soul of the respondent. The respondent came to know that the petitioner used to take heavy doses of drugs for depression from which he has been suffering for over ten years. Due to heavy drinking and use of heavy dose of drugs for depression was even not able to have proper and healthy physical relationship with the respondent.'

7. She also alleged that the factum of earlier marriage of the respondent/husband was concealed. She came to know only in November, 2009 that the respondent/husband was already married and had one daughter from the first wife. She denied the remaining allegations levelled against her pleading that she never left the matrimonial home of her own but was compelled to leave as she felt it unsafe to live in the matrimonial home. In respect of the averments made in the divorce petition about various calls made and threats given by the Tailor working at the Boutique of appellant/wife, she denied the same claiming it to be 'nothing but a cleverly concocted bald and false story'.

8. While respondent/husband examined himself as PW-1 and his mother Smt.Santosh Sondhi as PW-2, the appellant/wife examined herself as RW-1.

9. After considering the testimony of the witnesses and relying on the legal position as laid down in AIR 1973 SC Del 200 Rita Nijhawan vs. Balkishan Nijhawan, (2006) 3 SCC 778 Vinita Saxena vs. Pankaj Pandit and (2005) I DMC 241 (Del.) Pinki Jain vs. Sanjay Jain, the learned Judge, Family Court vide impugned judgment allowed the divorce petition observing that factum of first marriage of the appellant/wife was not concealed. Learned Judge, Family Court also noted that the factum of marriage between the parties being a sexless marriage was also established

and treating the same to be an act of cruelty, dissolved the marriage.

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellant/wife while not disputing that marriage was not consummated at any point of time, insisted that the jewellery of appellant/wife is still with the respondent/husband and she is concerned about the same and it must be recovered.

12. In an appeal against decree of divorce, this Court is not supposed to convert the proceedings into recovery proceedings to recover the *istridhan*. We are informed that criminal case i.e. FIR No.321/2011, PS Shalimar Bagh is pending trial.

13. The respondent/husband during his examination as PW-1 has stated that his first marriage took place in the year 1997. He was also having a daughter from the first marriage. This fact was well within the knowledge of Sh.Madan Suji – maternal Uncle of the appellant/wife.

14. The appellant/wife herself has admitted during her cross examination that Sh.Narender Suji – son of her maternal Uncle Sh.Madan Suji knew her husband for 25 years. The marriage was mediated through the maternal Uncle of appellant/wife. Even otherwise the respondent/husband was legally divorced from his first wife and he had no reason to hide this fact especially from a person known to him for about 25 years as well his father who is closely related to the appellant/wife.

15. In the decision reported as AIR 2015 SC 285 Vidhya Viswanathan vs. Kartik Balakrishnan the Apex Court has held that not allowing a spouse for long time to have sexual intercourse by his or her partner, without sufficient reason, itself amounted to mental cruelty to such spouse.

16. Irrespective of the fact that as to who is to be blamed for non-consummation of marriage, the fact remains that the marriage which was

solemnised on November 21, 2007 was not consummated. We need not enter into blame game but can take note of the fact that impotency of the husband could not be a probable cause for the reason that prior to that he was married and also had a daughter.

17. Another act of cruelty attributed by the respondent/husband to the appellant/wife is her visit to his office as well contacting his boss making false complaints against him. Due to this conduct of the appellant/wife, the respondent/husband had to leave the job. He has also gone into depression. Both these conducts individually as well cumulatively amount to treating the respondent/husband with cruelty.

18. In the decision reported as 19 (1981) DLT 64 Shakuntala Kumari v. Om Prakash Ghai it has been held that a false complaint by the wife to the husband's employer would amount to mental cruelty. The relevant paragraph of the report is extracted as under:

'A false complaint of this nature to an employer would certainly amount to mental cruelty. It would bring down the employee, in the eyes of his employer, and would reflect on his career and promotional opportunities. This would certainly play on his mind and affect his mental peace.

A Government servant is expected to maintain a reasonable and decent standard of conduct in his private life and not bring discredit to his service by his misdemeanours...'

19. The appellant/wife cannot rebut the evidence led by the respondent/husband to prove the act of mental cruelty being caused by her by visiting his (respondent's) boss at his residence and also at his (appellant's) office and creating scene there.

20. The above instances were sufficient to dissolve their marriage on the ground of cruelty.

21. Finding no illegality or infirmity in the impugned order, the appeal is

dismissed but without any order as to costs.

22. LCR be sent back alongwith copy of this order.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

SEPTEMBER 09, 2016
'st'