



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 19th September, 2023

Pronounced on: 12th February, 2024

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MAT. APP. (F.C.) 103/2021

SHANKAR MALLICK Appellant
Through: Mr. Pralabh Bhargava, Advocate.

Versus

SARITA KUMARI 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.

CM APPL.36872/2021 (Exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM APPL. 36871/2021 (under Section 5 of Limitation Act for Condonation of Delay)

The present application under Section 5 of the Limitation Act has been filed on behalf of the appellant for condonation of delay of 123 days in filing the present appeal.

In view of the averments made in the application and in the interest of justice, the application is allowed. The delay of 123 days in filing the accompanying appeal is condoned.



The application is disposed of.

MAT. APP. (F.C.) 103/2021

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dated 29.01.2021, dismissing the divorce petition filed by the appellant/husband, on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*).
2. Briefly stated, the parties got married on 03.02.2014 as per Hindu Customs and Rites in Kolkata and no child was born from their wedlock. The parties admittedly separated in March, 2015 i.e. after about one year and during this period also, the parties resided together for a limited time of about four and a half months. The entire canvas of cruelty is, therefore, spent over two periods of 03.02.2014 to 15.03.2014 and 28.11.2014 to 07.03.2015, when the parties resided together.
3. ***The petitioner/appellant in his Petition*** had claimed that immediately after their marriage, they resided for about 15 days jointly in the parental home of the appellant at Kolkata and thereafter, they came back to Delhi. The parents of the appellant kept her with lot of love and affection. She was not allowed to do any household work except may be to make tea occasionally. The appellant was posted as an Assistant Manager in DMRC and was residing at Delhi. He along with the respondent, came to Delhi on 25.02.2014, where they started together at Shastri Park, Delhi. On the request of the respondent/wife, the appellant was pressurized to call her mother and two brothers also to Delhi, along with the respondent. Accordingly, the mother and the two brothers also came to reside in their



home at Delhi. The appellant has asserted that, despite all the love and affection, the respondent refused to do any household chores. She had an irritating behaviour and always indulged in fights on petty issues. She was in a habit of getting up late in the morning at about 10:00 a.m. and was very fond of watching T.V. till late at night. She, therefore, neglected all the household work, so much so that on one occasion, when *Satyanarayan Pooja* was organized in the house and she was requested by the appellant to get up by 9:00 o'clock, she refused to wake up and abused him.

4. He asserted that the respondent always had a reluctance for sexual relationship and on enquiring about the reason for her attitude, she replied "*Meri shaadi ek budhe se ho gayi hai, main kisi aur se pyar kart hu jo ki meri saheliseema ka bhai aur wo patna me rahta hai.*" Also, every time he tried to establish relationship, she insisted that he give her expensive gifts, jewellery and valuables. It is only when he bought her the gift that she would allow him to have sexual intercourse.

5. The appellant further averred that on the occasion of their first anniversary on 03.02.2015, the respondent fell sick and had to be admitted in Ganga Ram Hospital, where she remained admitted for about five days. The mother and the brothers of the respondent immediately came to the house of the respondent. They threatened and accused him for the ill-health of the respondent.

6. The appellant further asserted that on one night in March 2013, at about 11:00 p.m, the respondent started laughing and mummering in her sleep. He immediately contacted the mother of the respondent, who called-up one person named Shastri in Patna and on his advice, gave him some tricks and pooja, which made the respondent sleep in peace.



7. The appellant has further asserted that on the occasion of *Holi*, he along with the respondent, her mother and brothers, went back to Patna. On reaching Patna, he was threatened by the family members of the respondent that they would kill him and his family members. He even pleaded with folded-hands but the family members of the respondent, hurt, abuses on him and his family members. On 15.03.2014 the respondent refused to come back to her matrimonial home in Delhi.

8. The appellant went in the month of May, 2014, to bring the respondent back to Delhi but she flatly refused to co-habit by reiterating that she had been forced into this marriage and she did not want to get married to him; *he should divorce her so that she could marry the brother of her friend, Ms. Seema*. He thereafter, made umpteen requests to the respondent to accompany him but she flatly refused to do so and therefore, he had no option but to come back his home alone in Delhi.

9. He also made an attempt to bring her back in August, 2014, and even bought gold articles and jewellery worth Rs.35,000/- on the insistence of the respondent as a condition to return back home, despite which she refused to return to Delhi. The respondent then demanded a car for herself and in order to assuage her desires, he took a loan from his office and bought a second hand car on 27.11.2014. Thereafter, on 28.11.2014, he made the third attempt to bring back the respondent and was eventually able to make the respondent return with him to Delhi.

10. However, the attitude of the respondent continued to be as cruel as it was. All his love and affection was repudiated by the respondent. He even offered to hire a maid for doing the household work but the same was also declined by the respondent on the ground that she would take care of the



household but her promise turned out to be false. It was the appellant who was left to do the entire household work.

11. The appellant asserted that while he was in Delhi and the respondent was in Patna since 07.03.2015, he received a call from CAW Cell, Patna on 10.05.2015 and was informed that the respondent has lodged a Complaint against him and his family members and were asked to attend the proceedings. He along with his parents, rushed to CAW Cell, Patna, where he was humiliated by the respondent and also kicked in his face and abdomen. The respondent added to the humiliation of the appellant and his family members by throwing away her *mangalsutra* and removing the vermilion from her forehead. She further threatened to put him and his family members in deep trouble and demanded a divorce. The respondent further humiliated and insulted the appellant by directing him to touch her feet and bow down in front of her.

12. The appellant in order to save himself from the clutches of police, gave in and the matter was compromised between them *vide* written endorsement dated 25.05.2015. However, despite the compromise and the undertaking of the respondent that she would return back to the matrimonial home, she failed to do so. Since March, 2015, the appellant made concerted efforts and left no stone to bring back the respondent but to no avail. She remained un-cooperative and despite her undertaking that she would join after two months, she failed to do so. Since July, 2015, she has failed to contact the appellant. The respondent has been staying in her parental home since 07.03.2015.

13. In the month of February, 2016, the mother of the respondent contacted the parents of the appellant and threatened to file a fresh



complaint in CAW Cell against them.

14. The parents of the appellant after this horrible experience moved back to Kolkata while he joined his office in Delhi. He tried to contact the respondent over telephone but was always abused in filthy language. He was called to CAW Cell, Patna, multiple times but he informed the Cell that his own case was pending in this Court.

15. The appellant had further asserted that on 16.03.2016, he again received a call from CAW Cell, Patna and also threats from the respondent of false implication in cases. He was also threatened that he and his family members would be defamed by the respondent and the respondent would create a scene at his office as well as at his residence.

16. The appellant further asserted that on 31.03.2016, at around 5:00 a.m, the respondent, her mother, Mamaji and Chachaji, came to his residence and made a huge commotion. The police were called and they were all taken to Polic Station Shastri Park, where he was abused by the respondent and her family members, in front of everyone. He again requested that the matter was pending in the Court and that whatever they wanted to say, may be presented in the Court.

17. Again on 17.04.2016, few relatives of the respondent and friends of the respondent, came to his parental home and abused his parents. The father of the appellant informed them that due to the behaviour of the respondent, they have debarred the appellant on 02.03.2016 and have told him not to come to their house, in order to avoid any nuisance. However, the family members of the respondent were not willing to pay heed to the requests of the parents of the petitioner and the police had to be called.

18. Subsequently, the matter was settled and she undertook to come back



within two months. However, as soon as the appellant and his family members came out of the CAW Cell, the respondent and her mother physically assaulted him in the presence of police personnel. He was forced to seek pardon by falling at the feet of the respondent and her mother. She also threatened the appellant with divorce. He suffered severe depression and was subjected to humiliation, insult and harassment.

19. The appellant has further asserted that on 06.05.2016, the respondent lodged a written Complaint against him and his family members at CAW Cell, Patna. He was informed by the police that the DD had been registered against him and his family members and they were called to attend the proceedings. They all appeared in CAW Cell where they were humiliated, abused and threatened by the respondent and her family members that they would be sent to jail.

20. The appellant thus, asserted that he has been subjected to extreme cruelty and there has been no resumption of conjugal rights since March 2015 since when the respondent has been staying in her parental home. He claimed that the respondent has subjected him to extreme cruelty and has also deserted him without any sufficient ground and sought divorce on the ground of cruelty under Section 13 (1) (ia) of the HMA, 1955.

21. ***The respondent in her Written Statement*** denied all the averments made in the petition. She asserted that she has discharged all her matrimonial obligations and has been a good wife in taking care of household chores. She denied that she did not co-operate with the appellant in conjugal relationship. She asserted that the appellant used to come back home in drunken condition and would harass her on one pretext or the other, without any reason. When she tried to reason with him about his conduct, he



would get furious and give her beatings. He would often lock the door of the house from outside when he left the house and when the neighbours enquired from him, he informed them that she was under the influence of 'Bhoot Pret'. In his office as well, he had similarly informed his colleagues as an explanation for locking her in the house.

22. The respondent admitted that the appellant visited her thrice to Patna but claimed that it was not to take her back but only to meet her; in fact he himself did not want the respondent to join back the matrimonial home. She further asserted that a car for Rs.7,00,000/- was demanded but the family members were able to arrange only Rs.5,00,000/- for the purchase of the car. She further explained that because of her exam in Patna, she had stayed back. She denied ever having made any demand for gold jewellery or other luxury articles. She further denied that any threats were ever extended to the appellant or his family members. She claimed that it is she who was subjected to neglect and harassment by the appellant and that the divorce petition was liable to be dismissed.

23. The *issues* on the pleadings were framed on 05.08.2019, as under:-

- “(i) *Whether the respondent has committed cruelty upon the petitioner-husband? OPP*
- (ii) *Whether the petition is liable to be dismissed for the preliminary objections in the WS? OPR*
- (iii) *Relief, if any.”*

24. The *petitioner/appellant appeared as PW-1* and also examined **PW-2**, Mr. Arun Kumar, Senior Assistant, HR Metro Bhawan, to prove his service record.

25. *The respondent appeared as RW-1* and tendered her evidence by way of affidavit, which is exhibited as Ex-RW-1/A.



26. *The learned Principal Judge, Family Court, in detail considered each and every incident as narrated in the pleadings and concluded that the appellant was not able to prove that the respondent had subjected him to any cruelty or that she had intentionally and without reason failed to join the appellant at their matrimonial home at Delhi. It was concluded that the appellant was unable to prove any act of cruelty by the respondent and the divorce petition was accordingly dismissed.*

27. Aggrieved by the said judgment, the present Appeal has been preferred.

28. **Submissions heard and record perused.**

29. Admittedly, after the parties got married on 03.02.2014, they resided in Calcutta with the parents of the appellant initially for about 15 days and thereafter, came to Delhi, where they resided till 15.03.2014. On the occasion of Holi, they went to Patna to the parental home of the respondent, however, the appellant came back to Delhi while the respondent continued to stay in her parental home. The total stay during this period was of about 42 days. It is also not disputed that the respondent eventually joined the appellant at Delhi on 28.11.2014, but after about three and a half months she again went back to Patna on 07.03.2015 and she never joined back the matrimonial home. In all, *the parties have lived together for about five months from the date of their marriage till 07.03.2015, when they finally separated.*

30. Essentially, the claims of the appellant are that the wife was of irritable behaviour and had no interest in household work. She got up late in the morning and watched T.V till late in the night. From the averments made by the appellant, it can be said that he felt a total neglect by the respondent



in the matrimonial life. The most significant aspect in this regard is his deposition that the respondent had no interest in him and had expressly stated that she was wanted divorce as she was interested in getting married to the brother of her friend, Ms. Seema. She even claimed that the appellant was a *Buddha*. This is borne out from the facts admitted by her in her cross-examination that she was about 22 years old while the appellant was more than 30 years, at the time of their marriage. It is also not denied that the Government Job of the appellant was the major factor which weighed in the marriage of the parties. These admissions of the respondent do lend credence and trustworthiness to the allegations of the appellant that the respondent was disgruntled with him and had demonstrated her indifference towards him.

31. The appellant had further asserted that she always had reluctance to maintain the conjugal relationship with him and every time she would make some demand for gift or jewellery to establish the sexual relationship. The respondent has vehemently denied these allegations but has explained that the appellant himself used to come drunk in the night and harass and beat her. Again, some truth can be inferred from the explanation given by the respondent. There is no complete denial of the claim of the appellant of there being no healthy sexual relationship which itself is an anathema to any happy married life as has been held in the case of Rajeev Chadha Vs. Shama Chadha Nee Shama Kapoor, (2012) 188 DLT 313. Similar observations have been made in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 and Shakuntla Kumari vs Om Prakash Ghai, AIR 1981 Delhi 53.

32. She has further alleged that she was beaten-up and locked in the house and the appellant used to falsely claim that she was under the influence of



'Pret/Bhoot' but has not been able to corroborate her allegations of beatings by the appellant through any cogent evidence or by giving any specific incidents.

33. Everything was not alright in the matrimonial relationship, is also evident from the fact that immediately after their marriage her mother and brothers had accompanied her to their matrimonial home at Delhi. Admittedly, the mother and the two brothers stayed with them in Delhi, during their first phase of living together. Interestingly, the second time, when she came to reside with the appellant on 28.11.2014, the mother and the brothers again came to Delhi on 03.02.2015, when she was hospitalized on account of some stomach ailment.

34. It is evident that the respondent had her own hesitation in settling her matrimonial relationship with the appellant and had huge dependence on her mother and brothers, whose presence gave her comfort and solace. This is further corroborated from the fact that for about eight and a half months from 15.03.2014 till 28.11.2014, she remained in her parental home. During this period, the appellant admittedly went thrice to bring her back, but she returned only on his third visit on 28.11.2014. She has lamely claimed that the appellant himself did not want her to join the matrimonial home but if so was his intent, why would he visit her three times in an effort to bring her back. Her explanation that he only came to meet her and had no intention to take her back, does not appeal to reason considering that they were newly married couple. Nothing prevented the respondent to herself go to her matrimonial home; rather her conduct points towards her disinclination to be together with the appellant in the matrimonial home.

35. The respondent has not denied that she went back to her matrimonial



home on 28.11.2014 where she stayed till 07.03.2015. There is no cogent evidence led by her to prove any act of physical abuse, harassment or cruelty by the appellant during her second stint of stay of three and a half months from 28.11.2014 to 07.03.2015. She failed to corroborate her allegations either of dowry demand or of beatings, cruelty and harassment.

36. It is pertinent to now observe that after she went back to Patna on 07.03.2015, she made a complaint in CAW Cell, Patna. The appellant along with his family members, were called to appear in the CAW Cell, Patna, which he attended on 11.05.2015.

37. Admittedly, a written settlement dated 25.05.2015, Ex-RW-1/2, was entered between the parties wherein she had agreed to return to Delhi, after two months but she failed to do so. Her reason for having taken two months' time to return was that she had some examination, but has failed to corroborate the same by giving any details of the alleged examination. There is also no explanation in her entire testimony as to why she did not return even after May, 2015, as was promised by her. A vague explanation has been given by the respondent that she was not able to go since the appellant did not come to take her back. There was nothing which prevented her to return to Delhi, as had been assured by her. Even if it is accepted for the sake of arguments that appellant failed to bring her back, she could have come back along with her mother and brothers who had accompanied her the first time she came to Delhi in her matrimonial home. She, despite entering into a settlement on 25.05.2015, failed to join back her matrimonial home for which there is no cogent explanation.

38. It is pertinent to also refer to the testimony of the appellant that when they appeared before the CAW Cell on 10.05.2015, he was abused and



humiliated by the respondent and his family members. Also, the respondent threw her *mangalsutra* and even wiped off her vermilion from her forehead. *Perse, to wear a mangalsutra or vermilion may be an individual choice* However, when it is done in the circumstances to demonstrate that respondent had no inclination to continue in the marital bond and consider herself married to appellant, it fortifies the irresistible conclusion that respondent had no respect for the appellant and their marital bond. It also reflects that the respondent had no intention to continue her marriage with the appellant.

39. Similar situation as in present case, came up for consideration in the case of *Dr. N.G. Dastane Vs. S. Dastane*, AIR 1975 SC 1534 where the wife broke her *Mangalsutra*, which was interpreted as symbolizing rejection of her marriage and was held to be an act of extreme cruelty. Herein also, the conduct of the respondent can only be interpreted as a manifestation of no interest for the continuance of matrimonial relationship and her husband. It clearly reflects her own disenchantment with her marriage for her own personal reasons, not attributable to the appellant. Her conduct is demonstrative of her repudiation and rejection of the matrimonial relationship.

40. The woes of the appellant did not end there. They were not limited to the rejection of the matrimonial relationship by the respondent but he was also made to suffer on account of the dowry harassment complaint made against him and family members by the respondent and her family members. As already discussed above, the first complaint which surfaced in May, 2014, got settled *vide* Settlement Deed dated 25.05.2015 but the appellant was made to undergo much humiliation and insult. He had deposed that at



the time of arriving at the settlement, he was made to touch the feet of the respondent and the mother, under the pressure of the police.

41. To add on to the affliction, he was slapped with another CAW Cell complaint dated 06.05.2016, even though they had no communion from the first complaint made in May, 2015, to this second complaint. FIR under Section 498A Indian Penal Code was registered not only against the appellant but also against his family members. However, in her entire testimony, she has not been able to substantiate any allegation of dowry harassment. The respondent has admitted in her cross-examination that in the said complaint on which FIR under Section 498A of the Indian Penal Code was registered, all the other family members except the appellant and the mother, have been discharged. Making such irresponsible and unsubstantiated false allegations of dowry harassment not only against the appellant but also the family members which find no substance in the present proceedings, is clearly an act of cruelty as has been held in the case of K. Srinivas Vs. K. Sunita X (2014) SLT 126 and Ravi Kumar Vs. Julmidevi (2010) 4 SCC 476. What else can be termed as cruelty for an individual than to see his family members being subjected to travails of criminal trial because of him. The frivolity of the allegations are evident from the fact that all the other family members except the appellant and his mother got discharged at the initial stage.

42. To sum up, we find that the respondent had little interest in her matrimonial relationship with the appellant and not only did she repudiate her marriage but even went to the extent of making false allegations and accusations of dowry harassment, beating and humiliation, which have remained totally unsubstantiated on record.



43. Further, she has been staying away from the petitioner/appellant since March, 2015 and there has been no explanation for her failure to join the company of the appellant who has been deprived of his conjugal relationship for no fault of his. It needs no reiteration that the bedrock of any matrimonial relationship is cohabitation and conjugal relationships. For a couple to be deprived of each other's company proves that the marriage cannot survive, and such deprivation of conjugal relationships is an act of extreme cruelty. Such long separation of about nineteen years with no effort by the wife to resume matrimonial relationship, is an act of cruelty as is held in the case of Samar Ghosh (Supra).

44. We, therefore, conclude that the over-whelming evidence on record, clearly establishes the cruelty by the respondent towards the appellant. We thus, set-aside the impugned judgment dated 29.01.2021 and hereby grant divorce to the appellant on the ground of cruelty under Section 13 (1) (ia) of the HMA, 1955.

45. The appeal is accordingly allowed.

46. Decree Sheet be prepared.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

**FEBRUARY 12, 2024
RS/JN**