



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 04th October, 2023
Pronounced on: 28th February, 2024*

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MAT.APP.(F.C.) 78/2022

VIMAL TYAGI

..... Appellant

Through: Mr. Avadh Kaushik, Ms. Saloni Mahajan & Mr. Rishabh Kumar, Advocates with appellant in person.

versus

DOLI TYAGI

..... Respondent

Through: Mr. Priyanshu Yadav, Advocate with respondent in person.

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 (*hereinafter referred to as the "Act, 1984"*) has been filed on behalf of the appellant/husband assailing the Judgment and Decree dated 06.04.2022 *vide* which the Divorce Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) filed on behalf of the appellant/husband, has been dismissed.

2. **The facts in brief as narrated** by the appellant/husband are that the appellant/husband got married to the respondent/wife according to the Hindu



customs and rites on 16.04.2016 at Modi Nagar, Ghaziabad, Uttar Pradesh. Thereafter, parties lived together as husband and wife with the parents, brother and sister of the appellant/husband at the matrimonial home in District Hapur, Uttar Pradesh. One son was born from their wedlock on 29.07.2017.

3. The appellant/husband had submitted that he was doing a job as an Operational Manager in Aarogya Pathcare Lab, Tilak Nagar, Delhi. After 15 days of his marriage, he returned to Delhi where he has been residing with his friend Sumit in a rented accommodation at Village Tihar, Delhi.

4. The respondent/wife and the family members of the appellant/husband used to call him on alternate days and he used to visit them for 2-3 days in a month to spend time with the respondent/wife as well as his family members.

5. The appellant/husband has alleged that after few months of marriage, the respondent/wife started picking fights with his family members on the pretext that she did not want to take care of the mother of the appellant/husband who was suffering from breast cancer and had undergone surgery before the marriage of the parties. The appellant/husband approached the family members of the respondent/wife to seek support, but they threatened him that they would come to his house and give beatings to him as well as his family members.

6. The appellant/husband has further contended that the respondent/wife was of quarrelsome lady and talked rudely because of which the atmosphere in his parental home became strained.

7. In October, 2016, the appellant/husband brought respondent/wife to Delhi to stay temporarily with him, while his friend Sumit was requested to



shift to his relative's house. However, the behaviour of the respondent/wife did not change and she continued to mentally harass the appellant/husband because of which he was unable to discharge his job properly. When the appellant/husband once again sought help of his father-in-law to convince the respondent/wife to change her behaviour, he came up with a demand for transfer of his parent's agricultural land in the name of the respondent/wife, instead of making the respondent/wife understand her mistakes. The respondent/wife told the appellant/husband that she had married to him only with an intent to grab his parental property. Even from her first husband, she had taken Rs. 10,00,000/- at the time of divorce.

8. The appellant/husband has claimed that when his parents refused to transfer the agricultural land in the name of respondent/wife, the respondent/wife became angry and went to reside at the matrimonial home at Hapur, Uttar Pradesh.

9. **It is asserted that** essentially the bone of contention between the parties was the transfer of agricultural land and when the demands of the respondent/wife were not met, she continued with her harassment.

10. In March, 2019, the respondent/wife attempted to throttle the neck of the appellant/husband's mother who somehow managed to escape. Thereafter, on 26.07.2019, the respondent/wife intentionally pushed the mother of the appellant/husband down the stairs thereby injuring her severely. Since then, the appellant/husband has constantly been apprehensive about the safety of his family members.

11. The appellant/husband has further asserted that on 13.08.2019, the respondent/wife tried to kill herself and called the Police to level false allegations against him and his family members. However, with the



intervention of the neighbours who apprised the Police of the true facts, the respondent/wife was warned not to repeat such acts. The respondent/wife apologised before the Police Officials and promised to live peacefully in future and no action was taken by them.

12. On 14.08.2019, the respondent/wife called her parents, brother and close relatives to the matrimonial home who broke all the household articles and gave beatings to the family members of the appellant/husband. They also again telephonically extended threats to the appellant/husband to transfer the agricultural land in the name of respondent/wife.

13. The appellant/husband has asserted that one son was born on 29.10.2017, but the respondent/wife neglected the child. The respondent/wife in order to pressurise the family members of the appellant/husband to transfer the property, even extended threats to kill the son. On 16.08.2019, the appellant/husband brought the respondent and the child to Delhi as he feared for the life of his son. The respondent/wife brought a knife from kitchen and tried to kill the son only to pressurise him for transfer of agricultural land. However, he was somehow able to save his son.

14. On 26.08.2019, while the appellant/husband had gone for work, the parents, brother and other relatives of the respondent/wife came to his residence in Delhi and took away the respondent/wife and the son with them. The respondent/wife also took away all her belongings and jewellery without informing the appellant/husband. When the appellant/husband returned to his house and found them missing, he tried to contact the respondent/wife telephonically, but she did not respond. The appellant/husband contacted the father-in-law who also threatened him not



to visit his residence till the agricultural land is transferred in the name of the respondent/wife.

15. The appellant/husband has further asserted that on the next day i.e., 27.08.2019, the respondent/wife forcibly entered the matrimonial home at Hapur, Uttar Pradesh and threatened to continue to reside there till the agricultural land was transferred in her name. The appellant/husband went to lodge a complaint at the Police Station, but he was advised to file a Civil Suit. Left with no option, the appellant/husband made a Complaint dated 01.0.2019 to SHO Police Station, Hari Nagar, Delhi, but no action had been taken pursuant thereto.

16. The appellant/husband claimed that he has a fear of safety of his life, limb and property and to continue to live with the respondent/wife would cause him extreme physical and mental torture. Hence, the appellant/husband sought the divorce on the ground of cruelty.

17. The *respondent/wife was duly served through registered cover which was received back with the report of the refusal*. The respondent/wife was also served through Speed Post at her address at Modi Nagar, Ghaziabad, Uttar Pradesh, but she failed to appear despite service being effected. **Consequently, The respondent/wife was proceeded *ex parte vide* Order dated 18.12.2019.**

18. The appellant/husband examined himself as *PW1* and also examined *PW2/Sumit Kumar Chaudhary* and *PW3/Manish Sharma*, his friends to corroborate his testimony.

19. The *learned Family Judge* disbelieved the testimony of the appellant/husband that there were constant demands and threats for transfer of agricultural land in favour of the respondent/wife because no details and



documents of the agricultural land were filed or proved by the appellant/husband. The testimony of PW2/Sumit Kumar Chaudhary and PW3/Manish Sharma (friends of the appellant) was held to not further the cause of the appellant/husband since they were not witness to the matrimonial discord and had no personal knowledge of the incidents as relied upon by the appellant/husband. Even the Complaint dated 01.09.2019, Ex.PW1/4 made to the SHO Police Station, Hari Nagar, Delhi by the appellant/husband had not been followed. Thus, it was held that the appellant/husband was unable to prove the cruelty on the part of the respondent/wife and the divorce petition was dismissed.

20. Aggrieved by the impugned Judgment and Decree dated 06.04.2022, the present Appeal has been preferred by the appellant/husband.

21. Along with the Appeal, he had filed an *Application No. CM APPL. 25481/2022 under Section 151 read with Order XLI Rule 27 of the Code of Civil Procedure, 1908* to place the various documents on record which included the certified copy of the Judgment dated 18.11.2015 *vide* which the respondent/wife was granted divorce by Mutual Consent from her first husband; the Revenue Record of the agricultural land of the father of the appellant/husband located at their native village in the state of Uttar Pradesh; and the copies of the complaints and of the orders passed by the Family Court in the Civil Suit No. CS 11/2019 titled *Vimal Tyagi vs. Doli Tyagi & Ors.* which has been dismissed by the learned Additional Principal Judge, Family Court. The application was allowed and the documents were permitted to be placed on record, *vide* Order dated 21.08.2023.

22. Submissions heard from the counsels for the parties and the



documents as well as the evidence perused.

23. At the outset, the respondent/wife in the present Appeal, though had appeared on various dates, did not challenge the proceedings before the Family Court nor did file a reply to the grounds on which the present Appeal has been filed. The sole challenge was to C.M. No. 24581/2022 for production of the additional documents pertaining to the agricultural land.

24. Admittedly, the parties got married on 16.04.2016 and one son was born from their wedlock on 29.07.2017.

25. The case of the appellant/husband is not controverted by the respondent/wife as she neither appeared before the Family Court on services of the summons nor did she contest the Divorce petition filed by the appellant/husband.

26. The appellant/husband has set up a case that after the marriage of the parties, the appellant/husband came to Delhi where he was gainfully employed and was staying in a rented accommodation at Village Tihar, Delhi with his friend Sumit Kumar Chaudhary, PW2, while the respondent continued to stay in the matrimonial home at Hapur, Uttar Pradesh. There is no challenge whatsoever that while the appellant/husband continued to reside in Delhi on account of his job exigency, the respondent/wife throughout continued to stay at the matrimonial home at Hapur, Uttar Pradesh.

27. It is not disputed that she had come to stay in the rented accommodation at Village Tihar, Delhi of the appellant/husband for a short period in October, 2016. The appellant/husband's friend Sumit Kumar Chaudhary PW2 shifted to his relative's house in Najafgarh, Delhi for a few days. The consistent claim of the appellant/husband in his Divorce Petition



as well as in his testimony was that right from the inception of marriage, the respondent/wife had the sole interest in the properties of the father of the appellant/husband which she insisted to transfer in her name. The respondent/wife harassed the appellant/husband to an extent that he was compelled to seek the intervention of the parents and family members of the respondent/wife, but they also did not support him. Rather, they joined her in telling the appellant/husband to get the agricultural land of his parents transferred in her name. The appellant/husband had deposed that the respondent/wife even conveyed to him that she had taken Rs. 10,00,000/- from her first husband at the time of divorce and that she had also married to appellant/husband with the sole objective of getting the agricultural property of his parents. Since, the appellant/husband refused to get the agricultural land of his parents transferred in her name, the respondent/wife became angry and continued to harass the family of the appellant in the matrimonial home. The appellant/husband has further deposed that because of this constant pressure, he was not able to focus on his job.

28. It is further deposed by the appellant/husband that in May, 2017, the respondent/wife's brother came to his parental home in Hapur, Uttar Pradesh and again repeated the demand for transfer of agricultural land in the name of the respondent/wife or else they were threatened to be implicated in the false dowry cases. The appellant/husband claimed that he continued to tolerate such threats from the respondent/wife and her family members in a hope that her behaviour would change after the birth of the child and the things would get settled. However, persistent demands of the respondent/wife continued. The harassment on this account was continued by the parents, brothers, cousins of the respondent/wife who visited the



parental home of the appellant/husband at Hapur, Uttar Pradesh in August, 2018 and threatened and repeated the demand for transfer of land and also threatened to kill the son of the appellant/husband if the same was not done within a few days.

29. In March, 2019, the respondent/wife attempted to throttle the mother of the appellant/husband, though she with difficulty was able to save herself. The respondent/wife's pressure tactics continued when on 13.08.2019, she attempted to commit suicide and the Police was called before which she again repeated her false allegations. However, the Police, with the intervention of the neighbours, left with a warning to the respondent/wife not to repeat such acts in future.

30. The appellant/husband has further narrated the incident of 14.08.2019 when the parents, brother and close relatives came to matrimonial home at Hapur, Uttar Pradesh on the asking of the respondent/wife and not only gave beatings to the family members of the appellant/husband but also repeated their threat of implication in case the transfer of agricultural land is not made. They even broke the household articles and gave beatings to the family of the appellant/husband.

31. The appellant/husband getting scared of threats being regularly extended to him, brought the respondent/wife and the child to Delhi on 16.08.2019, but there was no change in the behaviour of the respondent/wife who insisted on her demands. The respondent/wife brought a knife from the kitchen and tried to kill their son in front of the appellant/husband.

32. Therefore, from the consistent, unchallenged and unrebutted testimony of the appellant/husband, it emerges that the respondent/wife essentially stayed in the matrimonial home at Hapur, Uttar Pradesh, while



the appellant/husband resided at Village Tihar, Delhi, except for a few days, when the respondent/wife joined him at Delhi, thereafter, she continued to be in the matrimonial home at Hapur, Uttar Pradesh.

33. There is not an iota of evidence led by the respondent/wife to explain her reason for continuing to be in the matrimonial home, separate from appellant/husband. In this backdrop, the testimony of the appellant/husband that the sole interest of the respondent/wife to get married with the appellant/husband was only to get the agricultural land owned by his parents, cannot be challenged or disbelieved.

34. The appellant/husband has further deposed that he had brought the respondent/wife and the son who had come to reside with him to Delhi. However, on 16.08.2019 they left the house of the appellant/husband behind his back when he had gone to office on 26.08.2019 by calling her parents, brother and other relatives at the residence. They all came and took away the respondent/wife and the son.

35. It is further deposed that the respondent/wife also took away her jewellery and belongings without informing the appellant/husband. The appellant/husband when on return from his, unlocked the house, he found that both respondent/wife and the child missing. The appellant/husband called the respondent/wife telephonically, but the respondent/wife did not respond any of the telephonic calls. The appellant/husband even tried to find whereabouts of the respondent/wife by calling the father of the respondent/wife, but the appellant/husband was threatened not to visit the parental house of the respondent/wife till the agricultural land was transferred in her name.

36. Again, there is no rebuttal of this aspect of the respondent/wife having



left the Delhi house of the appellant/husband in his absence on 26.08.2019 and that she had taken away all her belongings and jewellery since she intended not to return to the house of the appellant/husband.

37. The appellant/husband in his testimony has further deposed that on 27.08.2019, the respondent/wife forcibly entered the residential matrimonial home and insisted on residing there. Though the appellant/husband made a complaint to the Police but no action was taken and he was advised to file a Civil Suit.

38. From the testimony of the appellant/husband which is not controverted by the respondent/wife either before the Family Court or in the Appeal, it can be inferred that the respondent/wife has never shown any keenness to have a happy conjugal relationship with the appellant. The testimony of the appellant/husband proves that she consistently resided at her matrimonial home separate from the appellant/husband who is residing in Delhi. Not an iota of circumstance has been explained on behalf of the respondent/wife to show that she had any intention to be in the matrimonial relationship or reside with the appellant/husband; rather the overwhelming evidence on record proves that she had sole interest to live with in the matrimonial home away from the appellant/husband, whether the appellant/husband was or was not residing there, with the sole objective of getting the agricultural land of the parents of the appellant/husband transferred in her name.

39. It is proved on record that there was a complete disinterest of the respondent/wife in the matrimonial relationship and such rejection and indifference of the respondent/wife towards the appellant with no efforts whatsoever to reside with the appellant/husband, can only be termed as an



act of cruelty towards the appellant/husband.

40. We, therefore, observe that the learned Judge, Family Court fell in error in disbelieving the unchallenged testimony of the appellant/husband on the sole ground that the documents of the properties of the parents of the appellant/husband had not been produced by the appellant/husband. Those documents have been placed on record by the appellant/husband in the present Appeal.

41. We thus, conclude that the appellant/husband has been able to prove that he has been subjected to mental cruelty by the respondent/wife, entitling the appellant/husband to divorce on the ground of cruelty.

42. Accordingly, the present Appeal is allowed and the Judgment and Decree dated 06.04.2022 is set aside and *the divorce is granted on the ground of cruelty under Section 13(1) (ia) of HMA, 1955.*

43. The Decree Sheet be prepared accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBRUARY 28, 2024
S.Sharma