

Sulochna vs Vishnu Dutt Bhardwaj on 30 January, 2024

Author: Neena Bansal Krishna

Bench: Suresh Kumar Kait, Neena Bansal Krishna

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Reserved on: 27th Sep
% Pronounced on: 30th Jan
+ MAT. APP. (F.C.) 167/2019 & CM APPL. 30637/2019
SULOCHNA A
Through: Mr. Ashok Sharma, Advoc
Versus
VISHNU DUTT
Through: Mr. Mrinal Bharti, Mr.
Kumar Shekhari and Ms.
Srivastava, Advocates.
CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

NEENA BANSAL KRISHNA, J.

A wife should not be a constant reminder of one's financial limitations. Pressurizing spouse to fulfil distant and whimsical dreams clearly not within his financial reach may create a sense of persistent dissatisfaction which would be sufficient mental strain to drain the contentment and tranquillity out of any married life. One must tread carefully between the needs, wants and desires.

1. The present appeal under Section 19(1) of the Family Court Act, 1984, has been filed on behalf of the appellant (respondent in the divorce petition) against the Judgment and Order dated 14.02.2019, vide which the divorce has been granted under Section 13(1) (ia) and under Section 13 (1A) (ii) of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA, 1955") on the ground of cruelty and for no restitution of conjugal rights for a period of one year after passing of a decree for restitution of conjugal rights.

2. Briefly stated, the parties got married on 22.05.1997 and one son was born from the wedlock on 18.06.1999.

3. The respondent/husband in his Divorce Petition had asserted that after the marriage, the parties started residing at Nagina (Haryana) along with the parents of the respondent but this was not acceptable to the appellant. On her insistence, they shifted to Delhi, to reside in the house of the

brother and sister-in-law of the respondent because the respondent did not have a financial capacity to set-up an independent residence in a metropolitan city like Delhi. However, the attitude of the appellant was unaccommodating, temperamental and she had frequent differences with the sister-in-law. There was bickering and quarrels inter se the appellant and the sister-in-law on petty matters. Because of such irresponsible, erratic and aggressive behaviour of the appellant, he was compelled to set-up a separate residence in Delhi, in the year 2004. Even after shifting to an independent residence, the attitude of the appellant did not change and she continued to be disrespectful and quarrelsome. She frequently fought with him after he returned back from his office. Also because of these quarrels, many a times, he went to his office without his breakfast.

4. The respondent/husband had further asserted that at the time of marriage, he had spent around Rs. 32,000/- from his credit card. He refunded 24,000 and balance of Rs.8,000/- was returned by taking a loan from the appellant's parents. The appellant taunted him for taking loan from her parents and also asserted as to why he got married, if he did not have financially capability to meet the expenses.

5. The respondent claimed that he took an LIC Policy to ensure thr future of the appellant/ wife in case anything happened to him. He also tried to meet all her requirements despite his financial constraints. Even during her pregnancy, he took good care of her within his meets and he continued to suffer her tantrums in a fond hope that the things would eventually settle. However, the respondent made irresponsible accusations of he being unfaithful; so much so that after the birth of the child, when a family friend of the respondent visited their house to congratulate on the birth of the child, the appellant made public allegations that she was a woman of bad character and had some sort of illegal relationship with the respondent/husband, which was a source of immense mental trauma and humiliation to him. She even accused him of being unfaithful because of his long working hours in his office.

6. The respondent further asserted that she blamed him for all the unhappiness in her life and for not being able to provide her with the comforts of life. She dreamt of a high society life and refused to adjust in the limited resources which led to frequent quarrels with the respondent. At times, she took out the marriage photographs for their marriage album and stripped them, which caused immense mental harassment to the respondent. She would also beat their child only to instigate the respondent/husband as she was aware that he had lot of affection for the child.

7. The respondent/husband claimed that he became so frustrated with such conduct of the appellant that he would remain upset most of the time and was not able to concentrate on his office work due to which he was reprimanded many a times by his senior officers. Such conduct also resulted in diminished physical intimacy between the parties.

8. The respondent further asserted that in December, 2004, the appellant along with the child, left the matrimonial home and went to her parental home without informing the respondent. Despite much counselling by the respondent, she refused to return. However, she came back with the child in March, 2005, for the examination of the child but again left in June 2005, in his absence and took away all her belongings. She thereafter, refused to return to the matrimonial home and did not even

allow the respondent to meet the minor child. The respondent was then forced to file Guardianship Petition under Section 25 of the Guardians and Wards Act, for the custody of the minor child.

9. The respondent thus, sought divorce on the ground of cruelty and desertion under S.13(1)(ia) and S.13 (1)(ib) HMA, 1955.

10. The respondent had further submitted that during the pendency of the present petition, the appellant had filed a petition under Section 9 of the HMA, which was allowed by the Family Court on 19.03.2008. The respondent had preferred an Appeal in Rajasthan High Court but the same was dismissed. Since there was no restitution of conjugal rights for more than an year after passing of the decree, he also sought divorce under Section 13 (1A) (ii) of the HMA.

11. The appellant/wife in her Written Statement, denied all the allegations made by the respondent in his petition. She claimed that the petition for divorce was not based on true facts and the allegations made against her were false, baseless and concocted purely within an aim to harass the appellant. She stated that she is a graduate and has always been faithful, respectful and obedient towards the respondent and her in-laws and attended all her matrimonial obligations dutifully. She claimed that all her attempts to live in the matrimonial home were frustrated and defeated by the respondent. She thereby asserted that the divorce petition be dismissed.

12. The issues on the pleadings were framed on 28.07.2008, as under:-

" (i) Whether respondent has treated the petitioner after solemnization of the marriage with cruelty? OPP

(ii) Relief."

13. The respondent examined himself as PW-1; in addition, examined his parents as Sh. R.P. Sharma and Smt. Asarfi Devi as PW-2 and PW-6. His two sisters Smt. Madhu and Smt. Babita as PW-3 and PW-4. Smt. Nishi Gupta, his family friend and Sh. Umesh Chand Sharma, the nephew of the petitioner, were examined as PW-5 and PW-7 respectively.

14. The appellant, (who was the respondent in the divorce petition), examined herself as RW-1 and Smt. Sheela, her neighbour as RW-2. She also examined her sister Smt. Manju and brother-in-law, Mr. Vishnu Sharma as RW-3 and RW-4.

15. The learned Judge, Family Court, on appreciation of the evidence, observed that the respondent was successful in proving from his testimony coupled with all the other evidence led by the parties, that the conduct of the appellant was not proper. She was quarrelsome as well as extremely disrespectful towards the respondent and his family members and also that her conduct was not proper with the sister-in-law while they were residing with them initially in Delhi. Moreover, his testimony also proved that the appellant used to taunt the respondent and there was constant bickering and nagging. The assertions in the testimony of the respondent that the appellant called him unfaithful on account of his long working hours and the incident of her cutting the photographs

of marriage were accepted as there was no cross-examination on any of these aspects. Moreover, there was no cross-examination by the appellant about her having left the matrimonial home in June, 2005. Therefore, it was held that testimony of the respondent as supported by the witnesses examined by him, established that he had been subjected to cruelty by the appellant and consequently divorce was allowed on the ground of under Section 13 I (i-a) of the HMA. However, it was observed that the petition had been filed before the two years period expired from the date of the appellant leaving the matrimonial home and thus, the divorce on the ground of desertion was rejected.

16. The learned Judge, Family Court, further noted that there has been no re-conciliation or restitution of the conjugal rights despite the decree dated 19.03.2008, for one year and the respondent was held entitled to divorce under Section 13 (1A) (ii) of the HMA.

17. Aggrieved by the said Judgment, the present appeal has been preferred by the wife/the appellant.

18. Submissions heard from the counsels for the parties and the evidence as well as the documents perused.

19. The parties admittedly got married on 22.05.1997 and had one son from their wedlock. The marriage survived till 2005 i.e. for about eight years before the parties separated.

20. The record shows that the entire testimony of the respondent/husband in regard to the quarrelsome nature of the appellant, suspicion and allegations against his character and her failure to discharge her matrimonial obligations inter alia has remain unrebutted. The respondent's testimony with respect to the conduct of the appellant impacting his office work to such an extent that he often got reprimanded by his superior officers, her physically assaulting of the child, the incident of shredding their marriage photographs, her disrespectful attitude towards her sister in law, taunting the husband for his financial constraints, have not been rebutted by the appellant, during the recording of the evidence.

21. The Apex Court examined the concept of mental cruelty in the case of N.G. Dastane vs. S. Dastane (1975) 2 SCC 326. It was observed that the enquiry in a case of mental cruelty has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

22. The Apex Court in the case of A. Jaychandra vs. Aneel Kaur 2005 (2) SCC 22, observed that cruelty is such conduct of one spouse, which adversely affects the other. If the cruelty is physical, it is easy to comprehend but the problem arises when the cruelty is claimed to be mental. It was explained that first an inquiry must be made about the nature of the cruel treatment, secondly, its impact on the mind of the spouse and whether it caused reasonable apprehension that it would be harmful or injurious to the spouse. Ultimately, inference has to be drawn of the effect on the complaining spouse. If the conduct complained of itself is bad, it is enough to conclude against the

spouse and no further inquiry need to be held. The conduct itself is sufficient to prove the conclusion of cruelty which may be of unfounded variety, which can be subtle or brutal and it may be words, gestures or by mere silence, violent or non-violent.

23. In the present case, applying the three pronged Test laid by the Apex Court in Jaychandra (supra), it can be easily inferred that the acts of indifference, non-accommodative nature, constant taunts on the husband's financial capacity, disrupting family relations and an extremely disrespectful attitude, is per se a conduct that would cause disquiet in the mind of the respondent. Thus, such constant bickering and the fights caused continuous stress in the mind of the respondent and impacted his mental well-being as well.

24. The Supreme Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 in the context of cruelty under Section 13(1)(i-a) of the HMA observed that while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty. Further, the court should review the married life as a whole in order to see whether the conduct of the spouse amounts to cruelty deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer.

25. The various incidents narrated by the respondent towards the overall conduct and a non-adjusting attitude of the appellant who lacked maturity to even sort out the differences with the husband, leads to the irresistible conclusion that such conduct was bound to cause a grave apprehension in the mind of the respondent disrupting his mental equilibrium. Though these incidents may seem to be innocuous, insignificant or trifling when considered independently, but when such conduct prevails over a period of time, it is bound to create mental stress of the kind, which makes it impossible for the parties to survive in their matrimonial relationship, as held in the case of A. Jaychandra (supra) and Gurbux Singh vs. Harminder Kaur, (2010) 14 SCC 301.

26. We therefore conclude that the learned Judge, Family Court, has rightly held that the respondent was subjected to cruelty, to grant divorce under Section 13 1 (ia) of the HMA.

27. The respondent has also been granted divorce under Section 13 (1A)

(ii) of the HMA, which provides that in case there is no restitution of conjugal rights despite a Decree under section 9 of HMA, for a period of one year, either party can seek dissolution of marriage. The appellant has contended that the decree of Restitution of Conjugal Rights was made against the respondent and since he has not complied with the same, he is not entitled to take benefit of his own wrong in terms of Section 23 of the HMA.

28. However, in the Case of Smt. Gajna Devi vs. Purushottam Giri AIR 1977 Delhi 178 (1) and Dharmendra Kumar vs. Usha Kumar, AIR 1977 SC 2218, it was observed that the language of under Section 13 (1A) (ii) of the HMA, makes it abundantly clear that the relief under Section 13 (1A) (ii) of

the HMA, is an absolute right and is independent of which party is the Decree Holder under section 9 of the HMA. Essentially, the divorce on this ground does not amount to taking advantage of your own wrong as it is a legal right which follows non-resumption or restitution of conjugal rights despite a decree of restitution. It has been further observed that it would not be a practical and realistic approach and indeed would be unreasonable and inhuman to compel the parties to keep the facade of marriage alive even though the rift between them is complete and there are no prospects of their ever living together as husband and wife.

29. This is also evident from the language of under Section 13 (1A) (ii) of the HMA which is to the effect that "either party", which includes the decree holder as well as the judgment debtor, who can seek divorce in case of non-compliance of decree of Restitution of Conjugal Rights. If the Parliament intended that it is only the party in whose favour the restitution has been allowed, who can avail the remedy under Section 13 (1A) (ii) of the HMA, then the language would have been accordingly used in the said Section. The very fact that Section 13 (1A) (ii) of the Hindu Marriage Act, enures to the benefit of "either party" clearly implies that in case of non-compliance of a Decree under Section 9 of the HMA, either party is entitled to seek divorce on this ground and the Judgment Debtor cannot be precluded from exercising his right to avail the relief thereof. Section 23 cannot be interpreted in a way to completely render the remedy under Section 13 (1A)

(ii) otiose.

30. We thus, conclude that the divorce has also been rightly granted under Section 13 (1A) (ii) of the HMA, by the learned Judge, Family Court. There is no merit in the appeal and it is hereby dismissed. The pending applications, if any also stand disposed of.

(NEENA BANSAL KRISHNA) JUDGE (SURESH KUMAR KAIT) JUDGE JANUARY 30, 2024 RS/
JN