

2022 LiveLaw (Del) 4

IN THE HIGH COURT OF DELHI AT NEW DELHI

VIPIN SANGHI; JASMEET SINGH, JJ.

MAT.APP.(F.C.) 97/2019; 03.01.2022

VANDANA SINGH versus SATISH KUMAR

Appellant Through: Mr. Praveen Mahajan, Adv. with appellant in-person. Respondent Through: Mr. Amit Bhatnagar & Ms. Namrata Ranga, Advs. with respondent in person

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal has been filed by the Appellant/wife against the Respondent/Husband under Section 19 of the Family Courts Act, 1984 to assail the judgment dated 31.10.2018 passed by the Family Court, Dwarka, New Delhi, whereby the petition filed under Section 13(1) (ia) of the Hindu Marriage Act, 1955, by the appellant/wife for grant of divorce from the respondent/husband on the grounds of cruelty, was dismissed.

2. Briefly stated the facts are that the marriage of the parties was solemnized on 06.05.2010 at Arya Samaj Vivah Mandir Trust (Regd) at Manvi Kalan, Near Tehsil Khekra, Bhagpat, UP according to Hindu Rites and Ceremonies. The marriage was consummated but no child was born out of their wedlock.

3. It was the case of the Appellant that at the time of the marriage, she was pursuing B.Tech. from Lucknow University, and the respondent used to visit India from Canada to meet his family. It was during these visits that the respondent started following her, and expressed his love for her. Thereafter, the Appellant and Respondent became friends and started communicating with each other through telephonic calls and messages. During this time, the Respondent informed the Appellant that he was pursuing MBA from Canada, and gave his date of birth as 27.01.1983. At the time of their marriage the Appellant came to know that the actual date of birth of the respondent was 27.01.1977. However, at that time, she could not back out from the marriage out of fear.

4. The Appellant further averred that the Respondent had initially, cleverly, convinced her not to inform either of their parents about their marriage. After the marriage ceremony, the couple went to Lucknow, and then to Agra for their honeymoon, and thereafter both parties returned to their respective homes. Thereafter, the Respondent left for Canada for his job, taking along with him all marriage documents and photographs.

5. The Respondent returned to India, after one and a half years of the marriage, on 19.10.2011. Both the Appellant and the Respondent stayed in Mumbai for two days along with the respondent's sister.

6. The next time the Respondent returned to India was from 13.10.2012 to 20.11.2012. This time the parties went to Nainital on vacation for two days. The next visit of the Respondent to India was on 03.02.2014, when the parties stayed together in Delhi for one day, after which the Respondent again went back to Canada. The Appellant averred that on all these occasions, the Respondent was physically, mentally and sexually

abusive towards her. Owing to the above conduct of the Respondent, the Appellant finally instituted the divorce petition on 28.04.2014.

7. The Respondent in his written statement denied all allegations and submitted that the Appellant was well aware of his age before their marriage, and that their marriage was a happy one. He further submitted that he travelled to India in 2008, when the parties stayed together for forty-five days. Thereafter, the Appellant visited in the year 2009 and then in 2010 for about two months each, when the parties spent most of their time together.

8. The respondent further averred that it was due to the pressure from the Appellant's family, that she was refusing to reside with the Appellant, as the family of the Appellant was against their inter-caste marriage. If the Appellant was given a choice, she would choose to live with the respondent.

9. Both the parties led their respective evidence in support of their pleadings. The Family Court came to the conclusion that the Appellant was not able to establish that she was subjected to cruelty – whether physical or mental. The Family Court was of the view that she has not been able to prove that the conduct of the respondent amounted to cruelty within the parameters of Section 13(1)(ia) of the Act. Rather, it was the Appellant who had committed cruelty on her husband, by concealing her marital status and by leveling several non-specific allegations regarding ill treatment and cruelty, without giving any specific details with regard to those allegations.

10. We required the parties to remain present before us, and interacted with them in the light of the fact that they, admittedly, had resided together for very few days during the entire period of their marriage, i.e. 11 years. The Respondent, on account of his being in Canada, had joined the interaction virtually. The Respondent kept insisting that the Appellant is being pressurized by her brother not to live with the respondent, and she still wanted to stay with him. He also stated that he is ready to make arrangements for her to come to Canada and stay with him. The Appellant, however, refuted this allegation, and maintained her stand that the marriage was deceitful and a violent one, and she is not inclined to continue the same. We, therefore, heard the arguments and reserved judgment.

11. Two aspects that need our consideration are, whether: (i) the long periods of continuous separation between the parties led to the matrimonial bond being breached beyond repair, which tantamounted to cruelty and, (ii) whether the conduct of the respondent before, or after the filing of the Divorce Petition has been such as to cause mental cruelty to the Appellant to such an extent, that she cannot be reasonably expected to live with the Respondent.

12. On the first aspect, the Judicial view – in context of longtime separation of parties, has been well settled with time. In **Samar Ghosh Vs. Jaya Ghosh**, (2007) 4 SCC 511, while enumerating instances of human behavior which may be relevant in cases of mental cruelty, the Supreme Court has indicated an illustrative list of instances. The part relevant for this discussion reads as follows:

“101. ...

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes

abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

...

(xiv)Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties .In such like situations, it may lead to mental cruelty.”

(emphasis supplied)

13. Recently in the case of **Sivasankaran v. Santhimeenal**, 2021 SCC OnLine SC 702, the Supreme Court held that the court can dissolve a marriage when there is actually no chance of the marriage surviving, and it is broken beyond repair. The Court Relied on **Naveen Kohli v. Neelu Kohli**, (2006) 4 SCC 558, wherein it held as follows:

“85. Undoubtedly, it is the obligation of the court, and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. ...”

14. In **Laxmi v. Kanhaiya Lal**, MAT.PP.(F.C.) 5/2020 decided by this Court on 07.10.2021, where the parties lived together only for a period of 8 to 9 months, while they had been living separately for the last 15-16 years, this court has held as follows:

“23. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither of the parties to a marriage enters into the matrimonial bond, only to break it later. For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them. Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties. It is well known and medically established that constant feeling of sorrow, hatred, stress, pain, hurt-and the like, do also manifest in the form of serious diseases such as heart diseases, diabetes, cancer, etc. [The same has been a point of study in an article by Timothy W. Smith and Brian R. W. Baucom, wherein it was stated that quality of intimate relationships matters as “strain and disruption are associated with increased risk” (of coronary heart disease)]¹. The data from NCRB suggests that there are more suicides resulting from unsettled marital disputes, compared to those resulting from divorce. In our view, there is no reason, not to recognize this as cruelty, entitling the court to pass a decree of divorce on the ground of cruelty.”

¹Timothy W. Smith and Brian R. W. Baucom, “Intimate Relationships, Individual Adjustment, and Coronary Heart Disease: Implications of Overlapping Associations in Psychosocial Risk”[2017] 72 (6) American Psychologist (American Psychological Association) 578.

15. The objective of the institution of marriage is to bring two souls together, who embark on the adventurous journey called life. They share experiences, smiles, sorrows, achievements and struggles. They uplift and support each other in all situations with their emotional, mental and physical presence. On this journey of life, they create personal,

social and spiritual bonds, everlasting memories, future plans, through which they co-exist in the society. An essential aspect of marriage is being present in each other's life, physically and emotionally. It is not to say that every marriage, where the couple stays apart from each other for work or other obligations consensually, is a broken one. However, a marriage where there is neither sharing of emotions, nor of dreams, joys, sorrows, memories (happy or sad), is merely a legal bond.

16. In the present case the parties have never lived together for any significant length of time, since inception of their marriage. It appears, that the Respondent treated the Appellant as his *overseas wife*, only to use her as a temporary companion, and to have someone to serve him when he came to India on short visits after yearly gaps. In the past seven years, after institution of the divorce proceedings, the parties have admittedly not communicated with each other. The respondent's submission that the appellant has been forced and is under pressure to not stay with the respondent, is wholly denied by the Appellant even before us. The Appellant is a 34 year old woman with a professional degree, having worked in a MNC. She is a major, and has been consciously maintaining her stance consistently. During the hearing, when we personally interacted with the parties, the Appellant has emphatically stated that she has no intention to reconcile with, or stay with Respondent under one roof.

17. The period of separation and the deciduous meetings of the parties are enough to show that their matrimonial bond has broken and is beyond repair. After the marriage, which is now 11 years old, the parties lived together only for a few days together in Lucknow, Agra, Delhi, Nainital and Mumbai, when the Respondent came back from Canada on vacations. In the present case, there is neither a matrimonial home, nor the possibility of ever having one. The damage to the marriage is evident. These instances do not amount to ordinary wear and tear of day-to-day life. The parties in the present appeal are at an age, where they may start a new life, if given a chance. However, keeping them tied to a legal bond would only mean snatching away from them the chance to ever lead a fulfilling life. Continuation of this matrimonial bond, itself, is sufficient to cause immense mental cruelty to the appellant, at least, if not to both the parties. In the facts of the present case, we see no reason to keep this moribund marriage alive. The ground of cruelty is, thus, clearly made out as expounded in **Samar Ghosh** (supra).

18. We may now turn to the second aspect taken note of by us hereinabove. The appellant raised a grievance that the respondent never really provided for her after their marriage. To this, the only answer given by the respondent is that he bore the appellant's expenses for travel and stay in hotels when he visited India, and he also brought gifts for her, including on marriage anniversary. He states that the appellant is herself qualified & working and, therefore, was not in need of any monetary support.

19. The issue is not about the appellant/ wife being in need of monetary support. The issue is, as to how the respondent conducted himself in his role as the appellant's husband. The admitted lack of any financial support – not even occasional, displays the indifferent and inert attitude of the respondent towards the appellant. This is also clearly displayed by his lack of will to be with the Appellant – either in Canada, or in India. The respondent claims that the appellant herself withdrew from the process of her immigration to Canada, to be with him. There is nothing placed on record by way of

evidence, by the respondent, to show as to what steps he took to persuade the appellant to join his company in Canada, or to return to India and be with her. The said conduct of the respondent clearly shows that it was not a priority for him to save his marriage with the appellant. This indifference shown by the respondent towards the appellant would certainly have caused doubts and consternation in the mind of the appellant, and her decision – not to immigrate to Canada, only because the respondent was calling her, can well be appreciated. There appear to be little, rather no confidence building measures that the respondent appears to have taken, to give an assurance that the appellant would be well taken care of, and not harmed or left helpless, if she followed him into a far off strange world.

20. In his written-statement, the respondent has made rather serious and scandalous allegations against the appellant's father which have not been substantiated by him in his evidence. He alleged that the father of the appellant – upon learning of the marriage of the parties, had stated that the petitioner should be "*gang-raped*" for the kind of act she has performed and that "*the petitioner should have been aborted at the time of birth*" and that "*the petitioner is a curse to the family*". These averments are contained in the response to paragraph 11 & 12 of the divorce petition. As aforesaid, these statements attributed to the appellant's father have not been substantiated, much less established, by the respondent. The attribution of such like statements to the appellant's father would constitute character assassination of the appellant's father. They portray the appellant's father in a very poor light. For any daughter, it would be extremely painful and torturous to be told that her father feels for her in the manner alleged by the respondent. Any self-respecting daughter would find it difficult to continue to have anything to do with a man, who has made such scandalous allegations against her father. The relationship between a father and his daughter is very delicate, loving and pure. The allegation made by the Respondent against the Appellant's father seeks to vitiate that relationship.

21. We may also observe that in his written-statement, and also before us, the respondent has been claiming that it is the Appellant's father and brother, who have turned the matrimonial relationship between the parties into hell. Thus, it is clear that the respondent has treated, and continues to treat, the appellant's family with disdain. This conduct of the respondent would also have caused immense mental cruelty to the appellant, sufficient for her to reasonably conclude that she cannot continue her relationship with the respondent.

22. We are, therefore, of the view that even the aforesaid conduct of the respondent establishes the ground of mental cruelty caused to the appellant, by the respondent.

23. In view of the aforesaid, we allow the appeal, set aside the impugned judgment and decree, and dissolve the marriage between the parties by a decree of divorce on the ground of cruelty contained in Section 13(1)(ia) of the Hindu Marriage Act. Decree sheet be prepared accordingly.