



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

*Reserved on: 29th August, 2023
Pronounced on: 20th December, 2023*

+ **MAT.APP.(F.C.) 252/2023**

RAJENDER KUMAR Appellant
Through: Mr. Baldev Raj and Mr. Shikha
Tyagi, Advocates.

versus

MANJU SHARMA 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.

1. The present Appeal under Section 28 of the Hindu Marriage Act, 1955 read with Section 96 C.P.C. has been filed against the Judgment dated 30.04.2009 passed by the learned Additional District Judge, Delhi dismissing the divorce petition filed by the appellant/husband under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*).

2. Briefly stating, the parties got married on 05.05.1992 according to Hindu customs and rights and one daughter, Surbhi was born from their wedlock on 16.02.1993.

3. It was the claim of the appellant/husband (*who was the petitioner in the Divorce Petition*) that since the beginning, the conduct of the respondent/wife and her family members was not respectful. The respondent/wife wanted to live a life of luxury even though the



appellant/husband was a poor man. The respondent/wife used to frequently quarrel with the appellant/husband.

4. It is claimed that the respondent/wife went to her parental home after three days of marriage and when the appellant/husband went to bring her back, her parents and brother quarrelled with him and told him that she would not return unless he was able to arrange separate accommodation and took a share from property from his parents. She also threatened to implicate the appellant/husband and his family in false case of dowry demand, suicide, cruelty and harassment. A report to this effect was got registered by the appellant on 18.08.1994, at Police Station Vivek Vihar.

5. The appellant further asserted that the respondent/wife was in a habit of frequently visiting her parental home and remaining there. Objections to the same were met with threats to the appellant/husband. On 18.12.1996, the respondent/wife and her parents threatened to implicate the appellant/husband in a false suicide case by either consuming poison or self-immolation by pouring kerosene or hanging herself from ceiling fan, if the property was not transferred in her name.

6. Further, the respondent/wife along with her daughter left the matrimonial home on 18.12.1996 with all her clothes and jewellery, without informing anyone. Efforts by the appellant/husband and his parents for reconciliation and to bring her back were met with misbehaviour and threats by the respondent/wife and her brothers. The appellant/ husband also issued a Legal Notice dated 05.04.1997 requesting respondent/ wife to join the society of the appellant/ husband but there was no response by the respondent/wife.

7. Thereafter, the appellant/husband filed the Divorce petition dated



11.03.1998 on the ground of cruelty, however, the same was dismissed *vide* Order dated 30.03.2005, against which the present Appeal has been filed before this Court.

8. While the case was pending before the Trial Court, an FIR No. 360/2002 dated 11.10.2002 under Sections 406/498A/34 of the Indian Penal Code, 1860 was registered against the appellant/husband.

9. The appellant/husband further asserted that since 18.12.1996, the respondent/wife has been avoiding and neglecting his company as a wife and despite his best efforts she preferred not to resume the matrimonial relations. The respondent/wife has wilfully and deliberately deserted the appellant/ husband and his company and is not interested in living with him. A Legal Notice dated 05.04.1997 was sent, but to no avail.

10. It was asserted by the appellant/husband that the respondent/wife kept sending letters up to 1997 in order to create false evidence but neither she nor her family members or father ever came to settle the disputes with the appellant/husband, and nor did they approach any relative. Simply writing letters that the appellant/husband has not come to take her back would not reflect that respondent/wife had any intention of joining the company of the appellant/husband.

11. Hence, the appellant/husband filed the divorce petition seeking divorce on the ground of *Desertion* under Section 13(1)(ib) of the HMA, 1955.

12. The respondent/wife in her **Written Statement** asserted that she was subjected to cruelty by the appellant/husband who was rude, harsh and rough towards her since the beginning of their marriage. She further claimed that the appellant/husband and his family members harassed her for



dowry and gave her merciless beatings. As a consequence of such indiscriminate treatment, her second child was *still born*, despite which neither the appellant nor the family members visited her in the hospital.

13. The respondent/wife also asserted that the appellant/husband and his family had made a demand of Rs. 50,000/- and had told her not to return till she brought the money. Her parents were able to arrange Rs. 30,000/- with great difficulty, which was given to the appellant/husband allegedly for a business purpose but it only fuelled the dowry demands and on 18.12.1996 a demand for the residual amount of Rs. 20,000/- was made. When the same was not met, she was given merciless beatings and was kicked out after being dragged on the floor. Finding no other choice, the respondent/wife came back to her parental home and narrated the entire incident.

14. The family members and some respectable members of the *Beradari* approached the appellant/husband, but the parents of the appellant/husband were adamant and insisted on their illegal demand.

15. It is submitted that the respondent/wife has never deserted the appellant/husband and she is willing to continue in the matrimonial relationship. She vehemently contested the appellant/husband's claim for divorce on the ground of desertion.

16. Issues on the pleadings were framed on 08.12.2005, as under: -

“a) Whether the respondent has deserted the petitioner for a period of continuous period of not less than 2 years immediately preceding the presentation of the petition? (OPP)

b) Relief.”

17. The appellant/husband examined himself as PW-1 and respondent/wife appeared as RW-1 in support of their respective cases. The



RW-2 father of the respondent/wife also appeared as her witness.

18. The learned Additional District Judge considered the entire evidence and observed that admittedly parties got separated on 18.12.1996. The evidence established that the respondent/wife was willing to join the company of the appellant/husband at every stage, but it is the appellant/husband who defaulted and he was guilty of constructive desertion.

19. It was thus concluded that the appellant husband had failed to prove the desertion and consequently his divorce petition under Section 13(1)(ib) of HMA, 1955 was dismissed.

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

21. The appellant/husband had deposed that he was a poor man while the respondent/wife wanted to enjoy a life of luxury and insisted that he should separate from his parents, take his share from the property of his parents and live with the respondent/wife.

22. After three days of marriage, when the appellant/husband went to the parental home of the respondent/wife to bring her back, the respondent/wife and her brothers quarrelled with him and told that the respondent/wife would not return until and unless the separate accommodation is arranged and the appellant/husband takes a share in the parental property.

23. The appellant/husband had also asserted that the respondent/wife threatened to implicate in false cases of suicide, dowry harassment and cruelty etc. The respondent/wife left the matrimonial home and went to her parental home without informing anybody on 18.12.1996 since then she has been residing with her parents.



24. Pertinently, the appellant/husband had alleged various acts of cruelty on the basis of which he had sought divorce on the ground of cruelty which was dismissed and the Appeal thereof is pending in this Court.

25. The grounds of establishing cruelty have neither been pleaded in the present case nor are subject matter for consideration. The simplicitor contention is that the respondent/wife has been living away from the appellant/husband since 18.12.1996 and despite all the reconciliatory efforts of the appellant/husband, the respondent/wife has failed to resume the matrimonial relationship.

26. The ingredients for establishing the desertion have been explained by the Supreme Court in Bipinchandra Jaisinghbhai Shah vs. Prabhavati 1956 SCC OnLine SC 15 which are as under: -

“Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid”.

27. Essentially, what is mandatorily required to be proved is not only the physical separation of the parties but also an animus i.e., the intention of the wife not to return to the matrimonial home.

28. In the present case, since 18.12.1996, there are no reconciliatory



efforts made by the respondent/wife to resume her matrimonial relationship.

29. The respondent/wife has only contended from time to time that the letters were being written to the appellant/husband to take her back to the matrimonial home, but at no point of time, did the appellant/husband come to take her to matrimonial home. Interestingly, no such letters have been proved in the present case.

30. Ironically, a conjugal relationship is a union of two persons which cannot survive upon the respective ego of either party and the insistence upon the husband coming to take the wife to their matrimonial home. Merely by writing the letters, which have not even been proved on record, the intention of wife to resume matrimonial relationship cannot be presumed or held to be proved. The respondent/wife's assertions that she had been willing to resume the matrimonial bond are only bald assertions which are not supported by any overt evidence. Her empty words reflect the lack of sincere effort by the respondent/wife to return to her matrimonial home. Her conduct can only be described as lip service which establishes that she had no intention to resume the matrimonial relationship.

31. Pertinently, though the respondent/wife had separated from the appellant/husband since 18.12.1996, after about six years, the FIR No. 360/2002 under Sections 406/498A/34 of the Indian Penal Code, 1860 was registered and that too on the directions of the learned Metropolitan Magistrate in the Complaint dated 31.08.2002 accompanied with an application under Section 156(3) of the Code of Criminal Procedure, 1973 of the respondent/wife, on 11.10.2002.

32. It is pertinent to observe that the appellant/husband and his parents have been acquitted in the Criminal Case under Sections 498A/406/34 of the



Indian Penal Code, 1860 *vide* Judgment dated 30.10.2017 by learned Metropolitan Magistrate and the order of acquittal has been upheld in the Appeal *vide* Order dated 23.01.2019.

33. The FIR has been registered in the year 2002; the respondent/wife has remained quiet from 18.12.1996 till 2002 for getting the FIR registered on her allegations of cruelty. This conduct and inaction on the part of the respondent/wife for about six years has not been explained by any cogent evidence. The action of the respondent/wife in getting the FIR registered after six years leads only to one conclusion that she had no *animus* i.e., intention to return to her matrimonial home and restore the conjugal relationship.

34. Learned Additional District Judge has observed in its impugned judgment that the empty words of the appellant/husband, that he had made an effort to bring the respondent/wife back for resuming the matrimonial relationship and had even issued a Notice dated 05.04.1997 is not sufficient to establish that he had any intent to take her back home, was perhaps swayed by the fact that during the testimony, the appellant/husband asserted that he was not willing to take back the respondent/wife after 11 years of separation. However, reluctance of the appellant/husband to resume the matrimonial relationship after 11 years cannot bring discredit to him for the conduct, the rejection by respondent for such long years are bound to bring dejection in the appellant who cannot be expected to wait *ad-infinitum* for a change in the mood of his wife. Moreover, as observed earlier, her intention to desert the husband is loud and clear from her conduct in getting the FIR registered in 2002.

35. The divorce petition on the ground of desertion has been filed on



02.07.2005, the crucial period for consideration is from 18.12.1996 till the filing of the petition. No evidence whatsoever has been led by the respondent/wife from where an inference could be drawn that it is the appellant/husband who was dis-inclined for re-union; rather the overwhelming evidence on record establishes a clear intention of the respondent not to join back the appellant/husband in the matrimonial home. Furthermore, even if the appellant/husband had filed a petition for divorce on 11.03.1998 on the ground of cruelty, but mere filing of a divorce petition was no impediment or a bar to the conciliatory efforts being made by the respondent/wife. The conduct of the respondent/wife as brought forth from the evidence on record coupled with the separation of about twenty-seven years, does not conform to that of a person who had no intention to desert the appellant/husband.

36. We, therefore, conclude that the respondent/wife left the matrimonial home on 18.12.1996 with an intention of not resuming her matrimonial relationship and had deserted the appellant/husband. In view of the foregoing discussion, we set aside the impugned Judgment dated 30.04.2009 and grant the appellant/husband divorce on the ground of desertion under Section 13(1)(ib) of HMA, 1955.

37. Accordingly, the present Appeal along with pending applications, if any, is disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

DECEMBER 20, 2023/s.Sharma