



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

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*Reserved on: 3rd August, 2023
Pronounced on: 11th October, 2023*

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MAT. APP. (F.C.) 215/2023 & CM APPL.37120/2023

TAPSI VIDYARTHI

..... Appellant

Through: Appellant in person with Mr.Ajit Kumar, Advocate (through VC) and Mr.Utkarsh Kumar, Advocate.

Versus

ARVIND KUMAR SINGH

. Respondent

Through: Respondent in person with Mr.Manish Kaushik, Advocate and Mr.Mishal Johari, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

SURESH KUMAR KAIT, J.

1. The appellant-wife, aggrieved by the Judgment and Decree dated 31.05.2023 whereby the learned Judge, Family Court has dissolved the marriage between the parties on the ground of Cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "the Act, 1955"*), **has filed the present Appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Act, 1955.**

2. The parties got married on 18.04.2012 as per Hindu rites and customs and one child, Om was born from their wedlock on 29.11.2013. The respondent/husband asserted that few days after the marriage, the appellant



started bickering over petty issues and arguing with him that she be allowed to keep her jewellery even though she has been advised otherwise. While they went on Honeymoon to Thailand, on 23.04.2012 she created an issue over the jewellery; so much so, when they returned on 28.04.2012, she left for her parental home without informing anyone and started threatening the respondent and his family members with dire consequences. She claimed having high level connections. The respondent apprehensive of dire consequences, gave a complaint in the Police Station on 05.05.2012 against the appellant/wife and her parents. However, the matter was compromised within the family and the jewellery was given to the appellant.

3. The respondent considered that the matter had been resolved and the appellant/wife went back to Allahabad, her place of posting where she was employed in a private Company. The respondent requested the appellant to leave her job at Allahabad and join his Company in Delhi/NCR. The appellant was however, adamant to continue with her job at Allahabad and thus, refused to join him at Delhi.

4. The respondent further asserted that she had scant regard for the respondent and his family members and she visited Delhi once or twice in a month but then too, would spent most of the times at her parental home. It was further asserted that she was in a habit of consuming alcohol since prior to marriage and it continued even after the marriage. While living alone at Allahabad, she started smoking and taking drugs and drinking cough syrups. She would call the respondent in the inebriated condition and abused him and threatened to commit suicide to implicate him and his family members. In the month of February, 2013 the appellant tried to commit suicide in



Allahabad by taking sleeping pills on account of Depression. On coming to know about this, the respondent brought her to her parental home in Gurgaon and got her treated by a Psychiatrist at Safdarjung Hospital. However, the appellant did not stop consuming alcohol and taking drugs and again attempted suicide in April, 2013 by taking excessive sleeping pills and was rushed to the Ayushman Hospital by the respondent. When the respondent tried to explain the situation to her parents, they started arguments and blamed the respondent for the condition of the appellant. This conduct of the appellant put him under constant threat that the appellant may commit suicide.

5. The respondent stated that the appellant left the matrimonial home along with her belongings, jewellery in April, 2013 and deserted him. She informed him that she was pregnant and started using her pregnancy as a tool to pressurize and harass the respondent and his family members. He became so harassed that he was unable to concentrate on his job and his service was terminated vide Termination letter dated 09.07.2013. He started his own business but could not do justice to it due to constant threats by the appellant. He remained jobless from June, 2013 to April, 2014.

6. Further, in July, 2013, the appellant filed a complaint under Protection of Women from Domestic Violence Act, 2005 (D.V.Act) and also a Complaint Case under Sections 498A/406 IPC against the respondent and his family members which was eventually converted to registration of FIR No. 266/2016 at Police Station Dwarka. A petition under Section 125 CrPC was also filed against the respondent-husband. She also made a written Complaint dated 05.09.2013 against the in-laws of the respondent's sister



who were Army personnel namely Col. Prahlad Dahiya, father-in-law of the sister and Major Arun Dahiya, husband of the sister i.e. brother-in-law of the respondent alleging them to have taken dowry. This act of the appellant created disturbances in the matrimonial life of the sister of the respondent and proved the extent to which the appellant could stoop. It resulted in loss of reputation of the respondent's sister and became a source of mental cruelty for him.

7. The respondent further stated that he was paying Rs.10,000/- per month as maintenance to the appellant for their son Om, pursuant to the Order dated 21.03.2014 of the learned M.M. (Mahila Court), but the appellant moved an application for further enhancement of the maintenance to Rs.40,000/-, which again is nothing but an act of cruelty as she herself is earning handsome salary and her father is receiving pension being retired as Group Captain from Indian Air Force. In these circumstances, the respondent claimed that he was left with no option but to separate himself and sought divorce on the ground of Cruelty and Desertion.

8. **The appellant-wife contested the petition** and asserted that their marriage was performed with great pomp and show and her father had told clearly that being from defence background, he did not believe in the culture of dowry and would give whatever he desired to his daughter and that no demand of dowry should be made. Despite that, the respondent-husband tried to convince the appellant to take a car loan in her name for purchasing a new car Skoda Laura as his family believed in giving and receiving dowry and many articles were given in the marriage of his sister. The car was purchased in the year 2012 after their engagement and was given as a gift to



Major Arun Dahiya, brother-in-law of the respondent. The monthly instalments of the loan taken for the said car, were continued to be paid by the respondent but he made demands for the money from the appellant and her family members. She also explained that before leaving for Honeymoon to Thailand, all her jewellery articles have been snatched by the respondent and she was only left with *Mangalsutra* which was also taken out of her pursue by the respondent in May, 2013 without her knowledge and since then, she had no information about the whereabouts of those ornaments. Though respondent pretended that everything was normal after marriage, but subsequently, she came to know that he had made a complaint on or about 05.05.2012 at the Police Station i.e. just after 15 days of marriage against her and her parents levelling baseless claims of she having mental issues and her parents threatening with dire consequences. She explained that she developed Thyroid and used to get mild Depression as the ailment was diagnosed late. However, the respondent used this as an excuse to take her to the Psychiatrist at Safdarjung Hospital without informing her parents even though they lived just 15 minutes away from the matrimonial home.

9. On 27.04.2013, when she asked respondent to take her to the Gynaecologist to confirm if she was pregnant, the respondent abused, manhandled and dragged her to the ground instead of taking her to the Doctor. It was further asserted that when she messaged about her first pregnancy, the first reaction of the respondent was the child did not belong to him and he sent a message to this effect. The father of the respondent advised her to eat raw garlic in peak summer month and when she consulted Gynaecologist about this, the Gynaecologist strictly advised her against it as



it could cause miscarriage. She claimed that respondent and his family members always tried to harm her and the child. Threats were extended to her to get the child aborted. After being abused on 27.04.2013, the respondent told her on 28.04.2013 to return to her parental home in Gurgaon and the father of the appellant was also informed to take her back. When she refused to go to her parental home, she was abused and the respondent and his mother went to their relatives' place after locking two rooms. She developed low blood pressure which could be fatal for pregnancy. The family members of the appellant approached the family members of the respondent to resolve the issues, but the efforts proved futile. She was thus, compelled to make complaint in CAW Cell which was later converted to FIR No. 266/2013 at P.S. Dwarka North and initiate other litigation.

10. It was further asserted that the child was born on 29.11.2013 but despite being informed, the respondent and his family members spread false and defamatory allegations against her in the hospital amongst the hospital staff including doctors and nurses to the extent that they could not visit the said hospital in future even for child's routine vaccination.

11. The appellant got a job in Tata Motors Limited but the respondent created unpleasant situation at her place of work and did not let do her job peacefully. The respondent and his father used to call her and her relatives at odd hours. In 2015, respondent sent a very derogatory joke to the father of the appellant which was directed towards the appellant and her father.

12. The appellant also submitted that visitation rights were granted to the respondent by learned Mahild Court to which she did not raise any objection, but the visitation rights were sought with an ulterior motive to



harass her during these proceedings. The learned M.M., Mahila Court vide Order dated 17.08.2016 directed the respondent and his family members not to visit the colony of the appellant and meet with her neighbours or colleagues and the respondent and his mother had submitted an Undertaking to this effect. It was thus, asserted that it is the respondent who had been treating her with cruelty.

13. On the pleadings of the parties, the issues were framed on 19.05.2018 as under:-

“1. Whether the respondent has after solemnization of marriage has treated the petitioner with Cruelty?

(OPP)

2. Whether respondent after solemnization of marriage has deserted the petitioner for a continuous period of not less than two years from the date of presentation of the present petition?

(OPP)

3. Relief”.

14. The respondent and his father appeared as PW-1 and PW-2 respectively in support of the respondent’s petition. The appellant examined herself and her father as RW-1 and RW-2 respectively to contest the petition.

15. The learned Judge, Family Court on appreciation of evidence, concluded that the respondent had been treated with cruelty. However, it was held that there was no case made out to prove that the appellant has deserted the respondent and therefore, the divorce on the ground of ‘Desertion’ was denied, but was granted on the ground of Cruelty under Section 13(1)(ia) of the Act, 1955.

16. Aggrieved, the present Appeal has been preferred by the



appellant-wife.

17. Submissions heard of both the counsels for the parties and record perused.

18. The respondent/husband has sought divorce on the ground of Cruelty. To bring a marital dispute within the ambit of Section 13(1)(ia) of the Act for dissolution of marriage, cruelty has to be proved. The pertinent observations of the Hon'ble Supreme Court on the aspect of cruelty in Parveen Mehta Vs. Inderjit Mehta (2002) 5 SCC 706 are as under:-

“21.A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

19. Admittedly, the parties had worked together with a Courier Company in the year 2009 for some time. The parties met on Facebook in the end of year 2009 and they developed friendship and started meeting during the year 2011-2012. They often used to go to Club together. Respondent informed his father in the year 2011 about his desire to marry the appellant and he introduced her to his parents in the year 2011. Likewise, the appellant



introduced him to her parents and they eventually got married on 18.04.2012. The appellant was working with Castrol India Ltd. before her marriage since October, 2010 and was at Allahabad till July, 2014. It is further not denied by the appellant that the respondent had requested her to shift her base to Delhi-NCR where there were equally good opportunities but she did not do so. The appellant is a qualified B.E.MBA. As per her own testimony, she had been working in various MNCs/Companies since 2009 till date without a break.

20. The parties got an opportunity to know each other well prior to getting married, but, apparently, they immediately after marriage had adjustment issues. Both the parties admitted that they went for their Honeymoon to Thailand on 23.04.2012 where they both had fights and the appellant was angry on account of her jewellery. Evidently, before going for the Honeymoon, the jewellery of the appellant had been kept by her mother-in-law for safe custody considering that her daughter-in-law was travelling to Thailand, as per the testimony of the respondent. The respondent also explained that while the jewellery given by the appellant's family was kept by her mother, the jewellery given by the parents of the respondent was kept by mother of the respondent as they were going to Thailand for Honeymoon. This qualifying aspect obviously does not appeal to reason and it can be inferred that the entire jewellery of the appellant was kept in the Locker by the mother of the respondent which was essentially for safe keeping. The appellant got angry presumably thinking that her entire jewellery had been taken away from her. They both admittedly had altercation on account of jewellery while they were in Thailand.



21. The appellant has averred that the learned Family Court has overlooked the fact that the respondent had caused cruelty upon the appellant by making such false complaint to the police which was not even in her knowledge. However, the explanation given by the respondent was that the respondent had feared that his wife may file a complaint with the police with false allegations of torture; demand of dowry and jewellery. Therefore, he himself first filed a complaint on 05.05.2012 stating that she was suffering from mental issues. Admittedly, this was done by him to create a defence. His act reflects his apprehension and defence but admittedly, the appellant was not aware of this complaint till initiation of *inter-se* litigation. The act of respondent reflected his insecurity and cannot be taken as an act of cruelty as it was never in her knowledge.

22. It emerges from the testimony of the parties that the differences erupted immediately after the marriage and the trust issues cropped up between the two. The learned Judge, Family Court on this aspect has observed in the impugned Judgment that *both were having different expectations with each other and other's family, which resulted in such serious differences and extreme apprehension of the petitioner (husband) and his family appears from their conduct immediately after marriage, this might not be justified and also that they had different kind of expectations from the respondent (wife) and his family, for which only they are to be blamed and not respondent (wife).*

23. The appellant has admitted in her testimony that in the month of February, 2012 on account of Thyroid not being detected earlier, she developed mild Depression and consumed excess sleeping pills while she was at Allahabad around 11/12.02.2013. She was immediately brought to



Delhi by Air by the respondent and was treated at Safdarjung Hospital vide OPD Card exhibited as Ex.PW1/RZ. Immediately thereafter, she accompanied the respondent and his family for marriage Reception of the sister of the respondent at Jalandhar which was on 13.02.2013.

24. The appellant further admitted that the second episode of taking excessive sleeping pills happened after the marriage and Reception function of the sister of the respondent when she consumed 15 tablets of Alprazol i.e. the sleeping pill at about 11.30 AM on 24.02.2013 and she was treated at Umkal Hospital, Sushant Lok, Gurgaon. Both these episodes happened before the parties got married on 18.04.2012. Though the appellant had claimed another incident of consuming sleeping pills in April, 2013 while she was staying at matrimonial home, but there was no evidence whatsoever placed on record in corroboration of this incident except that it was mentioned in the petition. The learned Judge, Family Court concluded that in the absence of any cogent evidence for this third incident of suicide attempt by the appellant, it could not be held that the appellant tried to consume excess sleeping pills third time as well.

25. The question which thus arose was that whether these acts of attempted suicide can be termed as an act of Cruelty. The learned Judge, Family Court observed that these two episodes of suicide attempts happened within a gap of 15 days. The act of excess consumption of sleeping pills was essentially a medical condition precipitated by mild Depression from which the appellant was suffering at that time, which called for sensitive handling and proper treatment.

26. We find that the aforesaid medical condition of the appellant-wife was neither intentional nor was it intended to implicate the respondent-



husband in any false case. Pertinently, both these incidents of Allahabad and of Gurgaon had happened before the parties got married on 18.04.2012. These acts have rightly not been termed as acts of cruelty on the part of the appellant.

27. The learned Judge, Family Court has noted two incidents of attempted suicide by consuming pills and observed that *these actions were during very limited period when she was not staying with the petitioner (husband) and appreciating that anyone can fall to depression in a given phase for a limited period and also that there was no cogent evidence on record to show that there has been any attempt on the part of respondent (wife) thereafter.*

28. The testimony of both the parties in regard to incidents is largely admitted but both have their own justification and explanation. The circumstances as discussed above, reflect that though both the parties co-existed in their matrimonial relationship till 29.04.2013 and discharged their respective matrimonial obligations with both taking care of each other, but there were differences between them which finally led to their separation in April, 2013 i.e. after about one year of marriage.

29. The appellant asserted that she had been beaten up by the respondent and his family members in the end of April, 2013. She has explained in her cross-examination that she had gone to the house of the respondent on 29.04.2013 and stayed there for 2 to 3 days. Her father-in-law was at his place of posting at Mumbai while mother-in-law and the respondent left her alone by locking two rooms in the matrimonial home. Her father-in-law had written a letter to her father stating that in case any ornament is found missing from the house, the appellant shall be responsible for the same. Thereafter, her parents came and took her to their house at Gurgaon and



since then, she has been residing with her parents.

30. The respondent also admitted the five photographs Ex.PW-1/R3 having been taken by the brother and the parents of the appellant at the time when they were residing together in the matrimonial home, but he denied that on that date, he had beaten the appellant at the instigation of his mother.

31. We find that both the appellant and the respondent have admitted that a fight took place around 29.04.2013 and the respondent and his mother left the house by locking two rooms leaving the appellant alone in the matrimonial house. This naturally emanated from a fear in their mind that something untoward may happen if they continued living in the house. The leaving of appellant and his mother cannot be termed as an act of cruelty in the given situation of existing acrimony between the parties. The respondent admitted that his father sent a letter to the appellant's father stating that if any article is found missing from the house, it would be the appellant who shall be responsible. In these circumstances, the appellant left the matrimonial home and as per the testimony of the appellant, she has been residing in the parental home since then.

32. From this incident, all that can be inferred is that some fight happened between them and it was the trigger point which prompted the appellant to move out of the matrimonial home along with her brother and father.

33. The evidence reflects that there were marital discord, non-compatibility and various issues which kept cropping up between the parties which ultimately led to the appellant leaving the matrimonial home in end of April, 2013. Till then, there were adjustments issues between both the parties and neither can be held guilty of cruelty. The learned Judge, Family Court has thus rightly taken note of the conduct of the parties towards each



other and observed as under:

“64.....The actions on the part of the respondent in this regard is nothing but vengeance, and is of a nature which is nothing short of mental cruelty, of such gravity that one cannot be expected to put up with such kind of revengeful spouse who can go to any extent if differences in her own relationship with the spouse arises, unmindful of the fact that it in no way will help in resolving her own differences at the matrimonial home and in fact will only aggravate it. If the petitioner may be faulted with the kind of the adamant attitude as alleged by the respondent where he was not willing to bend or mend his ways to accommodate and adjust with the respondent despite having had a considerable period of premarital relationship with the respondent and having had sufficient time and occasions to know the mood etc. when they happened to go together at night clubs also as admitted by him, the respondent too is matching him pace by pace and is not giving up in any way. Her pattern of action is also to harass. There is nothing in her actions which may reflect that she is accommodative in nature and wants restitution of conjugal rights”.

34. We find that the aforementioned observations of the learned Judge, Family Court rightly summed up that the respondent-husband was not willing to mend his ways and so did the appellant-wife adopt the pattern to harass and thus, both the sides were out to persecute each other.

35. The respondent has admitted that after the appellant left the matrimonial home in the end of April, 2013, she informed him through a text message about her pregnancy in response to which he did write denying the paternity of the child. As has been observed by the learned Judge, Family Courts, nothing could have been more cruel than denying paternity



of own child. No doubt, the conduct of the respondent was not only unreasonable but had the underlying aspersion about the character of the appellant. However, the way to deal with wrongful conduct of the appellant, could have been through discussions or any such sensible way considering that not only were the parties well educated but even their families had a good educational and social status, all being qualified professionally and having certain social status. The way respondent responded to the text message sent by the appellant, cannot be justified. The appellant-wife soon thereafter in the month of July, 2013 resorted to not only file a Complaint Case under Protection of Women from Domestic Violence Act, 2005 but also filed a Dowry harassment case which resulted in registration of FIR No. 266/2016 under Sections 498A/406 IPC at Police Station Dwarka. A petition under Section 125 CrPC was also filed by her against the respondent-husband. She also made a written complaint dated 05.09.2013 against the in-laws of the respondent's sister who were in the Army namely Col. Prahlad Dahiya, father-in-law of the sister and Major Arun Dahiya, husband of the sister i.e. brother-in-law of the respondent, alleging them to have taken dowry. Her conduct in immediately resorting to criminal litigations only reflected her keenness in not attempting any reconciliation but to rush to make complaints not only against the respondent but also against his parents and the married sister as well. The appellant has not been able to justify any of the allegations of cruelty against the respondent and his family members.

36. If any person has been subjected to any crime, that person has an absolute right to seek the remedy by taking recourse to the State machinery. If in fact, the appellant was subjected to cruelty, she had every right to



approach the police. However, it was for her to establish from cogent evidence of being harassed and subjected to cruelty on account of insufficient dowry.

37. The appellant-wife has not been able to justify the grounds on which the complaint was made which led to registration of FIR against the respondent and his family members. Pertinently, in this case, this is more true since the sister-in-law of the appellant is married and the appellant herself was in regular employment at Allahabad throughout and used to infrequently visit the matrimonial home. On the face of it, the allegations of dowry harassment against sister-in-law (*Nanad*) and her husband and leading to discord in her family, have not been proved and such allegations were naturally a source of mental trauma for the respondent-husband as he because of having got married with the appellant became a reason for his entire families suffering from criminal trials. But unfortunately, her evidence is as vague as it could be. There is no evidence practically from where it could be concluded that she was being harassed for dowry demands.

38. Though filing of a criminal complaint *per-se* cannot be termed as an act of cruelty yet, at the same time, the allegations of cruelty as made in the criminal case(s), should have been substantiated in the divorce proceedings.

39. In the case of *K.Srinivas vs.K.Sunita* X (2014) SLT 126, the Supreme Court held that filing of the false complaint against the husband and his family members constitutes mental cruelty for the purpose of Section 13(1)(ia) of the Act, 1955.

40. The Hon'ble Supreme Court in *Raj Talreja Vs. Kavita Talreja* (2017) 14 SCC 194 has observed that:-



“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short “the Act”). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.”

41. Similarly, it has been held by the Supreme Court in Mangayakarasi vs. M.Yuvaraj (2020) 3 SCC 786 that it cannot be doubted that in an appropriate case, the unsubstantiated allegation of dowry demands or such other allegations, made the husband and his family members exposed to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege the mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground.

42. Further, the Supreme Court in the case of Ravi Kumar vs. Julmidevi



(2010) 4 SCC 476 has categorically held that “reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society” and it amounts to ‘cruelty’. Similar observations were made by the Coordinate Bench of this Court in the case of Rita Vs. Jai Solanki (2017) SCC OnLine Del 9078 and Nishi Vs. Jagdish Ram 233 (2016) DLT 50.

43. We agree with the findings of the learned Judge, Family Court who has rightly observed as under:-

“64.....But even if for the sake of arguments those aspects are ignored, the action of the respondent in filing complaints against in-laws i.e. father-in-law and husband of the sister of the petitioner is without any justification and is reflection of vengeance at its worst where one is bent upon to settle the score in respect of differences with one’s own spouse and his family by making allegations against the in-laws of his sister who were in Army, in responsible and respectable position. The same had the potential of disturbing the matrimonial relationship of sister of the petitioner in her matrimonial home. There has been absolutely no justification for the said action in as much as it has not been the case of the respondent that she was ill treated by in-laws of the sister of the petitioner at any point of time or they had provoked the petitioner to ill treat the respondent or treat her in a particular way so as to compel her to toe the line that the petitioner wanted”.

44. In addition, admittedly, the appellant has been living separately since April, 2013 and all the conciliatory efforts as discussed below, have not met any success. It has been noted time and again in the judgments of the Supreme Court that continuous separation between the parties for a long



period itself is a ground for divorce. The Apex Court in the case of *Samar Ghosh Vs. Jaya Ghosh* (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Hindu Marriage Act and observed that in a marriage 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 and can be termed as mental cruelty.

45. Every marriage rests on mutual trust, affection, compatibility, congeniality and consanguinity. Furthermore, such were the differences that they were led to the inevitable separation since April, 2013 and despite ten years having elapsed, there is no possibility of reconciliation. The very fact that the parties were able to live together barely for one year and since April, 2013, they have been living separately proves that the parties were unable to sustain their matrimonial relationship. The gravamen of any marriage is the succor and the peace that the couple derive from the company of each other. Long separation and deprivation of conjugal relationship, with almost an impossible chance of reconciliation, is extreme kind of cruelty.

46. **In the considered opinion of this Court, we find no error in the conclusion of the learned Judge, Family Court that the acts of the appellant clearly amounted to cruelty towards the respondent and his family members which were of the kind that entitled him to divorce on the ground of ‘Cruelty’ under Section 13(1)(ia) of the Act, 1955.**

Desertion:

47. Now, coming to the aspect of Desertion, the respondent had also



sought divorce on this ground which was declined by the learned Judge, Family Courts by observing that there was no case made out even remotely as to desertion being on the part of the appellant. In this context, we may observe that the consistent case of the appellant is that she left the matrimonial home in the end of April, 2013. She has not been able to explain circumstances which compelled her to leave the home though she claimed that she had been beaten up but as already discussed above, her medical papers did not support her claim. Also pertinently, there is no denial that when the child was born, the respondent visited the hospital and also admittedly, paid the medical bills. Also, he stayed overnight as the appellant herself has deposed that while in the hospital, he spread false and defamatory allegations against her amongst the doctors and nurses to the extent that they could not visit the said hospital in future even for child's routine vaccination. He explained that he had remained throughout the night in the hospital on the day when his son was born. He also admitted that he had taken the child from nurse in the late night and was moving with the child in the lobby of the hospital outside the room. The appellant had also admitted in her cross-examination that the hospital bills were born by the respondent. This affirms the assertions of the respondent that on coming to know about birth of child, he did visit the hospital. The respondent has denied in his cross examination that he along with his friend Deepender Bawa created any scene in the hospital under the influence of liquor in the late night.

48. In the same vein, it is also pertinent to refer to the cross examination of the respondent wherein he admitted that he used to visit the house of the appellant during the nights to meet her between 1.30 AM to 3 AM though he



denied that he used to be under influence of liquor and used to create scene in the vicinity. These incidents have been explained by the respondent to be his efforts for reconciliation even after the registration of FIR. Though the respondent's senses, timings and conditions may not have been ideal but the only inference that can be drawn from his repeated visits at odd hours to the house of the appellant was that he in fact, intended to reconcile.

49. Another significant aspect which emerges from the cross-examination of the respondent-husband is that he stayed with the appellant for two days in Lamentary Hotel, Chandigarh in the year 2014. They had not picked the separate rooms as the room in the hotel had been booked for the appellant from her Company. Again, the conduct of the respondent only reflects that there was no intention of the respondent to part ways with the appellant and he continued to approach the appellant for reconciliation. It is the appellant who in the month of April, 2013 decided to call off the marriage and refused all his overtures for reconciliation.

50. The appellant has thus, withdrawn from the company of the respondent for the reasons of there being skirmishes over routine family matters and did not find it conducive to continue in the matrimonial relationship. She had an *animus deserendi* to leave the matrimonial relationship in April, 2013 itself and was not willing for any reconciliation thereafter. Thus, in the given circumstances, the learned Judge, Family Court wrongly concluded that there was no desertion on the part of the appellant.

51. We, on the appreciation of the evidence conclude that it is the **appellant who deserted the respondent entitling him to divorce also on the ground of 'Desertion' under Section 13(1)(ib) of the Act, 1955.**



52. Accordingly, We, for the reasons discussed above, dismiss the Appeal challenging the divorce granted under Section 13(1)(ia) of the Act, 1955, however, we conclude that the respondent is also entitled to divorce on the ground of 'Desertion' under Section 13(1)(ib) of the Act, 1955.

53. The Appeal is accordingly decided.

54. The pending applications, if any, stand disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 11, 2023

r/akb