

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

M.F.A. NO.4795 OF 2020 (IDA)

BETWEEN:

LEENA MONTEIRO
W/O ALWYN D'CRUZ
AGED ABOUT 42 YEARS
R/AT. FF5, DHANUSH PALACE APARTMENT
13TH MAIN, 7TH CROSS
NEAR SANA SUPER MART
VIJAYA BANK COLONY
BILEKALAHALLI, BEGUR HOBLI
BANNERGHATTA ROAD
BENGALURU-560043.

... APPELLANT

(BY MR. SATYEN BAJAJ, ADV.,)

AND:

ALWYN D'CRUZ
S/O LATE CHRISTOPHER D'CRUZ
AGED ABOUT 53 YEARS
RESIDING AT JYOTHI NILAYA
HOSAMANE EXTENSION
CHIKMAGALURU-577101.

... RESPONDENT

(BY MR. H.N. MANJUNATH PRASAD, ADV.,)

THIS MFA IS FILED U/S.55(1) OF THE DIVORCE ACT, 1869, AGAINST THE JUDGMENT AND DECREE DT.22.06.2020 PASSED IN MC NO.33/2020 ON THE FILE OF THE VII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE PETITION FILED U/S.10 OF INDIAN DIVORCE ACT.

THIS M.F.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 55(1) of the Indian Divorce Act, 1869 (hereinafter referred to as 'the Act' for short) arises out of judgment dated 22.06.2020, by which petition filed by the appellant under Section 10 of the Act seeking dissolution of marriage on the ground of cruelty, has been dismissed.

2. Facts giving rise to filing of this appeal in nutshell are that the appellant and the respondent were married on 17.05.1999 at Chikkamagalur. Out of the wedlock, a girl child was born on 06.10.2001. On 08.06.2017, the appellant filed a petition under

Section 10 of the Act. It was pleaded that family of the respondent has financial issues, which led to fights and arguments between parents, siblings and children. The respondent was unable to take care of the financial needs of the appellant. She therefore, decided to take up a job. It was averred that in order to support the respondent, she moved to UAE in 2008 and started working in Abu Dhabi Commercial Bank in October 2008. The appellant thereafter started paying of the debts of the family of the respondent and brought some agricultural properties in the name of respondent. However, despite the effort put in by the appellant, the respondent failed to be financially independent and instead of taking care of financial needs of the appellant was dependant on her.

3. In the year 2012, the appellant realized that the respondent as well as members of his family were draining her financially as well as emotionally. The

appellant therefore, decided to seek divorce and apprised the respondent about it. However, the respondent bluntly refused the proposal made by the appellant. The appellant with an object of giving her marriage another chance, took the respondent to UAE in the year 2012 and set up a salon there with an investor visa. However, by the end of the year 2013, the respondent expressed the intention to go back to India.

4. It is the case of the appellant that she has spent approximately Rs.60 Lakhs on respondent and his family and has been living away from her daughter. It was further pleaded that the respondent has failed to take care of the appellant and the appellant in fact has taken care of her husband's failed business ventures as well as loans and debts of his family.

5. Despite service of notice, the respondent did not appear before the Court and by an order dated 04.01.2018 was placed ex parte.

6. The appellant examined herself as PW1 and got exhibited 8 documents namely EX.P1 to P8.

7. The Family Court by the impugned judgment inter alia held that the appellant except financial transaction has failed to prove the ground of cruelty. It was further held that the appellant has failed to prove that the respondent has caused mental agony and has ill treated the appellant mentally. Accordingly, the petition filed by the appellant has been dismissed. In the aforesaid factual background, this appeal has been filed.

8. Learned counsel for the appellant while inviting the attention of this Court to the averments made in the petition as well as the examination in

chief of the appellant submitted that the appellant had proved that the Respondent had subjected the appellant to cruelty. It ought to have been appreciated by the Family Court that the Respondent despite service of notice did not appear before the Family Court and had not entered the witness box. It is also submitted that no evidence in rebuttal was led and therefore, the version of the appellant ought to have been accepted. On the other hand, learned counsel for the Respondent has supported the judgment and decree passed by the Family Court.

9. We have considered the arguments advanced on both the side and have perused the record. It is trite law that standard of proof in a case of matrimonial dispute pertaining to cruelty cannot be said to be applicable as is applicable in case of trial in the Code of Criminal Procedure. However, the parties to the dispute is required to describe the measure and

standard of cruelty and to lead cogent evidence to succeed in the plea of dissolution of marriage on the ground of cruelty. [**See: 'MAYADEVI vs. JAGDISH PRASAD, AIR 2007 SC 1426**].

10. In celebrated case of **'DASTANE VS. DASTANE', AIR 1975 SC 1534**, the Supreme Court while dealing with cruelty as a ground for divorce has held that in a case for divorce on the ground of cruelty, the conduct charged as cruelty is to be of such a character so as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for the petitioner to live with the respondent. It was further held that it was not necessary that cruelty must be of such nature as to cause danger to life limb or health or as to give rise to a reasonable apprehension of such a danger of harm or injury to health or reputation or the like would be

an important consideration in determining whether the conduct of the respondent amounts to cruelty or not. It was also held that the question of cruelty as ground for divorce has to be determined on the basis of facts and circumstances of each case.

11. In **SAMAR GHOSH VS JAYA GOSH (2007) 4 SCC 511**, the Supreme Court inter alia has elaborated the instances of mental cruelty which are reproduced below for the facility of reference:

No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(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.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and

similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty;

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(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.

12. In the instant case, the appellant has examined herself. She has placed on record Ex.P6 to P8 viz., Statement of Accounts which reflect that

various transactions amounting to Rs.60 Lakhs in all have been made in favour of the Respondent. If the examination in chief of the appellant is read in its entirety, it is evident that the Respondent has treated the appellant as a cash cow and had a materialistic attitude towards the appellant. The Respondent had no emotional ties with the appellant. The attitude of the respondent in itself has caused mental agony and emotional trauma to the appellant which is sufficient to make out a ground of mental cruelty. The Family Court has grossly erred in not appreciating the version of the appellant and it ought to have been appreciated that the testimony of the appellant was not even put to cross examination. Therefore, there is no convincing reason not to accept the uncontroverted testimony of the appellant. Thus, the ground for dissolution of marriage on the ground of cruelty as provided under Section 10(X) of the Act is made out.

For the aforementioned reasons, the impugned judgment and decree dated 22.06.2020 is hereby set aside and the marriage between the parties is dissolved by a decree of divorce under Section 10(X) of the Act.

In the result, the appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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