IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:59093-DB
A.F.R.

RESERVED

Judgment Reserved on: 21.08.2024
Judgment Delivered on: 30.08.2024

Court No. - 2

Case :- FIRST APPEAL No. - 11 of 2023
Appellant :- Apoorva Gupta @ Apoorva Kumar Gupta
Respondent :- Vandana Gupta
Counsel for Appellant :- Akshat Kumar,Sanjay Kumar Srivastava
Counsel for Respondent :- Sagar Singh,Jyoti Prakash,Shri Ram Maurya

Hon'ble Rajan Roy J.
Hon'ble Subhash Vidyarthi J.

(Per: Subhash Vidyarthi, J.)

1. By means of the instant appeal filed under Section 19 of the Family Courts Act, the appellant has challenged the validity of a judgment and decree dated 08.02.2022, passed by the First Additional Principal Judge, Family Court, Hardoi, in Regular Suit No.607 of 2019: Apoorva Gupta versus Vandana Gupta, under Section 13 of Hindu Marriage Act, 1955.

2. In response to a notice issued by this Court, the respondent had put in appearance by filing a Vakalatnama appointing three learned Advocates to represent her before this Court. The appeal was admitted by means of an order dated 13.01.2023 and the trial court's record was summoned. Thereafter the following order was passed on 07.08.2023:

> *"1. The appeal was mentioned by leaned counsel for the appellant. A written notice has also been served to learned counsel for the respondent namely Sri Ram Maurya.*
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> *2. Learned counsel for the respondent has failed to appear when the case was called out.*
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> *3. The case is ready for hearing.*

4. List this matter for ex-parte hearing. Let a notice be sent to the respondent along-with a copy of this order about the date fixed.

5. List in the week commencing 21.8.2023."

3. The office has reported on 13.12.2023 that the notice issued to the respondent has been served through her mother, which is sufficient service, but she has not put in appearance before this court to oppose the appeal and, therefore, the appeal was heard ex-parte on 21.08.2024.

4. In the plaint filed on 06.08.2016 before the Principal Judge, Family Court, Hardoi, the plaintiff-appellant pleaded that the parties got married on 14.04.2012 at Hardoi. The defendant stated that she would not live in Mallawan town and will live at Delhi. The plaintiff kept her at Delhi for some time but when a proper arrangement for residence at Delhi could not be made, he kept the defendant at Mallawan with his parents. The defendant did not cooperate in performance of the house-hold chores and she went away with her father and she took away all her clothes and jewelry with her. The defendant had lodged a false criminal case against the plaintiff, his parents and both his sisters, in which the plaintiff and his family members were acquitted and accepting the defendant's condition that she will not go to Mallawan, the plaintiff started living with her at Delhi. For this reason, the plaintiff's parents severed their relations with the plaintiff and they deprived him of all the rights in their properties.

5. On 09.05.2014, the defendant went to live with her parents and she delivered a baby girl in a Nursing Home on 12.07.2014, in which the plaintiff rendered his full cooperation, but some quarrel took place there and the plaintiff was threatened and turned away and he was not involved in the ceremonies of his daughter. The plaintiff used to send money-orders for some time but later on the defendant declined to accept the same and she did not let the plaintiff meet his daughter.

6. The plaintiff further pleaded that false complaints were made by the defendant against him and the Women's Commission held mediation between the parties, but the defendant did not agree to live with the plaintiff or to let him meet his daughter. The defendant treated the

plaintiff in a cruel manner, she did not cooperate in house-hold chores at Delhi, she indulged into quarrel and beatings almost on daily basis and she got the plaintiff threatened for his life by her brothers. The plaintiff also pleaded that the defendant was living separate from him for the past two years without any cause and she was threatening to entangle him in a false case.

7. The defendant filed a written statement in the suit denying the plaint allegations and she alleged that she was harassed for demanding dowry and the plaintiff left her at her father's residence on 09.05.2014 and since then he did not even inquire about her well being. The defendant stated that she was willing to perform her conjugal obligations.

8. The Family Court framed the following two issues: -

   (1) Whether the plaintiff is entitled to get his marriage dissolved on the basis of averments made in the plaint?

   (2) To what relief is the plaintiff entitled?.

9. The plaintiff examined himself as PW-1 by filing his affidavit as his examination-in-chief, wherein he reiterated the plaint averments. In his cross-examination, the plaintiff stated that on 24.06.2013, the defendant had lodged an F.I.R. under Sections 498-A, 323, 324, 504, 506 I.P.C. and Sections 3/4, Dowry Prohibition Act against the plaintiff, his parents and two sisters. He further stated that the defendant had deserted him without any reason for the past four years but as he had a threat of his life and property from the defendant, he did not want to live with her.

10. One Sanjay, who works in a shop situated near the plaintiff's house and who claims to know the parties very well, was examined as PW-2 and the plaintiff's father Anup Kumar Gupta was examined as PW-3 and they also supported the plaintiff's version. The plaintiff's father stated in his cross-examination that the defendant's father has filed a case under Sections 452, 323, 504, 506 I.P.C. in the year 2015 against him and the plaintiff.

11. The defendant examined herself as OPW-1 and she declined all the plaintiff's allegations and she further stated that although the plaintiff used to beat her, she does not have any life threat from him and she wants to live with the plaintiff.

12. The defendant's father Umesh Chandra Gupta was examined as OPW-2, who stated in his examination-in-chief that as a settlement had been arrived at during mediation, the dowry case was got closed by all the witnesses turning hostile. However, no written settlement was entered into between the parties. In his cross-examination. He stated that there was some old relationship between his family and the family of the plaintiff. He admitted that the plaintiff had sent some amount to the defendant through money-order, but without disclosing the amount, he said that it was a meager amount. He stated that he did not understand the meaning of the word 'hostile' used in his affidavit filed as his examination-in-chief.

13. In documentary evidence, the plaintiff filed a copy of the complaint no. 3337 of 2015 filed by the defendant's father against the plaintiff and his father under Section 452, 323, 504, 506 I.P.C. in the Court of the Chief Judicial Magistrate, Hardoi, a copy of F.I.R. relating to Case Crime No. 343 of 2013 under Sections 452, 323, 504, 506 I.P.C. filed by the plaintiff in Police Station Mallawan against the defendant's father and three other persons and a copy of the charge-sheet dated 29.07.2013 filed in respect of that F.I.R.

14. The Family Court dismissed the suit for divorce by means of the impugned judgment and decree dated 08.02.2022 holding that after the F.I.R. was lodged by the defendant, the parties had entered into a settlement and resumed cohabitation and, therefore, the occurrences that had taken place prior to it cannot be taken into consideration for adjudicating whether the defendant has treated the plaintiff with cruelty. Cases have been lodged against each other by persons of both the sides and, therefore, filing of a false case cannot be a ground for granting a decree of divorce. Minor differences in matrimonial relationships are normal and the same cannot be termed as cruelty.

15. Rejecting the claim of divorce on the ground of desertion, the Family Court held that the parties resided together happily as husband and wife till 12.07.2014, the plaintiff has not made any efforts for resuming cohabitation thereafter whereas the defendant has expressed willingness to resume cohabitation with the plaintiff and, therefore, the ground of desertion is not established.

16. The following points arise for determination in this appeal: -

a) Whether the facts and circumstances of the case evidenced by the material available on record make out the grounds of cruelty and desertion?

b) Whether the judgment and decree passed by the Family Court dismissing the suit for divorce is sustainable in law?

17. In **Rakesh Raman v. Kavita**, 2023 SCC OnLine SC 497, the Hon'ble Supreme Court has explained the meaning of the word "cruelty" used in Section 13 of the Hindu Marriage Act in the following words: -

> ***"18.*** *Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behavior" in a matrimonial relationship. While dealing in the case of Samar Ghosh [Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511] this Court opined that cruelty can be physical as well as mental:—*
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> > *"46…If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.*
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> ***19.*** *Cruelty can be even unintentional:—*
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> *…The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."*
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> ***20.*** *This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:*

(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.

(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."

(Emphasis supplied by the Supreme Court)

18. The appellant holds decrees of Bachelor of Technology and Master of Business Administration and is working as a Software Engineer. He got married to the respondent on 14.04.2012. It is evidence from the material available on record that both the parties belong to reputed families. On 24.06.2013, the defendant had lodged an F.I.R. under Sections 498-A, 323, 324, 504, 506 I.P.C. and Sections 3/4, Dowry Prohibition Act against the plaintiff, his parents and two sisters and the plaintiff and his family members were acquitted in that case by means of a judgment and order dated 18.02.2014 passed by the learned Additional Chief Judicial Magistrate, Court No. 5, Hardoi. Thereafter the parties resumed cohabitation, which could continue only for a brief period, as the respondent had left the appellant's house at Delhi on 09.05.2014 and she never returned to him. The appellant last met the respondent on 12.07.2014 at a nursing home where she had delivered a baby girl. On the last visit of the appellant, he was assaulted by the family members of the respondent and he had filed an application under Section 156 (3) Cr.P.C. in this regard, which was registered as a complaint, the accused persons were summoned and bailable warrants were issued against them due to their non-appearance and the case is still pending. Since then, the respondent

did not return to live with the appellant and there has not been any connect or communication between the parties. In his cross examination, the appellant stated that the parties resided together merely for about one year in all and that the respondent had deserted him for a period of about four years without any reason. The appellant also stated that he apprehends a life threat in living with the respondent and he had does not trust her.

19. The appellant had filed Writ Petition No. 12317 of 2017 for issuance of a Writ of Habeas Corpus for custody of his daughter and the matter was referred to mediation, but to no avail.

20. Now a period of more than a decade has elapsed since the parties started living separately. The respondent is not contesting the appeal in spite of service on notice having been issued by this Court twice. The first notice was issued on the application for condonation of delay in filing the appeal, in response to which she had appeared through Counsel, but she preferred not to file any objection. Thereafter the application for condonation of delay in filing the appeal was condoned and the appeal was admitted. When the respondent's Counsel did not appear before this Court, another notice was issued to the respondent on 07.08.2013, which was also served on her but she did not appear so as to give this Court an opportunity to make efforts for an amicable settlement between the parties. She has not come forward to oppose the pleas of the appellant.

21. When we examine the aforesaid facts in light of the law explained in **Rakesh Raman** (Supra), we find that the parties are living separate from each other for a period exceeding a decade and the appellant has not been able to meet his daughter even once during this period. These facts are sufficient to cause acute mental pain, agony and suffering to both the parties and it would make it impossible for the parties to live with each other, which would come within the broad parameters of mental cruelty. The long period of continuous separation of a decade establishes that the matrimonial bond is beyond repair. The marriage between the parties has become a fiction, though supported by a legal tie. In such situation, it leads to mental cruelty. Though the

respondent's refusal to live with the appellant may be without any intention of inflicting cruelty upon him, it would not make any difference, as intention is not a necessary element in cruelty. The appellant cannot be denied relief on this ground. By refusing to severe the tie between the plaintiff and the defendant, the Family Court has not served the sanctity of marriage; on the contrary, it has shown disregard for the feelings and emotions of the parties, which are not affectionate towards each other. Therefore, we are of the considered view that the peculiar facts and circumstances of the case make out a case for grant of divorce on the ground of cruelty.

22. The term "desertion" has been explained by the Hon'ble Supreme Court in **Debananda Tamuli v. Kakumoni Kataky**: (2022) 5 SCC 459, in the following words: -

> ***"7.*** *...The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.*
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> * * *
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> ***8.*** *The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence."*

23. The respondent had left the appellant's house on 09.05.2014 and she did not return to live with him till date, i.e. for more than a decade. The respondent is not contesting the appeal, which shows that she has no interest in her relation with the appellant and which indicates that the respondent has abandoned the relationship between herself and the appellant and an *animus deserendi* on her part, which is sufficient to constitute desertion.

24. In view of the aforesaid facts, we are of the considered view that the respondent has deserted the appellant.

25. The aforesaid facts are sufficient for grant of a decree of divorce in favour of the plaintiff-appellant. The Family Court has erred in dismissing the plaintiff's suit for grant of divorce.

26. In view of the aforesaid discussion, our decision of the points involved in this appeal is as follows: -

a) The facts and circumstances of the case evidenced by the material available on record make out the grounds of cruelty and desertion.

b) The judgment and decree passed by the Family Court dismissing the suit for divorce is unsustainable in law.

27. Accordingly, the appeal is ***allowed***. The judgment and decree dated 08.02.2022, passed by the First Additional Principal Judge, Family Court, Hardoi, in Regular Suit No.607 of 2019: Apoorva Gupta Versus Vandana Gupta, under Section 13 of Hindu Marriage Act, 1955 is set aside and the suit is decreed. A decree of divorce is granted in favour of the plaintiff dissolving his marriage with the defendant-respondent, which was solemnized on 14.04.2012.

28. Costs of the litigation made easy.

[Subhash Vidyarthi J.] [Rajan Roy J.]

Order Date: 30.08.2024
Ram.

Digitally signed by :-
RAM SINGH
High Court of Judicature at Allahabad,
Lucknow Bench