

Court No. - 39

Case :- FIRST APPEAL No. - 253 of 2007

Appellant :- Mahendra Prasad

Respondent :- Smt. Bindu Devi

Counsel for Appellant :- Sankatha Rai,S.N. Pandey

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Sri Himanshu Pandey, learned counsel for the appellant and Sri Shashank Kumar, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, arising from judgment and order dated 9.8.2004 passed by Ist Additional District Judge, Ghazipur in Divorce Petition No. 54 of 2001 (Mahendra Prasad Vs. Smt. Bindu Devi), whereby the learned Court below has dismissed the divorce suit instituted by the present appellant.

3. The appellant had pressed two grounds. First ground of mental cruelty has been pressed attributed to conduct offered by the respondent. Also, the ground of desertion has been pressed. Both grounds alleged have not been found established by the learned Court below.

4. Parties were married on 26.2.1990. 'Gauna' ceremony is described to have taken place on 4.12.1992 . On 2.12.1995, a male child was born to the parties. The parties resided together, intermittently. The appellant describes total duration of that cohabitation upto 8 months, from the date of marriage upto December, 1996, when the parties last cohabited. On the other hand, the respondent claims that parties continued to live together, though intermittently, upto August, 2001. At the same time, it is admitted to the respondent that parties have not cohabited since then. Even according to the respondent, 23 years have passed. Parties have remained separated. Only child born to them, has now attained the age of majority. He would

be about 29 years of age. No proceeding for restitution of conjugal rights has been witnessed, at the instance of the respondent.

5. Though, the issue of cruelty is alleged, we are unable to accept the submissions being advanced inasmuch as only this much has been stated that the respondent has been a free-willed person, who would go out of her own to the market and other places and did not observe 'Parda'. Further, insofar as the such acts and other acts have been attributed to the respondent, it is difficult to accept the same as acts of cruelty committed, inasmuch as both parties are well educated. The appellant is a qualified Engineer, whereas the respondent is a government teacher. Difference of perception towards life may give rise to different behaviours by individuals. Such difference of perception and behaviour may be described as cruel by the others by observing the behaviour of another. At the same time, such perceptions are neither absolute nor such as may themselves give rise to allegations of cruelty unless observed and proven facts are such as may be recognized in law to be acts of cruelty. The act of of the respondent being free-willed or a person, who would travel on her own or meet up with other members of the civil society without forming any illegal or immoral relationship, may not be described as an act of cruelty committed, in these facts.

6. The other act of cruelty attributed to the respondent, is of causing verbal insults to the appellant for reason of his poor economic status. In that regard, it is not disputed to the parties that their marriage was arranged. Thus, families were known to each other. It is not the case of the appellant that his family status was not known to the respondent. Still their marriage was arranged and solemnized. The respondent has lived with the appellant (for sometime), at the paternal home of the appellant. The respondent has also given birth to a child. Thus, normal relations have also existed between the parties. The acts of insults that were allegedly caused by the respondent have neither been described with details of time or place of occurrence, nor such acts have been proven before the learned Court below. To that extent, we find no error in the order of the learned Court below in not acting on the

plea of insults caused by the respondent. As to the act of immoral relations alleged by the respondent, no conclusive evidence could be led by the appellant. Besides, the allegation of the respondent having formed immoral relationship with a person described as 'Punjabi Baba', no other fact was attempted to be proved and no direct or credible evidence could be led. The evidence led was inconclusive. As to the occurrence, the learned Court below has rightly refused to act on the same, inasmuch as it could not be proven that the respondent had formed adulterous relationship with the said 'Punjabi Baba' or that she had lived with that person at his dwelling house. The fact proven before the learned Court below was that the said person had lived in the residential colony of the appellant and that he was forced to leave the same, occasioned by protests of the residents of the area. As to the reason of such protests, it could not be established that amongst others, the resident 'Punjabi Baba' has formed any immoral or other relationship with the respondent.

7. At the same time, the case of the appellant that parties have barely cohabited and they remained separated for reason of the respondent having parted company, cannot be doubted. On one hand, the appellant had led clear evidence to establish that the parties barely cohabited for few months between 1990 to 1995, when the (only) male child was born in 1995. The respondent admitted that the parties had lived separately but that she would visit her matrimonial home intermittently, and stay there for a few days, at a time. She last visited her matrimonial home in 1996, on the occasion of 'Mundan' ceremony of the son born to the parties. What happened thereafter i.e. between 1996 to 2001, is disputed. While, the appellant claims that parties never cohabited thereafter, the respondent only asserts that she last resided with the appellant in the year 2001. However, no credible evidence exists and no other detail was provided as may have led the learned Court below to believe that the parties had cohabited within two years from the date of institution of the divorce suit, on 14th August, 2001. Since then i.e. institution of the suit, parties have remained separated for a long period of 23 years. Mediation was attempted, but failed. On query made, learned counsel for the respondent states that it is not possible for the parties to reside together. Yet, respondent is not agreeable

to divorce.

8. That being the position, it has to be stated that the parties have lived separately for more than 23 years. In about 35 years of their marriage, they have barely cohabited over few years, that too, intermittently. As to the reason for separation suffered, in view of the statement made by learned counsel for the respondent that the parties are unable to live together, it cannot be denied that the respondent is unable to persuade herself to cohabit with the appellant and revive her matrimonial relationship. The above conduct is attributable to the respondent. She has denied to live with the appellant. Once such status exists, the conduct offered by the respondent, may itself constitute an act of cruelty to the extent the respondent may only be seeking to keep alive a legal fiction of her marriage, without any reason subsisting with her to keep alive that relationship.

9. Recently, in **Rakesh Raman Vs. Kavita, 2023 AIR (SC) 2144**, the Supreme Court relied on its earlier decision in **Samar Ghosh Vs. Jaya Ghosh, (2007) 4 SCC 511**. In that, it has been observed as below:

"16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration. In [Samar Ghosh v. Jaya Ghosh](#), (2007) 4 SCC 511 a three judge Bench of this Court had dealt in detail as to what would constitute cruelty under [Section 13 \(1\) \(ia\)](#) of the Act. An important guideline in [the above decision](#) is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in a given case has to be gathered from injurious reproaches, complaints, accusations, taunts, etc. The Court relied on the definition of cruelty in matrimonial relationships in Halsbury's Laws of England (Vol 13, 4th Edn, Para 1269, Pg 602) which must be reproduced here:

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders

them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

The view taken by the Delhi High Court in the present case that mere filing of criminal cases by the wife does not constitute cruelty as what has also to be seen are the circumstances under which cases were filed, is a finding we do not wish to disregard totally, in fact as a pure proposition of law it may be correct, but then we must also closely examine the entire facts of the case which are now before us. When we take into consideration the facts as they exist today, we are convinced that continuation of this marriage would mean continuation of cruelty, which each now inflicts on the other. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty" [Section 13 (1) (ia) of the Hindu Marriage Act, 1955]. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (ia) of the Act.

17. 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* (supra) this Court opined that cruelty can be physical as well as mental:

"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.

Cruelty can be even unintentional: -

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 illtreatment."

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)

18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under [Section 13\(1\) \(ia\)](#) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

10. Keeping in mind the law laid down by the Supreme Court, we find the finding recorded by the learned Court below as to mental cruelty, may not be sustained.

The appellant may claim mental cruelty committed by the respondent, to the extent she has deserted the appellant, for very long. In any case, the respondent is found to have deserted the appellant and to have sustained that desertion for a long period, which has now exceeds 23 years. That wilful act of the respondent and her refusal (even now) to cohabit with the appellant to revive her matrimonial relationship appears to be an act of desertion committed of degree as may itself lead to dissolution of her marriage. Here, we note, the respondent has not only refused cohabitation with the appellant, but she has also never made any effort to seek restitution of her conjugal rights.

11. Insofar as the permanent alimony is concerned, both parties are gainfully employed. The only child born to them has remained in the custody of the respondent. He is about 29 years of age. Therefore, neither any prayer has been made nor any occasion exists to provide for permanent alimony.

12. Accordingly, the appeal is allowed. The impugned judgment and order dated 9.8.2004 passed by Ist Additional District Judge, Ghazipur in Divorce Petition No. 54 of 2001, is set aside. Marriage between the parties is dissolved, from today. No order as to costs.

Order Date :- 10.12.2024

Noman

(Donadi Ramesh, J.) (S.D. Singh, J.)