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

% *Date of decision: 24th August, 2023*

+ **MAT.APP.(F.C.) 136/2022, CM APPL. 39535/2022**

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..... Appellant

Through: Mr. Nikhil Mann and Mr. Shalabh Bhardwaj, Advocates with appellant in person.

versus

████████████████████

..... Respondent

Through: Ms. Koplín K. Kandhari, Advocate through Video Conferencing. Respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

NEENA BANSAL KRISHNA, J

1. The present Matrimonial Appeal under Section 19 of the Family Court Act, 1955 has been filed on behalf of the appellant against the judgment and decree dated 24.05.2022, passed by learned Judge Family Court, Patiala House Courts, New Delhi, vide which her petition under Section 13(1)(ia) and (ib) of HMA, 1955 for grant of divorce on the grounds of cruelty and desertion has been dismissed.

2. It was asserted in the divorce petition that the appellant and the respondent got married on 05.02.2013 according to Hindu rites and customs. Parents of the respondent had expired long ago and he was living with his



maternal aunt (Mausi) Ms. Kamla and her family. The appellant claimed that soon after the marriage she was subjected to physical and mental torture and various atrocities were meted out to her which she continued to tolerate in the fond hope that with passage of time things would get settled. However, the atrocities of the respondent and the family members increased day by day since their sole aim was to get rid of the appellant so that they could marry of the respondent to some other girl of some affluent family.

3. The appellant further asserted that Surjeet her brother-in-law (devar) forcibly took away her ATM card and withdraw a sum of Rs.5,000/- on 09.02.2013. She was forced to part with money from time to time and when she apprised the maternal aunt Smt. Kamla, she was told to keep quite. The appellant thereafter came to her paternal home on 14.03.2013 along with her elder brother, but was left at her matrimonial home on 22.03.2013. Smt. Kamla had visited their house and on meeting told her that she should bring Rs.1 lakh as the said amount had to be paid to someone. The appellant, however, expressed her inability and after reaching matrimonial home she found the atmosphere totally hostile. A demand of Rs.2 lakhs was also made for opening the electrical appliance shop by the respondent.

4. The appellant became pregnant on 23.03.2013 but was forcibly administered the medicine which resulted in the abortion of the child. Despite her repeated requests, she was not taken to the Doctor, but was abused and humiliated. Finally, she was made walk to Satyam Nursing Home, Katwaria Sarai and without apprising the Doctor of her medical condition some medicines were prescribed along with bed rest, but she was made to work. Because of the physical and mental torture it became impossible for her to continue to live in her matrimonial home. It was also



alleged that she had observed the respondent having more inclination towards his sister-in-law (bhabhi) Kanika @ Krishna and he would offer her costly gifts. The suspicion of the appellant turned into a reality when she found the respondent leaving her bed room at odd hours in the night. Whenever she questioned him, he threatened her with dire consequences.

5. On 26.04.2013 the respondent and his family members made a demand of Rs.1 lakh and when the appellant refused to accede to their demand, Smt. Kamla hit her head against the wall by catching her hair. Eventually, the appellant realized that it was not a cultured and respectable family which she had expected and her life was put in eminent danger.

6. On 10.05.2013 Prateek her devar entered into her bed room and tried to have physical relationship and when she inquired from him about the respondent, he retorted that the respondent was with his girlfriend and it was he only who had sent the devar to the room of the appellant. She raised an alarm, on hearing which Smt. Kamla and her son Surjeet came into the bed room and behaved as such incidents were normal. The respondent returned at about 12:30 A.M and threatened the appellant to act as per his dictation or he would not let her live peacefully in her matrimonial home. Thereafter, she was given merciless beatings by the respondent and his family members because of which she suffered injuries and became unconscious. In the morning when she regained consciousness, she found her mobile phone missing. She made a request to Smt. Kamla to return her mobile phone, but she flatly refused.

7. The appellant then went to her parental home where she was treated by the Doctor from 11.05.2013 to 07.07.2013 but respondent or his family members did not come to inquire about her well being. On 07.07.2013 the



family members of the appellant went to her matrimonial home where Shri Mahipal paternal uncle of the respondent was present and he told that Smt. Kamla was no longer interested to keep her and offered a sum of Rs.12 lakhs for taking divorce. The appellant further asserted that she was deserted by the respondent on 11.05.2013 and despite repeated efforts he refused to take back the appellant because of which she was compelled to continue to live in her paternal home.

8. The appellant filed a complaint under Section 12 of D.V. Act, which is pending disposal before the learned M.M. She has been awarded Rs.2,000/- per month towards maintenance and Rs.5,000/- per month towards rent vide Order dated 29.01.2015. However, there are arrears of about Rs.2 lakhs which are still to be paid by the respondent. The respondent refused to pay the money and was in the judicial custody on account of non-payment of the maintenance.

9. Further, the appellant got an FIR No.64/2014, P.S. CWC, Nanakpura under Section 498A/406/313/323/34 IPC registered in which the charge sheet has already been filed under 173 Cr.P.C against the respondent and his family members. The appellant claimed that it has become impossible for the parties to live together and hence sought divorce on the grounds of desertion and cruelty under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955.

10. The Respondent failed to file the Written Statement and the right to file the same was closed vide Order dated 16.12.2019. The respondent thereafter moved an application for recalling of the Order dated 16.12.2019 and also placed his Written Statement on record. The application was allowed subject to cost. However, the respondent stopped appearing and did



not pay the cost. The written statement, therefore, was not be taken on record.

11. In support of her assertions, the appellant examined herself as PW1.

12. The learned Judge, Family Court on appreciation of the testimony of the appellant observed that the medical documents relied upon by the appellant did not pertain to the pleadings of the case. Her claim of harassment on account of dowry was found to be unsubstantiated as no family member to corroborate her testimony, was examined. It was thus concluded that the appellant has not been able to prove that she was subjected to cruelty or that the respondent had deserted the appellant and the divorce petition of the appellant was accordingly, dismissed.

13. Aggrieved the present appeal has been preferred by the appellant.

14. **Submissions heard.**

15. The appellant in her testimony had deposed that she was subjected to dowry demands, harassment and was beaten and tortured on various occasions and was treated like a maid servant in the house. She had asserted that money was demanded from her to enable the respondent to set up his business. Though it is true that the evidence on record is by way of sole testimony of the appellant and no other family member has been examined but it cannot be over looked that there is no challenge to her testimony.

16. The appellant in support of physical abuse and cruelty had deposed that she was beaten on 11.05.2013 for which she remained under treatment till 07.07.2013. She produced her Medical Card dated 30.08.2013 Ex.PW1/D with “**alleged history of assault and attempt to strangulate**”. She even produced the photographs showing injuries on her face, neck and leg. An FIR under Section 498A/406/313/323/34 IPC was registered on her



complaint thereby substantiating her claim of having been subjected to assault by the respondent. Incidentally, the respondent failed to contest the petition as his written statement was not taken on record or questioned the testimony of the appellant to the extent permissible under law by way of cross-examination.

17. It is also pertinent to refer to another set of medical documents of 24.10.2014 and of subsequent dates, of DDU Hospital. In the absence of any rebuttal by the respondent it has to be held that her testimony of being subjected to physical assault stands corroborated by the medical documents. Merely because the parties got married and the respondent was her husband, no law gave him the right to subject his wife to beatings and torture. Such conduct of the respondent necessarily qualifies as physical cruelty entitling the appellant to divorce under Section 13(1) (ia) of Hindu Marriage Act, 1955.

18. The petitioner has further deposed that she was left at her parental home on 11.05.2013 in an injured condition and thereafter despite her efforts, the respondent failed to take her back to the matrimonial home. Again, the respondent has not explained the circumstances in which the appellant had been left at her matrimonial home. He has also not countered the testimony of the appellant that she was not brought back to the matrimonial home, for which there existed no reason. It is proved that the respondent had failed to resume the companionship with the appellant and thus not only there existed physical separation but it was also coupled with “animus” of not bring back the appellant to the matrimonial home. That the respondent had no intention of resuming the matrimonial relationship which also got reflected when he chose not to contest the petition. The petition for



divorce has been filed after more than two years of separation and therefore the appellant is also entitled to divorce on the ground of desertion under Section 13 1 (ib) of the HMA.

19. Before concluding it is also significant to note that the respondent who is present in the Court has also stated that he has no objection to the grant of divorce.

20. We accordingly find merit in the appeal and the marriage between the appellant and the respondent is hereby dissolved.

21. The appeal is allowed and all the pending applications are hereby disposed of, accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 24, 2023

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