

Sneh Lata Vs. Ashok Kumar Dhull

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Court : Delhi

Decided On : Nov-12-2014

Judge : Sunil Gaur

Appellant : Sneh Lata

Respondent : Ashok Kumar Dhull

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

12. h November, 2014 + MAT. APP. No.97/2007 SNEH LATA Through: Appellant Mr. R.P.Sharma & Mr. Shivendu Kaushik, Advocates versus ASHOK KUMAR DHULL Through: Respondent Mr. Pankaj Vivek, Ms. Anupriya Singh & Mr. Atul Tripathi, Advocates CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL) % Appellant is the wife, who assails impugned judgment of 7th September, 2007 vide which respondent-husband has been granted divorce on the ground of cruelty and desertion. The factual matrix of this case has already been spelt out in the opening paragraph of the impugned judgment and needs no reiteration. Suffice it would be to note that parties were married on 8 th June, 1980 in Delhi and of the three children born out of this wedlock, unfortunately one son expired on 4th June, 2000, thus, the parties presently have one living daughter and one son. Appellant is a primary teacher in MCD and respondent is also a

teacher. According to respondent, the appellant used MAT. APP. No.97/2007 Page 1 to leave the matrimonial house to an undisclosed destination and return after 10-15 days. The secret visits were virtually quarterly and there used to be frequent quarrels between the parties. At trial, respondent had deposed as PW-1 and his mother-Mahima Devi deposed as PW-2 to substantiate the allegations of cruelty meted out by appellant to respondent. To corroborate his version, respondent had got examined a mason-Vijay Kumar (PW-5) and two police officials (PW-3 & PW-4) to prove that respondent had made a criminal complaint but it was registered as a kalandara under Section 107 of Cr.P.C. which was ultimately compromised. According to respondent, he has been forced to live away from appellant in a room on the first floor whereas the rest of the family lived on the ground floor and appellant had refused to cook meals for respondent and for two years prior to filing of the divorce respondent had been taking his meals from one Janak Dhaba. It is also the case of the respondent that he was assaulted by appellant and children on 3rd July, 2003 and since July, 2001 appellant has refused to cohabit with the respondent. On the contrary, stand of appellant herein before the trial court was of denial and it was asserted by appellant that she had given `20,000/- on 19th September, 2003 and she was living with respondent like a good wife and sought dismissal of the petition for divorce. Divorce proceedings concluded with the passing of the impugned judgment. The findings returned in the impugned judgment are as under:

The petitioner has been able to establish that respondent ignored her responsibilities by staying away from the matrimonial home without intimating the petitioner and the respondent declared her desire to desert the petitioner. The conduct of the MAT. APP. No.97/2007 Page 2 respondent in taking away the articles from the joint locker and then asking the petitioner to remain separate, clearly indicate that she deserted the petitioner with a view to end the relationship of husband and wife. The incidents whereby the petitioner was insulted and beaten up have also been established. No effective cross examination of the petitioner was conducted so as to dispute the testimony of the petitioner. It is also not disputed in evidence by the respondent that petitioner was forced to leave the matrimonial home ultimately in February, 2004 although the parties were already living separately from July 2001. All this caused mental and physical cruelty to the

petitioner as well as the conduct of the respondent amounts to desertion on her part.

At the final hearing of this petition, it was vehemently contended by learned counsel for appellant the evidence given by respondent is beyond pleadings and trial court has erred in relying upon the evidence of the respondent to grant the decree of divorce. It was also urged by appellants counsel that the parties had gone together to Trade Fair on 26th November, 2004 and they had attended the marriages of the relatives together in the year 2004. Reliance was placed by appellants counsel upon decisions in Naveen Kohli v. Neelu Kohli AIR 2006 SC1675 Savitri Pandey v. Prem Chandra Pandey I (2002) DMC177(SC), J.L.Nanda v. Smt. Veena Nanda AIR 1988 SC407 P.Malleswaramma v. P.Prathap Reddy AIR2006 Andhra Pradesh 4, Kulwant Singh v. Dalbir Kaur II (2005) DMC353P&H High Court, Jagat Singh v. Sarojini Devi I (2002) DMC6450P&H High Court and Smt. Maya v. Brij Nath AIR MAT. APP. No.97/2007 Page 3 1982 Delhi 240. Learned counsel for respondent submits that there is nothing to show that evidence led by respondent is beyond the pleadings and there is no effective cross examination of respondent. Respondents counsel points out that the averments regarding the visit of both the sides to Trade Fair and their attending marriage parties of relatives is not pleaded in the written statement by the appellant. Lastly, it is submitted that decisions relied upon by appellant are distinguishable on facts and there is no merit in this appeal. After having heard learned counsel of the parties and perusal of the impugned judgment and evidence on record and the decisions cited, I find that ordinary wear and tear of married life cannot amount to cruel conduct and the cruelty inflicted must be of grave nature. It is equally true that a non-resumption of cohabitation will be a ground for divorce and if parties have lived together even after filing of the divorce petition then this aspect has to be kept in mind. However, it is cardinal principle of appreciation of evidence that no amount of evidence can be looked into on a plea which is beyond the pleadings. However, the legal proposition as enunciated in the relied upon decisions has no application to the facts of the instant case as respondents deposition alleging cruelty is not effectively refuted in the cross examination of respondent. It has come in evidence that appellant herein used to abuse respondent and used to tell him about her relations with Mahender and

Virender and used to ridicule respondent in presence of the children, which caused immense embarrassment and mental torture to respondent. Appellants assertion of going to Trade Fair in November, 2004 MAT. APP. No.97/2007 Page 4 alongwith respondent and of their attending marriages of relatives has not been put to respondent in cross examination nor there is assertion of these facts in pleadings of appellant. Therefore, appellant cannot be heard and say that she is having cordial relations with respondent, who is admittedly living away from appellant. Infact, the evidence of appellant cannot be looked into, in absence of pleadings and since there is no effective cross examination of respondent regarding the allegations of cruelty and desertion, therefore, in the considered opinion of this Court impugned judgment granting divorce suffers from no illegality or infirmity. This court is of the considered view that there is no substance in this appeal. Resultantly, impugned judgment is maintained and this appeal is dismissed. (SUNIL GAUR) JUDGE NOVEMBER12 2014 vn MAT. APP. No.97/2007 Page 5

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