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Manali Singhal vs.ravi Singhal

Manali Singhal vs.ravi Singhal

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Court : Delhi

Decided On : Jan-29-2019

Appellant : Manali Singhal

Respondent : Ravi Singhal

Advocate for Pet/Ap. : Mr. Abhimanyu Bhandari, Mr. Tanmay Mehta, Mr. Ankit Virmani, Mr. Rinkel Singh, Mr. Krishan Tewary, Ms. Nimisha Narayan, Mr. Prosenjeet Banerjee, Ms. Meera Menon, Ms. Vinita Sashidharan, Mr. Deepak Singh Rawat

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

29. h January, 2019. CM(M) 80/2018 & CM No.2196/2018 (for stay) RAVI SINGHAL .....

... Petitioner
Through: Mr. Abhimanyu Bhandari, Mr. Tanmay Mehta, Mr. Ankit Virmani, Mr. Rinkel Singh, Mr. Krishan Tewary and Ms. Nimisha Narayan, Advs. MANALI SINGHAL Versus ..... Respondent Through: Mr. Prosenjeet Banerjee, Ms. Meera Menon, Ms. Vinita Sashidharan and Mr. Deepak Singh Rawat, Advs. with respondent-in-person. AND CM(M) 232/2018 * % + + MANALI SINGHAL .....

... Petitioner

Through: Mr. Prosenjeet Banerjee, Ms. Meera Menon, Ms. Vinita Sashidharan and Mr. Deepak Singh Rawat, Advs. with petitioner-in-person. RAVI SINGHAL Versus ..... Respondent Through: Mr. Abhimanyu Bhandari, Mr. Tanmay Mehta, Mr. Ankit Virmani, Mr. Rinkel Singh, Mr. Krishan Tewary and Ms. Nimisha Narayan, Advs. CM(M) 80/2018 & CM(M) 232/2018 Page 1 of 18 CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 The husband as well as the wife, being dissatisfied with the order dated 20th November, 2017 (in HMA No.519/2017 filed by the husband for dissolution of marriage by a decree of divorce against the wife on the ground of cruelty, of the Court of Principal Judge, Family Courts, Patiala House Courts, New Delhi) partly allowing the application of the husband for amendment of the petition for divorce, have preferred these petitions under Article 227 of the Constitution of India.

2. Notice of both the petitions was issued and the petitions are being listed together for hearing. The counsels were heard on 26th July, 2018, when, vide detailed order of that date certain queries were made from the counsel for the husband and on his request for time to consider, hearing adjourned. The counsels were further heard yesterday, when again on the request of counsel for husband, the hearing was adjourned to today. The counsels have been heard further.

3. The husband, in paras 18 to 24 of the divorce petition dated 1st June, 1998 pleaded as under: 18. It is relevant to mention that the petitioner had visited the mother of the respondent in England where she was under treatment. During the said visit the mother of the respondent asked to arrange for a residential accommodation for the respondent in Delhi and the parties should file divorce by mutual consent. After coming back to India, the mother of the respondent was immediately admitted in All India Institute of Medical Sciences and was critically ill. Without informing the petitioner or settling any terms with the the petitioner CM(M) 80/2018 & CM(M) 232/2018 Page 2 of 18 the respondent and her petitioner, father got an agreement prepared for the petitioner to sign. On 4.11.94 when the petitioner and his parents visited the house of the mother of the respondent at 37, Aurangazeb Road, New Delhi, the respondent and her father and brother insisted upon the petitioner and his parents to sign the said agreement. The petitioner and his parents were subjected to emotional blackmail on the ground of the illness of

the mother of the respondent. The respondent also represented that since her mother was dying, she wanted to see that all her disputes with the petitioner have been settled emicable by showing her the signed agreement. She further assured the petitioner and his parents that the said agreement shall not be implemented and that it is only for the satisfaction of her mother that she wanted him to sign. The petitioner was also threatened by the respondent and her father that in case he would not sign the said agreement, he would be subjected to all kinds of litigation and adverse publicity in the newspaper. Soon after the signing of the said agreement, i.e. within 6 days thereafter, the mother of the respondent passed away.

19. Thereafter the parties met number of times to decide about the terms of the settlement for filing the mutual consent divorce petition and on 21.11.95 a petition for divorce by mutual consent was sent by the petitioner to the respondent but the respondent refused to sign the same.

20. Thereafter on 28.10.97, the respondent filed a Suit for Specific Performance of the alleged agreement dated 4.11.94 against the petitioner and his parents and the said Suit No.25
is now pending in the Delhi High Court.

21. In the said suit filed by the respondent, she has impleaded the parents of the petitioner in order to harass and embarrass them in court. It is the case of the petitioner CM(M) 80/2018 & CM(M) 232/2018 Page 3 of 18 that throughout the period of separation, he has been paying and providing for the maintenance of the respondent and the child. The respondent has however falsely alleged in the said suit that she has to be paid a sum of Rs.40,000/= per month on account of maintenance under the agreement dated 4.11.94. The object of the said suit is to blackmail the petitioner and his parents and to force the petitioner to give to her a settlement beyond his means. It is the case of the petitioner that the allegations made in the said suit are totally false and the written statement has been filed by the petitioner in the said suit along with the counter claim to the effect that the petitioner is entitled to all the assets acquired by him in the name of his wife (the respondent). The pleadings in the plaint and the written statement shall be referred

to by the petitioner in the proceedings in this Honble court as and when required for meeting the ends of justice.

22. The petitioner further submits that in the pleadings in the said suit, the respondent has alleged in writing that the petitioner is having relations with other women. The respondent has also falsely alleged that the petitioner has not been providing for maintenance and the maintenance of the child. The allegations of the respondent of being involved with another person have been made to defame and to annoy the petitioner. On account of the said allegations, the petitioner has been suffering tremendous mental pain and agony.

23. It is also the case of the petitioner that the marriage between the parties come to an end in 1993 as stated above. The respondent is however trying to extract money out of the petitioner and his family because she is married to the petitioner. The respondent has been threatening to harass the petitioner in courts endlessly as she comes from a family of lawyers. The petitioner has been receiving threats from the respondent and her father CM(M) 80/2018 & CM(M) 232/2018 Page 4 of 18 24. who are engaged in active practice in the Supreme Court of India and in the other High Courts in India. to pay It is also the case of the petitioner that he has never refused to maintain the respondent within his means. The petitioner is also paying a sum of Rs.15,000/= per month to the respondent and the child in the High Court voluntarily and without any orders of the court in this behalf. The respondent, however, wants to blackmail the petitioner and wants him the amount of maintenance which he cannot afford. The respondent in fact agreed with the petitioner to file a mutual consent divorce petition but subsequently she refused to sign the same as she wanted the petitioner to give her a settlement which the petitioner cannot afford. The petitioner, therefore, submits that from 1989 till date, the parties have only lived together for a period of 3 to 4 years. The marital relations between the parties came to an end in 1993 and the parties admittedly started living separately since April, 1994. It is the case of the petitioner that on account of the cruel conduct of the respondent, he has suffered both mentally and physically for the last so many years. The respondent only wants to extract money from the petitioner and his family and she never had any concern about the marriage. The respondent has also been keeping the child away from the father

and the family. The said conduct of the respondent is in fact not in the welfare of the child in the circumstances stated here in above. 4. The divorce petition was filed in the year 1998. The wife filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) and which was dismissed. The pleadings in the divorce petition were completed in the year 2000. Issues were framed in the divorce petition on 17th August, 2004. The husband applied for amendment of divorce petition CM(M) 80/2018 & CM(M) 232/2018 Page 5 of 18 on 16th September, 2004. However, the application for amendment was not heard and the proceedings in the divorce petition remained in abeyance because of the pendency of a Revision Petition (in this Court filed by the wife) against the order of dismissal of her application under Order VII Rule 11 of the CPC and which Revision Petition was disposed of on 25th November, 2011, with liberty to the wife to apply to the Family Court under Order XII Rule 6 of the CPC. The wife, thereafter on 5th March, 2012, filed an application under Order XII Rule 6 of CPC and during the hearing of which application it transpired that the application filed by the husband for amendment of divorce petition was also pending consideration and accordingly the application for amendment of the divorce petition was heard first and vide the impugned order, while some of the amendments sought were allowed, others disallowed.

5. The challenge by the wife is to the two amendments which have been allowed.

6. The counsel for the wife, during the hearing on 26th July, 2018 drew attention to the following plea in the written statement of the wife to the divorce petition: ..The petitioner, even before signing of the said family settlement, has been promising the Respondent proper maintenance and residence. In his letter dated 20-4-1994 the

... Petitioner
has admitted and apologized that he has been giving the Respondent immense pain and that she was not to be blamed at all. Things went from bad to worse when the said Divya got a divorce from her husband. Under these circumstances, the Respondent was compelled to plead with the

... Petitioner

again and again that he should be faithful to her and also stop neglecting her and their daughter Shreya and should CM(M) 80/2018 & CM(M) 232/2018 Page 6 of 18 letter to the

... Petitioner
addressed another not treat them with cruelty. Along with the letter dated 20-4-1994, the Respondents mother expressing his sorrow for the emotional trauma that he was causing to all the members of the family. The

... Petitioner
had also told the Respondents mother about his interest in some other woman. Both these letters clearly establish the cruelty and ill treatment and the guilty conduct of the

... Petitioner
qua the Respondent and the falsity of the present petition and the allegations contained therein. The Respondent is annexing herewith a copy each of both the letters dated 20-4- 1994 marked as Annexure C & D respectively. and to the following response to the aforesaid passage in the replication filed by the husband: .It is denied that in the letters dated 20.4.94, the petitioner had admitted and had apologised to the respondent of anything which related to any matrimonial offences alleged by the respondent. The petitioner submits that the said letters would in fact show that the marriage between the parties had been a broken marriage from the very beginning. The said letters would also show the conduct of the petitioner towards his matrimonial dispute with the respondent. The petitioner always wanted to settle the dispute amicably and part company but the respondent has been only trying to extract money on account of the marriage between the parties. As regards the illness of the mother of the respondent and her movement from the airport to the residence and hospital, the petitioner submits that the respondents mother died a painful death and the petitioner sympathises with the respondent and her family. 7. The counsel for the wife next drew attention to the following two amendments in the divorce petition which have been permitted vide the impugned order: CM(M) 80/2018 & CM(M) 232/2018 Page 7 of 18 I. (v) The

... Petitioner
further submits that the Respondent has relied upon two letters, both dated 20th April, 2004. The said letters have been written by the

... Petitioner
to the mother of the Respondent. It is relevant to mention that the mother of the Respondent was a sitting Judge of the Delhi High Court at the relevant time. Since the marriage between the parties had completely broken down for the last two years, the

... Petitioner
and the mother of the Respondent had been trying to ensure that the marriage be dissolved by mutual consent. It is also relevant to mention that prior to the date of the signing of the letters, the

... Petitioner
was under investigation with regard to the alleged FERA violation and had to take a bail in the end of May, 1993. The letters, in fact, were written in the context that due to his alleged involvement in FERA case, he may be causing embarrassment of Mrs. Bhandare, who was a sitting Judge of the Delhi High Court and was terminably ill. The

... Petitioner
, in fact, was also charged for allegedly transferring money to the parents of the Respondent through the Indian High Commission in Spain. It is also relevant to mention that the father of the Respondent was a sitting M.P. at the relevant time. (vi) The

... Petitioner
further submits that the Respondent had taken with her certain documents and records, which she was refusing to return to the

... Petitioner
after she left the house of the

... Petitioner

in April, 1994. The said documents were recovered from the house of Shri H.C. Bhandare, the brother of Shri M.C. Bhandare on 5.8.1994. Shri M.C. Bhandare was a sitting M.P. from Maharashtra at The alleged documents were seized by the CBI from the house of Sh. H.C. Bhandare during the course of an investigation, relating to another matter. The

... Petitioner
submits that keeping in view the said circumstances, the

... Petitioner
and his family members were totally terrorized and taking advantage of the said situation, the Respondent the relevant time. CM(M) 80/2018 & CM(M) 232/2018 Page 8 of 18 8. II. and her father & brother insisted upon the

... Petitioner
and his family members to sign the Agreement of 4.11.1994, which they said would not be acted upon. Since this Agreement was not to be acted upon, the subsequent Agreement dated 21.11.1995 was sent by the Respondent herself, as stated above. The

... Petitioner
submits that in order to malign the

... Petitioner
, the Respondent has been using the letters of April, 1994, written by the

... Petitioner
to the mother of the Respondent, to falsely allege that the

... Petitioner
was feeling guilty of in alleged relation with any other woman and the said conduct of the Respondent has subjected the

... Petitioner
to tremendous mental pain and agony. It is relevant to mention that the Respondent has been alleging that the

... Petitioner
has been having relations with one Ms. Divya Bhasin. In the pleadings this Honble Court and in the Honble Supreme Court, the Respondent has been making unsubstantiated allegations against the

... Petitioner
that he is having relations with Ms. Divya Bhasin. The Respondent has also made false allegations against the

... Petitioner
about his involvement with other women on the basis of certain newspaper reports. The

... Petitioner
submits that the Respondent has been torturing the

... Petitioner
mentally even after the parties were separated from each other, as stated in the foregoing paragraphs of the petition. It is also the case of the

... Petitioner
that for the last more than 12 years, the

... Petitioner
has been suffering mental pain and agony, as the Respondent has refused to live with the

... Petitioner
and has been persisting with false and frivolous allegations of extra marital relations against the

... Petitioner
. The Family Court, for allowing the aforesaid amendments, has merely reasoned that the same are necessary for the purpose of determining the real CM(M) 80/2018 & CM(M) 232/2018 Page 9 of 18 questions in controversy between the parties and the divorce petition was still at initial stage and the recording of

evidence had not begun.

9. The counsel for the wife, during the hearing on 26th July, 2018 also drew attention to a rejoinder affidavit verified on 14th April, 2001 filed by the husband in SLP(C) No.345556/2001 pleading as under: With reference to para 1 to 11, stated as facts, I humbly submit that admittedly averments made in paras 8,9,10 and 11 are not forming part of the pleadings before the High Court and are liable to be struck off as scandalous and vexatious. Keeping in view all the allegations made in the paras, I giving hereinafter my reply to the various false and irreverent allegations made by the Respondent No.1. I submit that I never indulged in making any allegations against the character of the Respondent No.1. In fact my marriage with the Respondent No.1 broke down on account of her life style which I could not live with. The Respondent No.1 is not a remorseful or a wronged wife. After separating from me she has been leading a fast life and has been attending late night parties. To prove this, I am enclosing herewith an article published in the Times of India on 27.12.1997, mentioning her name (Manali Bhandare) in this context. The copy of the said Newspaper report is annexed as Annexure B. The subject matter of the suit in the High Court and the present SLP is a suit for Specific Performance filed under the Specific Relief Act. In the suit, the Respondent No.1 never alleged that the agreement in question was executed on account of my involvement with another woman. My personal life or my relation with any other woman or with Ms. Divya Bhasin are of no consequence in the present suit. I submit that the Respondent No.1 is making defamatory allegations against another woman who has nothing to do with my dispute with Respondent No.1. Even otherwise, all the allegations made against me about my involvement with the other woman are the subject matter of the matrimonial case mentioned above. The (a) CM(M) 80/2018 & CM(M) 232/2018 Page 10 of 18 (b) Respondent No.1 is also estopped from pleading about my relation with any other woman, after she left me and decided to live separately. Our marriage in fact came to an end, pending the filing of divorce by Mutual Consent by us as stated above. I humbly submit that I am not married to Divya Bhasin. I further submit I know Divya Bhasin and I respect her. I submit that the breackdown of my marriage with Respondent No.1 was not on account of my relation with Ms. Divya Bhasin or any other woman whom I came to know much after my separation from the Respondent No.1. It is

wrong that things went bad to worse after Divya Bhasin got a Divorce from her husband as alleged in one of the paras in question. Ms. Divya Bhasin got divorced on 11.9.1997 and therefore my living with her in 1994 does not arise. In fact I have always been conscious of my legal obligations to maintain Respondent No.1 and the child and therefore I wrote the letters dated 20.4.1994 to the Respondent No.1 and her mother. The said letters were written much prior to the date of the agreement. I wrote the said letters because I wanted to assure the Respondent No.1 that I shall provide for the Respondent No.1 and my child, within my means at the time of Divorce. I submit that the allegations made in the paras stated as facts are wrong and misleading. I submit that my parents have been wrongly dragged into this litigation. My parents are not liable to provide for the Respondent No.1 or my daughter during my lifetime. My parents signed the agreement in the circumstances mentioned in the written statement. I submit that I am not having affluent life style as alleged. The house at 24, Olof Palme Marg, Vasant Vihar, New Delhi does not belong to me. In fact I and Respondent No.1 lived in a portion of the said house which had one bedroom, one living room, one bathroom and a dressing room and a kitchen, having a total covered area of about 1800-2000 sq. ft. In fact the respondent No.1 had herself sent to me a draft of another agreement along with her letter dated 21.11.1995, which she subsequently refused to sign. The copy of the said letter and the agreement are annexed hereto as Annexure A. I submit that I have never represented to anyone that Divya Bhasin is my wife. CM(M) 80/2018 & CM(M) 232/2018 Page 11 of 18 As regards her name Divya Singhal, I submit that every person has a right to use any name. I submit that I have committed no illegality and all the allegations made by the Respondent No.1 are intended to mislead this Honble Court. I also deny that I lived with the other woman in California USA from 19.1.1999 to January, 2000, as alleged. 10. The contention of the counsel for the wife during the hearing on 26th July, 2018 was that the husband, by way of amendment, was seeking to change the explanation given of the context or the reason for writing the letters dated 20th April, 1994; while the earlier explanation was of the letters being in admission of his obligations as husband, the explanation now sought to be given by way of amendment was that the letters were in the context of violations of Foreign Exchange Regulation Act, 1973 (FERA) with which the husband was then charged with. It was further

the contention of the counsel for the wife that the husband, in the existing para 19 of the divorce petition, pleaded that he had on 21st November, 1995 forwarded to the wife a petition for divorce by mutual consent but the wife refused to sign the same and the plea now sought to be taken by way of amendment, of deprivation of cohabitation, was inconsistent to the act of forwarding the petition for divorce by mutual consent.

11. Prima facie merit was found on 26th July, 2018 in the latter of the aforesaid two contentions but not in the former.

12. The amendments, which have been declined by the impugned order, contained reference to letters dated 2nd July, 1994, 3rd July, 1994, 8th July, 1994 and 1st August, 1994. Resultantly, the said letters sought to be filed by CM(M) 80/2018 & CM(M) 232/2018 Page 12 of 18 the husband in support of the amendment sought, were also not taken on record.

13. It was observed in the order dated 26th July, 2018 that the purport of the amendments sought and which have been declined, appeared to be only to file the aforesaid letters and the parameters of Order VI Rule 17 of the CPC need not apply thereto.

14. It was on 26th July, 2018 enquired from the counsel for the husband, whether not the act of cruelty sought to be proved by the said letters was also an issue in previously instituted Suit No.509/2016 of this Court filed by the wife for specific performance of the agreement dated 4th November, 1994. The letters were sought to be filed inter alia to prove that the agreement dated 4th November, 1994 was not intended to be acted upon and the wife had caused cruelty by seeking specific performance thereof. It was thus enquired from the counsel for the husband, whether not the defence of the husband in the suit for specific performance was the same as was sought to be pleaded as a ground of cruelty in the divorce petition.

15. The counsel for the husband agreed.

16. It was next enquired from the counsel for the husband, how the Family Court could proceed with the trial of the same issue which was pending consideration in a previously instituted suit.

17. The counsel for the husband, during the hearing on 26th July, 2018, contended that the cruelty if any caused by such conduct was not in issue in the suit for specific performance but agreed that the finding in the suit for specific performance i.e. whether the agreement dated 4th November, 1994 CM(M) 80/2018 & CM(M) 232/2018 Page 13 of 18 was to be acted upon or not, would definitely have a bearing on the divorce petition, inasmuch as if the defence of the husband to the suit fails, there can possibly be no cruelty on account thereof.

18. It was further enquired from the counsel for the husband, whether at all there could be any cruelty by the legal remedy availed of by the wife for specific performance of the agreement dated 4th November, 1994 and it was again prima facie observed that the principles which apply to the law of defamation i.e. there could be no defamation by exercise of legal rights, would apply.

19. During the hearing yesterday and today, the counsel for the husband has argued, (i) that the husband, in the replication in the divorce petition has pleaded that the letters dated 20th April, 1994 were written on account of family obligation; attention in this regard is drawn to para 7(i) of the replication at page 136 of CM(M) 80/2018; (ii) that the husband is not withdrawing/wriggling out of any admission and is only adding an explanation which may at best be contradictory; (iii) that other letters similar to the letters aforesaid, which are now sought to be filed, have been permitted by the Supreme Court vide order dated 4th October, 2018 in SLP(C) No.22475/2018 to be placed on record of the suit for specific performance; on the same parity, the letters referred to in the paragraphs sought to be added by amendment to the petition for divorce should also be permitted to be taken on record; and, (iv) that the trial in the divorce petition had not commenced and the application for amendment was filed within six months of framing of issues. CM(M) 80/2018 & CM(M) 232/2018 Page 14 of 18 20. The counsel for the wife has controverted, by drawing attention to the application for amendment where the husband has sought to substitute the existing para 19 of

the divorce petition with a new paragraph.

21. The counsel for the husband has responded that he is agreeable to the existing paragraph 19 of the divorce petition also continuing to exist.

22. I have considered the controversy and will hereinafter deal with each of the amendments sought by the husband in the divorce petition.

23. In the existing para 19 of the divorce petition, it is pleaded that after the signing of the agreement dated 4th November, 1994, the parties met a large number of times to decide the terms of settlement for filing the mutual consent divorce petition and on 21st November, 1995 a petition for divorce by mutual consent was sent by the husband to the wife but the wife refused to sign the same. The wife in her written statement has denied any such meetings or any agreement having been reached for signing a petition for divorce by mutual consent, though has admitted receipt from the husband of the divorce petition. The husband, in the replication has reiterated the contents of the divorce petition. The husband now wants to plead the correspondences preceding the agreement dated 4th November, 1994. The impugned order declines the said amendment reasoning that the same amounted to taking additional pleas in the divorce petition. The husband further wants to explain that the letters were in the context of the FERA case against him. It is not as if the husband in the existing pleadings had no occasion to explain his stand with respect to the said letters. In the replication, to the written statement in which the wife had pleaded the said letters, the stand of the husband was that the said letters showed the conduct CM(M) 80/2018 & CM(M) 232/2018 Page 15 of 18 of the husband towards his matrimonial dispute and further showed that the husband always wanted to settle the dispute amicably. The husband undoubtedly now is seeking to withdraw the admission earlier made, of the context in which the said letters were written and wants to take a new stand to the prejudice of the wife. The said amendment is in withdrawal of admission of the husband in the existing pleadings. Such admission was not only in the existing pleadings but also in the rejoinder affidavit aforesaid filed by the husband in the Supreme Court wherein also the husband had sworn on oath that he was always conscious of his legal obligation to maintain his wife and child and for this reason

had written the subject letters. It was also the stand of the husband therein that he had written the said letters because he wanted to assure his wife that he will provide for her and his child. Such amendments in withdrawal of admission, it is the settled position in law, cannot be allowed and the Family Court has erred in allowing the said amendments. Reference in this regard can be made to Gurcharan Kaur v. Ranjeet Singh Sandhu 2017 SCC OnLine Del 11489 and DP Mahajan v. Alok Mahajan 2017 SCC OnLine Del 12684. The said amendments are also an afterthought.

24. The husband, by way of amendment further wants to plead in para 19 that the agreement dated 4th November, 1994 was got signed from him by the wife and her family by terrorising the husband and his family members. The said plea is again an afterthought. No such plea was taken in the divorce petition where the husband had unequivocally admitted that he had signed the said agreement for the satisfaction of the mother of the wife who was on the deathbed and under threat from the father of the wife that if he did not CM(M) 80/2018 & CM(M) 232/2018 Page 16 of 18 sign the agreement, he would be subjected to litigation and adverse publicity in the newspapers. The husband cannot now be permitted to, by way of amendment, as an afterthought, claim that he and his family members were terrorised into signing the agreement.

25. The husband, in para 21 of the divorce petition wants to take a ground of the wife making unsubstantiated allegations against the husband of having relations with other women.

26. Again, no such ground of divorce was set up in the divorce petition as originally filed, though it was pleaded that the wife in the pleadings in the suit for specific performance had alleged that the husband was having relations with other women and which were defamatory of the husband and annoyed the husband. Cruelty has been explained in several judgments as a conduct which leads the other spouse to feel that living with former is harmful to the mental and physical health of the latter. Reference in this regard can be made to NG Dastane Vs. S. Dastane (1975) 2 SCC326 Parveen Mehta Vs. Inderjeet Mehta (2002) 5 SCC706 GVN Kameshwar Rao Vs. G. Jabilli (2002) 2 SCC296 Savitiri Pandey Vs. Prem

Chandra Pandey (2002) 2 SCC73 Uma Rani Vs. Subodh Kumar 2015 SCC OnLine P&H5035and S. Vs. MK 2018 SCC OnLine Del 7414. If the husband, at the time of filing of divorce petition, did not feel that the allegation of the wife in the plaint in the suit for specific performance was harmful to the mental and physical health of the husband, the husband cannot, after six years therefrom, be permitted to take a plea that such act of the wife caused cruelty to him. CM(M) 80/2018 & CM(M) 232/2018 Page 17 of 18 27. It cannot also be lost sight of that Rule 7(g)(iv) of the Hindu Marriage Act Rules, 1979 requires particulars of all acts of cruelty with reference to names, dates and times to be pleaded and the plea in the existing petition, of the wife having taken such a plea in the plaint in the suit for specific performance, is without any particulars or names or dates and time and is thus not a plea of cruelty. Reference in this regard can be made to D Vs. P2017SCC OnLine Del 12384, Subhash Chander Sharma Vs. Anjali Sharma 2010 SCC OnLine Del 2360 and Lalit Kumar Vs. Mamta 2010 SCC OnLine Del 1925. Cruelty has to be felt at the time when it is inflicted and not as an afterthought. This was not considered during the hearing on 26th July, 2018, while expressing a prima facie opinion that such amendment can be allowed.

28. Thus, the husband is not found entitled to any of the amendments which were sought to the divorce petition, even those which have been allowed by the Family Court.

29. Resultantly, CM(M) No.80/2018 filed by the husband is dismissed and CM(M) No.232/2018 filed by the wife is allowed.

30. The parties are left to bear their own costs.

31. The Trial Court record requisitioned in this Court be returned forthwith. JANUARY29 2019 bs (Corrected and released on 18th February 2019) RAJIV SAHAI ENDLAW, J.

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