

N vs.s S

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Court : Delhi

Decided On : Apr-02-2019

Appellant : N

Respondent : S S

Judgement :

§~24 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:

02. d April, 2019 + MAT.APP.(F.C.) 17/2018 N S S Appellant Through: Ms. Manika Tripathy Pandey, Mr. Ashutosh Kaushik and Mr. Brahm Kumar Pandey, Advocates for the appellant along with appellant in person versus Respondent Through: Mr. S.C. Phogat, Advocate for the respondent along with the respondent in person CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE JYOTI SINGH G.S. SISTANI, J.

(ORAL) 1. Challenge in this appeal is to the judgment dated 24.10.2017 passed by the Family Court on a petition filed by the appellant herein under Section 13(1) (ia) and 13(2) (iii) of the Hindu Marriage Act, 1955 seeking dissolution of the marriage on the ground of cruelty.

2. Marriage between the parties was solemnized on 02.12.2001 according to Hindu rites and ceremonies at New Delhi. A male child was born out of their wedlock on 08.09.2005. It is the case of the appellant that since the beginning of her marriage, the respondent tortured her, did not give her money for household

expenses, used to abuse her and her mother in MAT.APP.(F.C.) 17/2018 Page 1 of 13 filthy language in public and before the villagers and also used to beat her. Another ground which has been raised by the appellant is that whenever the respondent used to go to his office, he used to lock the outside gate and keep the appellant in confinement. Even post the birth of the child, the attitude of the respondent did not change. His torture increased when the child became 03 years of age. The appellant requested him to admit the child in a play school, which he refused and would often beat her. He did not even pay the fees of the child for Nursery and K.G. classes. Post the demise of her mother, the atrocities increased and it became impossible for her to reside with the respondent. In fact, on one occasion, the respondent even threatened to kill her son. It is further pleaded that the appellant was thrown out from her matrimonial house on 14.06.2013. Since then she has been living with her brother at Bijwasan. It has been averred that the appellant has been living a life of misery and the respondent had made her life hell.

3. The averments made in the petition were strongly refuted by the respondent, who claims to be a dutiful husband and also that he was looking after his wife and child. All acts of cruelty as claimed by the appellant have been strongly denied by the respondent.

4. On the pleadings of the parties, following issues were framed: 1.

2. Whether the respondent has treated the petitioner with cruelty after solemnization of marriage?. (OPP) Relief. 5. The appellant examined five witnesses. The respondent examined two witnesses. The Family Court has dismissed the petition of the appellant primarily on the ground that she has not been able to prove the acts of MAT.APP.(F.C.) 17/2018 Page 2 of 13 cruelty and, moreover, Rule 7 of the Hindu Marriage Rules, 1979 has not been complied. The appellant has failed to provide sufficient particulars regarding the time and place of the alleged incidences and instances are vague. The Family Court also found the evidence of the witnesses to be hearsay and unreliable and accordingly the petition was rejected.

6. Ms. Pandey, learned counsel for the appellant submits that the averments made in the petition are duly supported by the testimonies of the appellant herself, two neighbours being PW-2 Savita and PW-3 Smt. Rita Rana and cousin brother PW-4 Naveen Joon. The learned counsel has placed strong reliance on the testimonies of the appellant, PW-2 and PW-3, who are independent witnesses and who have withstood the test of cross-examination regarding the continuous fights between the appellant and the respondent, as also with regard to the appellant being locked in her own house by the respondent before going to work. As far as the evidence of PW-4 is concerned, learned counsel for the appellant submits that although the said witness has deposed that he had not attended the wedding nor was he aware about the name of the person in whose wedding the appellant was ill-treated, but the said witness was not cross-examined with regard to the appellant having left the matrimonial home post the incident for as long as six months. She further submits that regarding payment of the school fee as well, the said witness has not been cross-examined and thus in the absence of any sort of rebuttal, the testimony is unimpeached and proves cruelty. The learned counsel further submits that the acts of cruelty are also evident from the fact that the matter was taken up to the Panchayat four times MAT.APP.(F.C.) 17/2018 Page 3 of 13 and it was not necessary to give the dates and time when the Panchayat had taken up the issues, as the same is not disputed or denied by the respondent.

7. Mr. Phogat, learned counsel for the respondent submits that the reading of the cross-examination would show that none of the witnesses were actually present at the time of any of the incidents. Their evidence is completely hearsay; none of the witnesses have deposed that they have ever seen the respondent locking the gate and confining the appellant. None of the witnesses have deposed that they ever witnessed the fight or the abusive conduct of the respondent or the act of dragging, as claimed in the wedding ceremony or the fact that the appellant was ever forced or thrown out from the matrimonial home. Learned counsel further submits that the Family Court has rightly dismissed the petition relying on Rule 7 of the Hindu Marriage Rules, 1979 as the entire petition is vague, lacks material particulars, the incidents which are claimed only are general in nature. He further submits that in the absence of non-compliance of Rule 7 of the Hindu Marriage Rules, 1979, the Family Court has rightly dismissed the petition. Additionally, the

counsel submits that the Panchayat was called as the appellant did not join the company of the respondent and not because the respondent was called in connection with the alleged acts as claimed by the appellant. Learned counsel submits that the general instances of cruelty, which have been mentioned, are simple wear and tear of the marriage and they do not fall in the category of cruelty. Counsel submits that the acts of cruelty should be of such grave nature as would cause apprehension of danger to the life, limb or body of the spouse. MAT.APP.(F.C.) 17/2018 Page 4 of 13 However, the instances so relied upon by the appellant do not fall in such a category. He further submits that the consistent view of the Court has been to encourage the institution of marriage and not allow people to separate and grant divorce merely on the whims and fancies of the individuals.

8. We have heard the learned counsels for the parties and carefully examined the pleadings and the evidence on the face of the trial court, which we have summoned.

9. We find from a perusal of the pleadings before the Family Court that the appellant had categorically averred in the divorce petition that since the beginning of the marriage the respondent had tortured her. He would not give her money and abuse her in filthy language and would even beat her mercilessly. In para 6, it was categorically stated that whenever the respondent went to office, he used to lock the gate from outside and the appellant would remain in confinement. In para 7, it was averred that the atrocities increased after the birth of the child and in fact when the child became three years, the respondent even refused to pay the fees and would beat the appellant. It was finally the mother of the appellant who paid the fees of the child. Para 8 contains an averment that after the death of her mother in 2010 the cruelty increased as she now did not have the shelter of her mother. On being threatened to be killed she had no option but to leave the house on 14.6.2013. A perusal of the written statement would show that there is only a general denial to the averments of paras 5 and 6 of the divorce petition. Specific allegations have not been denied. In so far as paras 7 and 8 are concerned, again there is only a general denial. While in para 7, the MAT.APP.(F.C.) 17/2018 Page 5 of 13 respondent had stated that he was paying the school fees of the child, but

no details of the period for which the fees were paid or the amount or the mode of payment have been mentioned. It is a settled law that a general denial of the averments of a petition is no denial. In the case of Badat and Co. Vs. East India Trading Company reported as (1964) 4 SCR19 it has been held that each and every averment will have to be categorically denied and if the denial is evasive, the said fact shall be taken to be admitted.

10. The appellant in her affidavit leading evidence has deposed in line with the averments made in her petition. Paras 5, 6, 7, 8 and 9 of her deposition, completely support what has been averred and we quote the same hereunder for ready reference:-

"5. I say that since the beginning of the marriage the respondent have tortured the deponent and he did not give any money for the household expenses. He used to abuse the deponent in filthy languages before the mother of the deponent and also before the villagers and before society and further he used to give her severe and merciless beatings.

6. I say that respondent beat deponent mercilessly and regularly and whenever he went to office he used to lock the gate from outside. He made the applicant remained in confinement. The deponent became more and more scared and lonely.

7. I say that after the birth of the child the attitude of the respondent did not change .he kept on his behavior and the atrocities increased. When the child became 3 years the deponent said the respondent to get his admission in the play school but he flatly refused and beaten the deponent .Thereafter the fees was given by the mother of the deponent .Even he did not pay the fees of the child in Nursery, KG. MAT.APP.(F.C.) 17/2018 Page 6 of 13 8. I say that after the death of the mother of the deponent in the 2010 the respondent had increased his cruelty and said that she does not have any shelter gradually it become impossible to live with him. He alleged false theft on the deponent he also threatened to kill the deponent and her son. Finally on 14th June 2013 the respondent had driven out the deponent from his house. Since then the deponent is residing with her brother at Bizwasan.

9. I say that the respondent still comes Bizwasan every 3 days and Threaten the deponent that he would kill her and the child and she can't do any thing of her he uses filthy language and made her life hell. 11. The respondent extensively cross-examined the appellant and we find that the appellant withstood her testimony and deposed that she was abused in front of the villagers; that the respondent locked her in the house when he went to office; that she held the receipts of deposit of fees by her mother, for the child. PW-2 who was her neighbour has also testified in support of the appellant and in her affidavit leading evidence, she had clearly deposed that she was a neighbour of the parties for the last 8 years prior to their separation. She has testified that the respondent would lock the house from outside and would return only in the night and the appellant would remain confined in the house the whole day. She was permitted to go outside the house only when the child was born and she always remained in fear. In fact she had also deposed that the respondent had approached her to threaten her that if she spoke to the appellant it would not be good for her. We find that in the cross-examination of PW-2 the respondent has not even cross- examined her on this aspect. The testimony of PW-2 on this aspect MAT.APP.(F.C.) 17/2018 Page 7 of 13 therefore remains unimpeached. PW-3 in her examination-in-chief has also supported the case of the appellant in so far as her being locked in the house is concerned. She has also supported the testimony of PW-2 as regards the respondent threatening her to keep away from the appellant. The cross-examination of PW-3 shows that there is no cross- examination or even a suggestion on this aspect of the testimony.

12. We thus find that the appellant has been able to prove that the respondent tortured her and confined her to the house throughout the day, while he was at the office. The finding of the Family Court that the appellant has not been able to prove this aspect for the cruelty alleged is thus an erroneous finding. In fact, a reading of the impugned judgment shows that the Family Court has not even dealt specifically with the aspect of cruelty alleged by the appellant and has taken a general view that specific instances of cruelty had not been pointed out in compliance of Rule 7 of Hindu Marriage Rules.

13. While we are conscious of the fact that procedural rules have to be given due importance and the purpose and rationale of Rule 7 is that the parties to the matrimonial dispute should not make vague allegations and drag the other party to a court of law. Having said that we may also observe that unlike other disputes, matrimonial issues are such that more often than not only the husband and wife are privy to most of the incidences and when dispute arise and incidents occur, with the passage of time, it is not humanly possible to remember each and every incident with date and time, more particularly, looking at the nature of allegations that arise. Therefore, in our view, to insist that in every case for every incident or allegation, date, time, place of occurrence, general MAT.APP.(F.C.) 17/2018 Page 8 of 13 conduct act or omission, should be given with mathematical precision, would not be an appropriate way to approach matrimonial disputes. In fact, a learned single Judge of this Court in the case of SA vs. AA (2016) 229 DLT675 has dealt into this issue and held as under: 33. Apart from making the aforesaid specific allegations, the respondent also made general allegations in his petition with regard to the alleged general conduct and behaviour of the appellant. It may not always be possible for a party to make specific allegations with regard to the date, time, place of occurrence in relation to a generalized conduct, act or omission-where such conduct is repeated continuously over a period of time. Thus, the allegations that the appellant used to call the respondent Hathi or Mota Hathi, cannot be given a particular date, time or place of utterance as, according to the respondent, such an utterance was repeatedly made by the appellant. Similarly, it may not be possible to give specific dates and times in relation to the allegations that the appellant denied sex to the respondent consistently. When two parties are in a marital relationship, neither is expected to maintain a logbook and note down therein each and every instance of matrimonial offence committed by the other. When the allegation is that a party showed uncooperative attitude towards his/her spouse and family members; did not show respect family members; misbehaved and abused with the opposite party and his family members-in respect of such allegations, it may not be possible to plead a specific date, time or place of occurrence. However, when intolerable conduct/matrimonial offence manifests itself into an incident which has larger proportions, the aggrieved party would be able to pin pointedly-with particulars and details, recite

and establish such matrimonial offence. the other spouse and his to We completely subscribe to and endorse this view of the learned Single Judge, and therefore, we find that in the present case, the Family Court has erred in dismissing the petition only on the ground of non-compliance of Rule 7 of the Hindu Marriage Rules, 1979. MAT.APP.(F.C.) 17/2018 Page 9 of 13 14. In so far as the incidence of the respondent having dragged the appellant and abused her and beaten her up in front of all the relatives at a wedding in Gurgaon is concerned, the Family Court has relied on the cross-examination of PW-4 in which he deposed that he was not aware of the name of the friend in whose marriage the appellant had gone and that he himself had not attended the wedding. The Family Court has also disbelieved the testimony of PW-5 the brother of the appellant as regards the same incident. We find that both PW-4 and PW-5 had categorically deposed that the said incident had occurred and also stated that soon after the incident the appellant had left for her mothers house and remained there for six months, after which the respondent felt sorry and only when he promised not to repeat such acts, that the appellant had returned to the matrimonial home. It is true that PW-4 had stated that he had not attended the wedding. Thus, in our view, only this part of the evidence is liable to be disbelieved for the reason that PW-4 was not present at the venue of wedding. However, we cannot discard the remaining part of his deposition that soon after the incident, the appellant had remained in her mothers house for a long period of six months. This evidence is enough to prove that an unpleasant incident had occurred at the wedding venue, which had forced the appellant to leave for her parental house rather than return to the matrimonial home.

15. The Family Court has laid too much emphasis on the fact that there were certain mismatch of dates in the testimony and the averments of the appellant as well as that of PW-5 and has taken this as one of the main grounds to reject the petition. PW-5 had stated that the child of the appellant was born in September, 2015 while the petition gives the MAT.APP.(F.C.) 17/2018 Page 10 of 13 date of birth as 08.09.2005. This discrepancy has been used by the Family Court to discredit PW-5 on his deposition that he had close proximity with the appellant. In our view this is no more than a mere typographical error and the year 2005 was perhaps typed inadvertently as 2015. Sure enough, looking at the age of the child

and the fact that the parties had separated in 2015, the witness could not have stated the year of birth as 2015. As regards the finding of the Family Court that when the marriage took place on 02.12.2001 the respondent could have had no occasion to abuse the appellant in February, 2001, the learned counsel for the appellant pointed out that the year mentioned after February is only a typographical error as it should have been 2002. She explains that the appellant was deposing that in the first year of marriage itself she was subjected to torture and beating by the respondent and in that context she had answered that she was abused in the same year. The same year according to her meant the first year of the marriage and not the calendar year of 2001. The explanation given by learned counsel for the appellant is only logical and appeals to us and we find that the Family Court had unnecessarily given too much of emphasis to a mere typographical error.

16. From the evidence and the pleadings it is thus clear to us that the appellant was able to prove some major incidents of cruelty alleged by her. It goes without saying that if a husband locks up the wife and confines her in a room throughout the day, it is certainly an act of cruelty, both physical and mental. Abusing, beating and dragging and that too in front of relatives and the other villagers are also acts of cruelty. The respondent has not been able to substantiate his claim that MAT.APP.(F.C.) 17/2018 Page 11 of 13 he looked after the child or paid his fees. As a father, it was his bounden duty to support the child and pay for his daily needs as well as the school fees, particularly when the appellant was not employed. Her mother or her brothers were under no duty to spend for her or pay for the child. In any case, this cannot be a defence to a divorce petition.

17. We also find force in the submission of learned counsel for the appellant that if all was well between the parties there was no need for the panchayat to have intervened to have resolved the issues. The testimony of the appellant that the panchayat had met four times is unimpeached and unrebutted by the respondent. We cannot agree with the contrary contention of the respondent that the panchayat met because the appellant did not want to join the respondents company. The evidence shows that it was the respondent who treated her with cruelty and on certain occasions when the torture and harassment became

unbearable she went to her parents house. However, most of the time she was in her matrimonial home until 2013, when she finally left the house and thus in our view, there was no need of the panchayat to intervene for the reasons stated by the respondent.

18. The Family Court has primarily rejected the petition on the ground that Rule 7 of the Hindu Marriage Rules has not been complied with and the petition lacks material particulars. In our opinion, in a marriage lasting for so many years it is not humanly possible for a spouse to remember every incident minute by minute. The appellant has referred to her being locked up as a continuing cause of action to which there was no rebuttal and hence we see no reason why any further specific details were required to prove this act of cruelty. Even the two neighbours MAT.APP.(F.C.) 17/2018 Page 12 of 13 have corroborated that her being confined to the room was a continuous affair for days and days together.

19. We thus find that the appellant was able to prove that the respondent had treated her with cruelty and the marriage between the parties deserves to be dissolved.

20. We hereby allow the present appeal and dissolve the marriage between the parties under Section 13(1)(ia) of the Hindu Marriage Act. Decree sheet be prepared accordingly.

21. The order of the Family Court dated 24.10.2017 dismissing the divorce petition is hereby set aside. G.S.SISTANI, J JYOTI SINGH, J APRIL02 2019 Pst/AK MAT.APP.(F.C.) 17/2018 Page 13 of 13

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