

**Alka Vs. R.K. Gautam**

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**Court :** Delhi

**Decided On :** Nov-02-1995

**Reported in :** 60(1995)DLT702; I(1996)DMC437; 1995(35)DRJ390

**Judge :** Vijender Jain, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 23

**Appeal No. :** First Appeal No. 167 of 1992

**Appellant :** Alka

**Respondent :** R.K. Gautam

**Advocate for Pet/Ap. :** Kanwal Narain,; Amitabh Narayan and; Ashish Bhagat,  
Adv

**Judgement :**

**Vijender Jain, J.**

(1) Aggrieved by the dissolution of marriage by the Additional District Judge, the appellant has preferred the present appeal.

(2) MR.KANWAL Narain, learned counsel appearing for the appellant, at the outset has argued that Section 23 of the Hindu Marriage Act (hereinafter referred to as 'Act') imposes a vital condition on the power and duty of the Court in the

matter of granting any relief under the Act. The Court must reach its satisfaction on each of the matters in Clauses (a) to (e) of Section 23(1) before it grants any relief including the relief based on the allegation of cruelty. Mr.Narain has argued that no such finding has been returned by the Additional District Judge and on this ground alone appeal has to be allowed. In support of his contentions, he has cited Anupama Misra v. Bhagwan Misra : AIR1972 Ori163 , Dr. N G Dastane v. Mrs.S Dastane : [1975]3SCR967 . Learned counsel for the appellant has contended that if a decree is to be passed under Section 23 of the Act, the satisfaction of the Court is to be on the record, it has not been mentioned in the impugned judgment that the Court has followed the mandate of Section 23 of the Act, the appeal of the appellant be allowed. In support of his contention he has cited Manilal Harjivandas v Gangaben Ganeshbhai : AIR1979 Guj98 and Smt.Indira Gangele v. Shailendra Kumar Gangele : AIR 1993 MP59 .

(3) Another leg of the arguments of learned counsel for the appellant is that the finding of the Additional District Judge is not based on the evidence and specifically in this regard he has argued that on the one hand Trial Court mentioned in the impugned judgment that the appellant has bolted the door of the balcony, then how her father could have been on the balcony dragging her inside and persuading her not to jump from the balcony to commit suicide.

(4) I have gone through the testimony of Shri Devender Kumar Kohli, PW-2, who in his examination-in- chief had stated that he saw the appellant with her father on the balcony and appellant was attempting to jump from the balcony and her father was dragging her from balcony. Even in the cross-examination the said witness has stated that one leg of the appellant was on the balcony wall and her father was dragging. In view of the testimony of PW-2, who is an independent witness, it cannot be said that the Trial Court has not taken into consideration evidence, which could be relied upon. From the material on record, it has also been observed in the impugned judgment that the behavior of the appellant was such at that time that she even slapped her father while stating that he had ruined her life by marrying her with the respondent. Other instances were also quoted in the judgment and on the basis of pleadings and evidence it had been summarised by the Trial Court that the behavior of the appellant towards the respondent his

parents, brother and sisters was indifferent, insulting and volatile and her persistent refusal to have sexual intercourse by staying away from the respondent and having attempted to commit suicide from jumping from the balcony on the occasion of marriage ceremony of the younger brother of the respondent were act of grave cruelty. therefore, I find no force in the arguments of the learned counsel for the appellant that the evidence was not properly appreciated by the Trial Court.

(5) MR.ASHISH Bhagat, learned counsel appearing for the respondent has argued that the arguments of the learned counsel appearing for the respondent that the Trial Court has not taken into consideration the provisions of Section 23 of the Act is not tenable in view of explicit finding of the Trial Court that the cruelty has been established beyond doubt. He has also argued that at this stage case cannot be remitted back for fresh disposal, as has been held in Anupama Misra v. Bhagwan Misra's case (supra). Mr.Bhagat has contended that the marriage had taken place 10 years back and during the period when the marriage subsisted, the appellant had been with the respondent for not more than 10 days and as a matter of fact the marriage has irretrievable broken down though that may be a justification in fact for divorce but certainly not in law. Mr.Bhagat has also relied upon the case of Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati : [1964]7SCR267 , in which the Supreme Court held |-

'SECTION 23 of the Act requires the Court to be satisfied on certain matters before it is to pass a decree. The satisfaction of the Court is to be on the matter on record as it is on that matter that it has to conclude whether a certain fact has been proved or not. The satisfaction can be based on the admission of the parties. It can be based on the evidence, oral or documentary, led in the case. The evidence may be direct or circumstantial.'

(6) On the basis of the aforesaid ratio of the Supreme Court, Mr.Bhagat has contended that on the basis of the evidence on record the Trial Court came to the conclusion that the cruelty stands proved and compliance of Section 23 of the Act has been made by the Trial Court. Mr.Bhagat has further argued that cruelty on its own stands proved and there was no question of condensation of cruelty in the facts and circumstances of this case. The appellant has totally withdrawn from the

society of the respondent.

(7) Before lengthy arguments were addressed by the learned counsel appearing for both the parties, I had tried for a reconciliation between the parties thinking that both of them are medicos and a broken marriage could be saved. However, in spite of efforts, nothing fruitful came out of such reconciliation.

(8) In view of the facts and circumstances of the case, it will not be in the interest of justice to re-open and re-evaluate the evidence by this Court in the absence of any perversity in the impugned judgment. In the instant case there was no reasonable or justifiable excuse for the appellant to deny sex to the respondent. The finding that the appellant did not have the courtesy to visit her father-in-law, who was lying admitted in the nursing home, adds to the behavior and act of cruelty on the part of the appellant. The Supreme Court in *Dr.N G Dastane v. Mrs.S Dastane's case* (supra) has held that the aforesaid acts tend to destroy the legitimate ends and objects of matrimony. Even if assuming that there was some justification for occasional sallies or show of temper, the pattern of behavior which the appellant generally adopted was grossly excessive and amounted to cruelty.

(9) In view of the aforesaid discussions, I do not see any justification to interfere with the well-reasoned order of the Trial Court. The appeal is dismissed. However, in the facts and circumstances of the case there is no order as to costs.

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