

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH

JUSTICE SHEEL NAGU
&
JUSTICE ANAND PATHAK

FIRST APPEAL NO.1172/2019

Rajesh Bhoyale
Versus
Smt. Mahadevi

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Shri T.C. Narwariya, learned counsel for the appellant.
None for the respondent though served.

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JUDGMENT
{Delivered on 29th day of March, 2022}

Per Justice Anand Pathak, J.:

1. The present appeal is preferred under Section 19 of the Family Court Act, 1984 against the judgment and decree dated 27-03-2019 passed by the Link Family Court, Gwalior whereby the application preferred by the appellant/applicant/husband under Section 13(1)(iA) of Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) has been rejected.
2. Precisely stated facts of the case are that marriage of appellant and respondent was solemnized on 22-02-2004 according to Hindu Rites and Rituals. After marriage, respondent/wife

insisted to live separately and in order to maintain domestic peace, after 6 months of marriage, appellant and respondent started living separately. Despite living separately, respondent/wife used to quarrel with appellant and left for her maternal home without any information. She did not take any interest in household work. Out of their wedlock two children born but due to negligence on part of wife, one child died and only one survived. Respondent/wife used to talk on mobile for hours together and used to move with unknown persons during late night in city. Thus, domestic incompatibility prevailed between the parties which led to filing of application under Section 13 of the Act seeking divorce.

3. One fact deserves mention is that respondent/wife did not appear in the trial Court and remained *ex parte*. That fact has been mentioned in para 5 of the judgment. Before this Court also, notice was issued for service of respondent through RAD mode earlier vide order dated 05-07-2019, but same returned unserved. Thereafter vide order dated 26-08-2019 process fee by RAD mode was directed to be given for service and same was received by the respondent but she did not prefer to appear, therefore, matter was heard in absence of respondent.
4. Heard learned counsel for the appellant at length and perused the record.
5. In the instant case as per pleadings it appears that appellant

filed application under Section 13 of Hindu Marriage Act with specific allegations that his marriage was solemnized on 22-02-2004 at Gwalior and at relevant time appellant was living along with his parent but soon after his marriage, his wife compelled him to change his house and therefore, appellant has to part his ways with his parents and had to live with his wife in nuclear family for domestic peace. From their wedlock, two sons were born, out of which one was 14 years of age at the time of filing of application and another son passed away at the age of 3 years due to alleged negligence of respondent/wife.

6. Submissions meandered through different allegations wherein neither she cooperated in performance of daily household work, taking care of children or in respect of maintaining domestic peace.
7. According to appellant, she used to converse on mobile for hours together and whenever intercepted, reacted sharply and indulged into verbal spat. Allegations further move in respect of her movement along with some unknown persons in the city but same has not been established by the appellant through cogent evidence. It was also the allegation of appellant that she does not cooperate in cohabitation with the appellant and she always avoided him.
8. Appellant referred certain mediation proceedings also pertaining to year 2009 to 2015 at Police Station Inderganj and

from the pleadings and evidence it appears that reconciliation proceedings have been held but of no avail. Even in earlier case services of mediation center of this Court were also availed and settlement was struck on 01-12-2015 in case No.857/2015 but soon thereafter things turned ugly.

9. All these allegations as referred above are being narrated in the divorce application and affidavit filed under Order XVIII Rule 4 of CPC by the appellant. His examination-in-chief was also duly recorded by the Family Court but since the respondent did not appear and remained *ex parte*, therefore, those allegations were not rebutted in any manner because nobody rebutted and cross-examined the witness on behalf of respondent/wife. Beside oral evidence, appellant filed copy of complaint dated 29-04-2011 Ex-P/2 addressed to Station House Officer, Police Station Inderganj in which he referred about the conduct of his wife. In the said complaint, it is surfaced that wife is extending threat to the appellant regularly and at times she indulged into physical violence also, intimidating him for dire consequences as well as for false implication etc.
10. Notice Ex-P/3 has also been exhibited by the appellant by which he issued legal notice on dated 08-10-2015 to his wife for seeking divorce, therefore, in all probabilities, respondent was well aware of the fact regarding domestic incompatibility shared by the couple and respondent knew the fact that

appellant would file divorce proceedings against the respondent.

- 11.** Notice for mediation dated 15-10-2015 has also been exhibited by the appellant as Ex-P/5 in which he was directed to appear on 28-10-2015 at Mediation Center, High Court as pre-litigation mediation case. Appellant also referred the compromise deed Sulahnama (dated 01-12-2015) in which respondent was advised to live with her husband at Gwalior with further undertaking that she would not quarrel with her mother and father-in-law and if she goes to her maternal home on religious occasions then said arrangement shall be done by the appellant. It was also agreed upon that appellant would not have any objection if she talks on mobile to her parent.
- 12.** Vide Ex-P/7 appellant also exhibited the complaint sent to Station House Officer, Police Station, Inderganj and copy endorsed to Superintendent of Police on dated 15-05-2017. All these documents were exhibited by the appellant in support of his submission.
- 13.** From perusal of these documents and allegations as contained in appeal, divorce application and affidavit, it appears that for a considerable period of time appellant and respondent shared domestic incompatibility and conduct of the respondent wherein she constantly for more than fifteen years or since 2004, caused irritation, threat, intimidation and avoiding cohabitation on the

pretext or the other collectively entitled the appellant to get the decree of divorce.

14. When appellant specifically pleaded about the behaviour of respondent for last more than 15 years and different stages of dispute, reconciliation and complaints from time to time were referred which indicate that both shared domestic incompatibility.
15. So far as mental cruelty is concerned judgment of Apex Court in the case of **Dr. N.G. Dastane Vs. Mrs. S. Dastane, AIR 1975 SC 1534** is worth consideration. The relevant extract of the judgment is reproduced as under:

"The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse,. That which may be cruel to one person may be laughed off by another; and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."(1) The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to

drown their differences, their ideal attitudes may help them over-look or gloss over mutual faults and failures. As said by Lord Reid in his speech in Gollins v. Gollins (2) ALL ER 966

"In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

The said judgment still holds the field and is source of wisdom time and again in respect of mental cruelty .

16. The aforesaid decision was referred to with approval in **AIR 2002 SC 2582 (Praveen Mehta Vs. Inderjit Mehta)**, (2007) 4 SCC 511 {**Samar Ghosh Vs. Jaya Ghosh**}, (2010) 4 SCC 339 {**Manisha Tyagi Vs. Deepak Kumar**}, (2012) 7 SCC 288 {**Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal**}, (2013) 2 SCC 114 {**U. Sree Vs. U. Srinivas**}. In all these cases, the judgment rendered in the case of **Dr. N.G. Dastane (supra)** is relied upon. In the case of **Samar Ghosh (supra)**, the Supreme Court has enumerated the illustrative instances of human behaviour which may be relevant for dealing with the cases of mental cruelty:

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate

some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) ** ** *

(iii) ** ** *

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) ** ** *

(viii) ** ** *

(ix) ** ** *

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) ** ** *

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) ** ** *

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage

intends to live in domestic relationship and peace.

21. *Resultantly*, the appeal stands **allowed**. The impugned judgment and decree dated 27-03-2019 passed by the Link Family Court, Gwalior is set aside. Application under Section 13 of the Act stands allowed. Appellant is entitled to get divorce from his wife, respondent herein. Decree be drawn accordingly.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge

Anil*



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