

Court No. - 42**Case :-** FIRST APPEAL No. - 405 of 2013**Appellant :-** Ravindra Pratap Yadav**Respondent :-** Smt. Asha Devi And Others**Counsel for Appellant :-** M. Islam, Ahmad Saeed, Azim Ahmad Kazmi**Hon'ble Suneet Kumar, J.****Hon'ble Rajendra Kumar-IV, J.****Rajendra Kumar-IV, J.**

1. This family court appeal challenges the impugned dismissal order dated 28.11.2005, passed by Principal Judge, Family Court, Varanasi, on a divorce petition filed by the appellant-husband in Marriage Petition No. 526 of 2001, under Section 13 Hindu Marriage Act, 1955.

2. The facts of the appellant's case may be briefly stated as follows :-

The plaintiff-appellant and defendant-respondent were married on 05.05.1979, according to Hindu rites and rituals. According to the appellant, *Gauna* was performed after seven years of marriage. The defendant-respondent came to his house and started living as wife. For some time, behavior and conduct of the defendant-respondent was good but suddenly she changed her gait and refused to live with him as wife. Apathy and her inhuman conduct towards appellant became apparent in short time. The plaintiff-appellant tried a lot to convince her but she did not establish

relationship with him. The plaintiff-appellant felt that his marriage with the respondent was merely an eyewash because immediately after the "Gauna" serious matrimonial problems developed between them which kept growing. According to the appellant, though they lived under the same roof for some time but respondent voluntarily began to live separately after some time of her Gauna, at her parents house. The plaintiff-appellant was serving in police department, thus, he had gone to the place of his posting. Appellant asserted that after six months of his marriage, he came back to his house taking leave and thought that there might have been some change in the behavior of defendant-respondent and that she would discharge her obligation of marital life and respect the marital bond. The plaintiff-appellant went to take his wife, but she refused to accompany him. She asked him to take divorce on consent, whereupon, plaintiff-appellant told her parents regarding the proposal of defendant-respondent to which they agreed.

3. On 04.07.1994, there was Panchayat in the village and according to community rituals, parties arrived at an agreement of divorce.

4. According to the plaintiff-appellant, they have mutually divorced and he had paid a permanent alimony at Rs. 22,000/- to the defendant-respondent before the respected persons to which defendant-respondent accepted.

5. According to plaintiff-appellant, defendant-

respondent no. 1 had contracted a second marriage with defendant-respondent no. 2 and two sons were born from their wedlock. According to the plaintiff-appellant, he sought decree of divorce on the basis of mental cruelty, long desertion and divorce agreement dated 04.07.1994.

6. Despite sufficient service through publication, defendant-respondent did not turn up in the court, therefore, the case was directed to proceed ex-parte.

7. In support of his case, the plaintiff-appellant examined himself as P.W.-1, Harikishan P.W.-2 and Ram Badan P.W.-3 and filed some papers before the lower court.

8. After examining the entire evidence led before the court below, it did not find the case of plaintiff-appellant proved and the case was ordered to be dismissed ex-parte with cost.

9. Feeling aggrieved with the impugned order, present appeal has been preferred.

10. We have heard learned counsel for the appellant and perused the record.

11. The plaintiff-appellant sought divorce mainly on the ground that divorce has taken place in the community Panchayat, mental cruelty committed by defendant-respondent denying to co-habit and discharge the obligation of marital life and separate living of the parties for considerable time, and continued to live separately ever-since.

12. The plaintiff-appellant examined himself as P.W.-1 and two other witnesses as P.W.-2 and P.W.-3 who supported the plaintiff-appellant case.

13. The evidence led by plaintiff-appellant is uncontroverted so far. There is nothing on record to disbelieve the plaintiff-appellant's case as well his uncontroverted evidence.

14. Dismissing the case of plaintiff-appellant, the court below observed that papers filed by the plaintiff-appellant are photo copies and no original papers have been filed by the plaintiff-appellant, the photo copy of papers are not admissible in evidence. The court below also observed in the impugned judgment that there is no evidence on the file showing that defendant-respondent Asha Devi has contracted second marriage. It is evident from the record that since long, the parties to the marriage have been living separately, according to plaintiff-appellant, defendant-respondent had no respect for marital bond, denied to discharge obligation of marital liability. There has been a complete breakdown of their marriage.

15. The court below has adopted a hyper technical approach and passed the order of dismissal of the plaintiff-appellant's case. There is nothing on record to controvert the evidence of plaintiff-appellant.

16. Undoubtedly, not allowing a spouse for a long time, to have sexual intercourse by his or her partner, without sufficient reason, itself amounts mental cruelty

to such spouse. A Bench of Three Judges of Apex Court in **Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511** has enumerated some of the illustrations of mental cruelty. Paragraph 101 of the said case is being reproduced below:

“101. 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) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(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) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(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 [pic]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) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge

of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(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) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

The above mentioned illustrations, No. (viii) and (xii) given in Samar Ghosh (supra), support the view taken by the High Court in holding that in the present case the wife has treated her husband with mental cruelty.

17. In **Vinita Saxena vs. Pankaj Pandit, (2006) 3 SCC 778**, on the aspect of mental cruelty the Apex Court made the following observations:

"31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

32. The word "cruelty" has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct

in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the [pic]impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

18. Since there is no acceptable view in which a spouse can be compelled to resume life with the consort, nothing is given by trying to keep the parties tied forever to a marriage than that has ceased to in fact.

19. From the perusal of plaint and other evidence available on record, we are unable to persuade ourselves to accept the view taken by the court below.

20. In view of the discussion herein above, appeal succeeds and is accordingly, **allowed**. Impugned order of the Family Court is quashed and set aside. The marriage petition filed by the plaintiff-appellant stands allowed granting decree of divorce.

21. In the circumstances, there shall be no order as to costs.

Order Date :- 16.05.2023

Manoj

(Rajendra Kumar-IV, J.)

(Suneet Kumar, J.)