

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
DB :- HON'BLE JUSTICE ANAND PATHAK &
HON'BLE JUSTICE HIRDESH, JJ**

ON THE 23rd JULY, 2025

FIRST APPEAL NO. 268 OF 2023

KAMENDRA SINGH RAJAWAT

Versus

SMT. SONU SINGH

FIRST APPEAL NO. 270 OF 2023

KAMENDRA SINGH RAJAWAT

Versus

SMT. SONU SINGH

Appearance:

*Shri Himanshu Chaturvedi- Advocate for appellant-husband in both appeals.
Shri H.K.Shukla on behalf of Shri Sooraj Bhan Lodhi- Advocate for
respondent-wife in both appeals.*

JUDGMENT

Per Justice Hirdesh:

IA No.1382 of 2023 & IA No.1383 of 2023, applications under Section 5 of the Limitation Act for condonation of delay in filing the appeals are taken up, considered and allowed for the reasons mentioned therein.

2. This judgment shall also govern disposal of connected First Appeal No.270/2023 as the same is filed by appellant-husband arising out of common judgment dated 16.12.2022 passed by Principal Judge, Family Court, District Bhind in Case No.128/2020 (HMA) whereby the application filed by appellant

under Section 9 of Hindu Marriage Act (hereinafter it would be referred as 'the HM Act) seeking restitution of conjugal rights has been allowed.

3. The instant First Appeal No.268/2023 under Section 19 of Family Courts Act has been preferred by appellant challenging the common judgment and decree dated 16.12.2022 passed by Principal Judge, Family Court, Bhind in Case No.249/2019 (HMA), whereby the application under Section 13(1) of HM Act filed by appellant seeking a decree of divorce on the ground of cruelty and desertion has been rejected.

4. It is not in dispute that marriage of appellant with respondent was solemnized on 26.04.2016 according to Hindu rites and rituals and they have no child.

5. In a narrow compass, necessary facts for disposal of both the appeals, in short, are that by filing divorce application before the Family Court, it was averred by appellant that his wife-respondent used to quarrel over trivial matters and does not perform household chores. His mother has already passed away. Respondent used to give threat with dire consequences and to send his family to jail and pressurized him to quit job. On 28.07.2019, respondent left her in-laws' house without informing anybody with all belongings and cash of Rs.10,000/- and went to her maternal home Mangalpur. She also used to give a threat for committing suicide and pressurize him to live with her. Despite various efforts, respondent is not ready and willing to return her in-laws' house. It is further submitted that due to gynaecological problems of respondent, he tried many times to take her treatment, but she deliberately denied to go to doctor that is why he was very well known that respondent can never become a mother of child and marriage has been performed with him by concealment.

6. Further, appellant in his divorce application pleaded that respondent intentionally refused to establish physical relations with him when he came on leave and due to her inability to fulfil her marital obligations, he filed an application under Section 9 of HM Act before Family Court for restitution of

conjugal rights in 2018, wherein the Family Court issued a direction to respondent to stay with him and fulfil her marital obligations. After proper treatment, respondent stayed with him only for a period of two months and thereafter returned to her parental home. Despite repeated requests, she did not turn up. On these grounds, he prayed that the marriage between them be dissolved.

7. Respondent filed a reply to divorce application and denied the allegations of appellant. It is pleaded that after spending Rs.11 lac with other household articles in her marriage, appellant used to demand Rs.2,00,000/- for purchasing a house in Gwalior and used to treat her inhumanely. She has always tried to fulfil her marital duties by living in her in-laws' house, but she was expelled due to non-fulfilment of demand of dowry. By taking advantage, an application under Section 9 of HM Act has been filed by appellant for restitution of conjugal rights before the Family Court where she had given her consent to live with appellant. However, after some time, appellant again started demanding dowry and on 29.07.2019, again expelled her after beating. It appears that appellant has neglected his responsibilities and not discharging his obligations as husband. While giving her statement on 29.07.2019, she has narrated that appellant has snatched her gold and silver jewellery and ousted her from her in-laws' house. Even otherwise, she is ready and willing to live with appellant. Hence, prayed for dismissal of divorce application.

8. Respondent had also filed an application under Section 9 of HM Act seeking restitution of conjugal rights with pleadings that her father had given sufficient dowry including cash of Rs.11,00,000/- and other household articles. Her in-laws' family used to harass and abuse her and her father and they did not keep her well, unless the demand of dowry of Rs.2 lac is fulfilled. An amicable settlement was held on 26.11.2018, but after six months, her husband and his family again started harassing and abusing her. On 29.07.2019, they ousted her from her in-laws' house and since then, she has been living at her

parental home. She has also filed a maintenance application under Section 125 of HM Act. It is further pleaded that she tried various times to settle the score, but appellant refused to keep her with him. Therefore, she has also filed a case under Section 498-A of IPC and Section 3/4 of Dowry Prohibition Act. Appellant had an illicit relationship with someone in Delhi and because of this, her husband is unable to maintain marital relationship with her and, and by taking advantage, appellant has filed divorce application on false grounds.

9. Appellant filed his reply to the application for restitution of conjugal rights filed by respondent in addition to his pleadings in divorce application, submitted that no dowry was given by father of respondent in his marriage. He tried many times to convince respondent by saying that there is no other person to take care of his father. Appellant also stated in his reply that respondent does not want to have intimate physical relationship with him and does not want to maintain marital relations. In pursuance of direction given by the Family Court on his application under Section of HM Act in 2018, respondent did not change her cruel behaviour and establish the marital relationship. He has left with no other option, but he was compelled to file divorce application. As a counter-blast, respondent filed a false criminal case against him and his father on 13.07.2020 in order to pressurize him. On these grounds, it is not possible for him to live with respondent and a decree of divorce be granted in his favour on the ground of cruelty and desertion.

10. After considering the pleadings of both the parties, the Family Court framed issues. After appreciating evidence of both the parties as well as material available therein, the Family Court dismissed the divorce application filed by appellant on the ground that he failed to prove "desertion and cruelty" against respondent and allowed the application under Section 9 of HM Act filed on behalf of respondent.

11. Being dissatisfied with impugned common judgment and decree, the appellant has knocked the door of this Court by way of both the appeals.

12. It is contended on behalf of appellant that the impugned judgment and decree passed by the Family Court without going through the evidence produced by the parties which is contrary to law. Respondent is living separately from appellant for a period of almost six years without any valid reason. Appellant is serving in Army and as and when he came back to his home on leave, his wife did not cooperate with him and gave him ill-treatment, which amounts to cruelty. Respondent lodged a false case against him and his father and used to threaten to commit suicide, which also amount to cruelty. Respondent has deserted him and deprived him of happiness of marital life. He had also filed an application under Section 9 of HM Act before family Court in which, respondent was directed to go with him and live happily in matrimonial fold, but she lived with him only two months and then, she again went to her parental house. Under such premises, he is entitled for a decree of divorce on the ground of cruelty and desertion.

13. On the other hand, learned counsel for respondent by supporting the impugned judgment and decree opposed the contentions of appellant and submitted that she is still wants to live with appellant in her matrimonial home and fulfil her duties as a wife by maintaining conjugal life. Hence, prayed for dismissal of both the appeals.

14. Heard learned counsel for the parties and perused the record.

15. The concept of "mental cruelty" has been discussed in catena of decisions by Hon'ble Supreme Court 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}* and *AIR 1975 SC 1534 {Dr. N. G. Dastane vs. Mrs. S. Dastane}*. Similarly, in the case of *Samar Ghosh Vs Jaya Gosh, 2007 (4)SCC 511*, the Hon'ble Apex Court has held that cruelty can be physical as well as mental :

"46...If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

Cruelty can be even unintentional: ...

....The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."

This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(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.

(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.

(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 becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.*

16. The legal principle with regard to "desertion" is concerned, the Hon'ble Apex Court in the matter of ***Bipinchandra Jaisinghbhai Shah Vs. Prabhavati*** ***AIR 1957 SC 176*** has explained as under:-

" For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there., namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*).

Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce; under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an *animus deserendi*"

[See:- AIR 1964 SC 40 (Lachman Utamchand Kirpalani Vs. Meena alias Mota), (2002) 1 SCC 308 {Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi} to (2006) 4 SCC 558 {Naveen Kohli Vs. Neelu Kohli}]

17. On perusal of evidence of both the parties and on going through the impugned judgment and decree passed by Family Court, it was found that the respondent although in her evidence deposed that her uterus was not damaged and her menstrual cycle is regular, but appellant in his evidence deposed that when he tried to take her for treatment, she deliberately denied to go to doctor and the fact regarding conception is very well known to respondent and her parents and concealing this fact his marriage was solemnized with respondent. Respondent had produced medical document by proving that she is capable of becoming a mother. Therefore, statement of appellant that respondent is unable to give birth to a child and due to this reason, her lineage has stopped, is false.

18. So far as the allegation of respondent regarding demand of dowry is concerned, no report or complaint was made to anybody or at any police station by her which clearly shows that there are minor domestic disputes between both the parties and not otherwise. From the record, it appears that appellant has utterly failed to prove his case that he was harassed, deserted and deprived of marital bliss.

19. Taking all these narration of facts into consideration, *prima facie*, there appears that the Family Court, while rejecting the divorce application filed by appellant cannot be said to have approached wrongly in recording a finding which is well-merited.

20. Regarding “*irretrievable breakdown of marriage*” the Hon'ble Supreme Court in the cases of ***R. Srinivas Kumar V. R. Shametha, 2019 (4) SCC 409, Munish Kakkar Vs Nidhi Kakkar, AIR 2020 SC 111 and Neha Tyagi Vs Lieutenant Colonel Deepak Tyagi (2022) 3 SCC 86***, has held that an irretrievable breakdown of marriage is a marriage where husband and wife have been living separately for a considerable period and there is absolutely no chance of their living together again.

21. On examining the case at the touchstone of principles of law laid down by Hon'ble Apex Court in the above-cited cases, suffice to say that evidence led by appellant clearly demonstrates that after marriage between couple in the year 2016, respondent lived with appellant till 29.07.2019. Appellant present in person before this Court and submitted that anyhow he intends and ready to accept respondent in matrimonial fold, but due to behavioural issues of respondent, he is reluctant to live with her and ready to give permanent alimony, so that both of them can part their way peacefully. The marriage of both the parties was solemnized on 26.04.2016 and they are living separately since 2019 i.e. more than six years. Due to rupture of marital cord, no child was born. Matrimonial bond is completely broken and is beyond repair. This Court left with no other option, but thinks it appropriate that since relationship of

both the parties must end as its continuation is causing cruelty either on the parties, therefore, the long separation, absence of cohabitation, the complete breakdown of all meaningful bonds and existing bitterness between the two, has to be read as "cruelty". Where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation, then continuation of such marriage would only mean giving sanction to cruelty with each is inflicting on the other.

22. So far as the question of grant of one-time settlement as full and final settlement is concerned, in matrimonial cases, the Court has to ascertain the financial capacity/status of parties depending on source of income and expenditure for determining amount of maintenance/permanent alimony/full and final settlement/one-time settlement, this Court left with no other option but think it just and proper to allow one-time settlement in the shape of full and final settlement **with the consent of both the parties** to the tune of Rs.20 lac in favour of respondent as offer made by appellant, which is payable to the respondent by appellant by way of Demand Draft or any other mode **within a period of four months from the date of receipt of copy of this judgment**. Subject to aforesaid full and final settlement of one-time settlement granted in favour of respondent.

23. In view of foregoing reasons and discussions, the marriage between the parties is **dissolved**. A decree be drawn accordingly.

24. Pending application(s), if any, shall stand closed.

A copy of this judgment be kept in connected First Appeal No. 270 of 2023.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

Avi*