

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On : January 02, 2017*
Judgment Delivered On : January 06, 2017

+ **MAT.APP.(F.C.) 82/2014**

MRS. NISHA RANI Appellant

Represented by: Ms.Arati Mahajan Shedha and
Mr.Manoj Kumar, Advocates with
appellant in person.

versus

SH. SOHAN SINGH NEHRA Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The parties were married on April 23, 2000 in New Delhi in accordance with Hindu rites and ceremonies, but unfortunately could not go along well, the appellant having left the matrimonial home on September 06, 2003 to live with her parents. Her leaving the matrimonial home on September 06, 2003 was considered an act of desertion and cruelty by the learned Trial Court and hence a decree of divorce dated November 11, 2013 was granted to the husband/ respondent by the learned Judge, Family Court, Dwarka, New Delhi. It is against this decree the appellant–wife has filed this Matrimonial Appeal (Family Court) No.82/2014 and has challenged the impugned judgment.

2. Briefly stated the facts are that the respondent/husband had filed a divorce petition HMA No.444/2009 (though originally filed before Faridabad Courts and pursuant to the order of the Hon'ble Supreme Court dated February 26, 2010 the petition came to be transferred to Delhi Courts) against his wife alleging his life being made miserable by his wife, she being quarrelsome; always insisting of separation from her in-laws; did not provide him food in time and made his life a hell. On February 14, 2002, the appellant gave birth to a child, who unfortunately expired on February 16, 2002 and she held the respondent responsible for his death and demanded ₹5,000/- as compensation; she used to leave the matrimonial home without his consent on pretext of joining some computer classes; and finally left the matrimonial home with her parents on September 06, 2003 in his absence taking away all her dowry articles and that he lodged DD No.25A dated September 11-12, 2003 with Police Post No.3, NIT Faridabad, Haryana. The husband / respondent also alleged that on April 03, 2004, a daughter namely Tina was born and all her delivery expenses were borne by him and since then he has been visiting the house of the appellant herein requesting her to return to her matrimonial home, but to no avail. The husband / respondent also alleged that on September 08, 2003 he filed a Divorce Petition No.24/2013 in Faridabad Courts, but since she gave an assurance to join him, he withdrew the said petition on January 19, 2004, but yet again the appellant failed to join his company. On June 13, 2004 he convened a Biradari Panchyat, but the appellant did not accept its advice and insulted him in the presence of the panchyat members and rather filed FIR No.477/2005 under Section 498A/ 406 of the IPC at police station Dabri, Delhi. The respondent further alleged that at the advice of the learned Court, he tried to patch up the matter and on January 05, 2006 went to her parents house

to bring her back, but was abused and kicked and that he reported the matter to SHO, Dabri, Delhi.

3. The appellant herein denied allegations made in the divorce petition and rather alleged that she was always been treated as an intruder / maid servant by the family members of her husband; was cursed, abused, scolded and her husband used to slap her in the presence of all to denigrate her. The appellant denied that she ever took away any of her articles and rather such articles, excluding jewellery, were returned by her husband before CAW Cell, Nanakpura, Delhi on January 17, 2005. She alleged that respondent has been demanding money on various occasions and her father gave ₹50,000/- towards cost of construction of a house purchased by the respondent, but he was not satisfied; she further alleged that she was harassed and beaten even when she was in family way and that on January 25, 2002, he threatened her to leave him and she had to move to her parents house in an advance stage of pregnancy where her child died; the respondent came to visit her after about 15 days only to blame her for killing their child. He did not pay a single penny towards delivery expenses of ₹30,000/- which were rather spent by her parents. The appellant further alleged that on September 06, 2003 she was again beaten in the morning by her husband; she called her parents and when they arrived, he ran away on seeing them and returned about half an hour later with two person only to abuse the appellant herein and her parents. Her parents then brought the appellant to Delhi. On April, 03, 2004 the respondent came at Delhi under the pressure of his relatives when she had delivered a baby girl but returned on April, 04, 2004 leaving her with her parents; that she is residing with her parents since September 06, 2003, she fear for her life as had suffered domestic violence and it was not possible for her to live with her husband in the given

circumstances and that her husband had rather deserted her by his conduct and is not entitle to a decree of divorce.

4. Both the parties examined themselves in evidence. The learned Judge, Family Court though disagreed with the respondent on various issues viz (a) the appellant ever used to taunt him on petty issues; (b) the appellant has ever pressurized him to live separately from her in-laws; (c) she ever failed to prepare food for him, as alleged; (d) or he was ever abused by the mother of the appellant at the time of death of their first child; (e) or she ever used to leave the matrimonial home without his consent on the pretext of joining computer classes; or (f) she ever abused him in the presence of his landlord at SGM Nagar, Faridabad; as no specific dates or events were disclosed by the respondent/husband either in his petition or in his evidence; and his allegations being generalized statements. The learned Judge, however granted a decree of divorce, primarily, on the grounds (a) the appellant herein admittedly left the matrimonial home on September 06, 2003 and the allegation that she was mercilessly beaten was difficult to digest in the absence of medical record, she being pregnant. The Court disbelieved that her husband ran away on seeing her parents only to return with two person to hurl abuses upon her and her parents. The learned Family Judge rather held that the appellant had left the matrimonial home on September 06, 2003 without any cause and since had failed to join the company of her husband despite his repeated requests has committed cruelty upon him by denying him the matrimonial bliss. Secondly, the learned Judge accepted the fact that on April 13, 2004 a Biradari Panchyat was convened by the husband – respondent at the residence of the appellant in Delhi; but she did not accept the advice of the Panchyat and rather slapped the respondent in the presence of panchyat members and since no suggestion was

put by the appellant of not having a Panchyat on April 13, 2004 or of not slapping her husband in presence of such members it was an act of cruelty. Lastly, when on January 05, 2006 respondent husband went to the house of her parents with Rishi Pal and Ram Kumar, he was abused and kicked by the mother of the appellant. The learned Judge Family Court held that these three incidents caused cruelty to respondent and granted him divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955. Further, the learned Judge Family Court also held that the appellant herein had left the matrimonial home without any reasonable cause with a requisite intention of bringing the marriage permanently to an end and had failed to join the company of her husband despite his repeated efforts and thus committed the act of desertion, hence petition was also decreed under Section 13(1)(ib) of Hindu Marriage Act.

5. We have heard learned counsel for appellant and have gone through the evidence.

6. Admittedly, the learned Judge, Family Court did not believe the allegations of respondent against the appellant herein that she being a quarrelsome lady was ever forcing him to live separately from her in-laws; or was taunting him on petty issues; or ever refused to cook food for him; or ever abused her husband at the time of death of their first child or threatened to implicate him in false cases; or ever left the matrimonial home without his consent to join the computer classes; or ever abused him in the presence of his landlord at SGM Nagar, Faridabad, but the learned Judge was so overawed of her leaving the matrimonial home on September 06, 2003 without the consent of her husband that he made it a basis for cruelty and desertion by the

appellant. A bare perusal of the evidence of the parties, however, would reveal the story otherwise.

7. Desertion is not a withdrawal from a place, but from a state of things. It is the repudiation by one of all obligations of marriage. It is the abandonment of one spouse by the other without any reasonable cause and without consent of other. Now let us examine if the appellant herein left the matrimonial home on September 06, 2003 without any reasonable cause or was she compelled to leave her home. The incident dated September 06, 2003 is though relevant but is not to be seen in isolation. We need to understand the background to weigh her intention in leaving her matrimonial home. The appellant in her reply to divorce petition as also in her evidence-affidavit Ex.RW1/A had deposed that she was always harassed, humiliated, tortured by her husband / respondent and that he was rude; used to beat her and that even on January 25, 2002 he had threatened to burn her if she does not leave the matrimonial home forthwith and that in order to save her life, she left the matrimonial home at about 06.00PM of January 25, 2002 in advance stage of pregnancy and had reached her parents at Delhi in bare three clothes. She further averred that the respondent did not provide her good diet or medicine and that her first child was born by caesarian operation on February 13, 2002 though expired on February 14, 2002 but despite the respondent being informed about the time of delivery and of death of her child, neither he nor his family members came to see the appellant or her child. The respondent visited her after 15 days only to blame the appellant that she is the one who had killed the child. Now, to find the truth qua her allegations, we need to refer to the cross-examination dated July 04, 2013 of the respondent as PW1 wherein he deposed that the appellant had told him that she was a burden on her parents and would not leave the child

as a burden on them and as the child died within 24 hours he blamed the appellant that she has killed the child. Now, making such allegation to a mother whose child had expired a few days before, would rather be a cruelty upon her when admittedly the appellant was still bed ridden, the child being born through a caesarian operation. The respondent rather insulted his wife who was under intense trauma on death of her first child. This admission of respondent rather reveal the helplessness of the appellant-wife.

8. Now, in the light of above, we need to examine the incident dated September 06, 2003. The appellant herein in her affidavit Ex.RW1/A had deposed that that despite she being pregnant again was given beating by her husband on September 06, 2003. She called her parents by telephoning them and on seeing her parents the respondent ran away from the house and had returned with two person after about half an hour only to abuse the appellant and her parents. Her parents could not tolerate this behavior and brought the appellant to Delhi. While leaving the house her parents had requested the respondent to give her clothes but he refused.

9. The respondent (PW1) when was cross examined, admitted that on September 06, 2003 the parents of the appellant had visited his house but he went away to buy vegetables and when he returned later in the day, the parents had already left. Though he denied that he ran away from his house but admittedly had left his house allegedly to buy vegetables. His conduct of leaving the house and returning later in the day reveal that he did not intend to face the parents of the appellant. Moreso, the appellant (RW1) in her affidavit Ex.RW1/A had repeatedly said that she and her parents tried to patch up with the respondent, but all their efforts had failed. The respondent did not prefer to

cross examine the appellant (RW1) on any of her assertions made in her affidavit Ex.RW1/A. Thus, her deposition qua her cause to leave her matrimonial home on January 25, 2002 and again on September 06, 2003 was duly explained by her in her affidavit Ex.RW1/A needed to have been given due weightage especially when it was an unchallenged testimony and here the learned Judge Family Court went wrong.

10. The respondent herein, if intended to secure a decree on the grounds of cruelty and desertion ought to have proved his allegations by leading positive evidence and not ought to have depended upon the suggestions not been put to him. Admittedly, per his cross examination as PW1, the respondent herein had visited his wife few days after first delivery and rather taunted that she had killed the child and thus committed an act of cruelty. Moreso the allegations of being beaten, harassed etc. made by appellant in her affidavit Ex.RW1/A also went unchallenged.

11. Though admittedly on September 06, 2003 the appellant herein had left the matrimonial home under the circumstances above but the respondent failed to prove his sincere effort to call her back. Rather he filed a divorce petition No.24/2013 in Faridabad on September 08, 2003 i.e. just two days after and that too on the ground of desertion alleging his wife had deserted him since last more than a year, thus concealing the fact that his wife was three months pregnant with his second child who later was born on April 03, 2004. Admittedly, the respondent withdrew the said divorce petition on January 19, 2004, probably realizing his mistake that his wife was pregnant. The filing of HMA Petition No.24/2013 for divorce within two days of her leaving the matrimonial home show the hollowness in his claim of making sincere efforts

to bring her back. The filing of a petition of divorce on false ground and then unilaterally withdrawing it rather adds to the cruelty upon the other spouse.

12. We also note the appellant herein has deposed in her affidavit Ex.RW1/A that the respondent never visited her parental house to bring her or her daughter to the matrimonial home despite the fact that now daughter is more than nine years old.

13. Thus, her staying with parents since September 06, 2003 was duly explained by the appellant herein and there exist a reasonable cause for her staying separate. The fact that she and her parents tried to patch up the matter and tried to convince the respondent, per affidavit Ex.RW1/A, rather show that she never intended to end up matrimonial ties with the respondent, she being unemployed, staying with her old parents who rather were bearing expenses of her and that of her daughter. The record reveal the respondent rather had deserted the appellant and even today she has to fight for her maintenance.

14. Now, the second incident relied by the learned Judge, Family Court is of dated June 13, 2004 when the respondent allegedly had called a Biradari Panchyat and had reached the residence of the appellant herein along with one Ram Kumar, Om Prakash and Bir Singh, but the appellant did not accept the advice of the Panchyat and rather had slapped the respondent in the presence of members of Panchyat. This incident is denied by the appellant in her reply/written statement dated August 06, 2010. Rather her stand is that her complaint was being heard from October 20,2003 to June 17, 2005 in the Anti Crime Women Cell, Nanakpura, Delhi and during such hearings the respondent was asked so many times by the Investigating Officer to visit the house of the appellant herein, but he never came. Though, it is correct that appellant did not

cross-examine the respondent (PW1) on this incident, but in the face of the denial by the appellant in her reply dated August 06, 2010, the respondent was required to do something more; he ought to have produced such witnesses, allegedly present at the time of alleged incident dated August 06, 2010.

15. Likewise, the respondent failed to produce Rishi Kumar and Ram Kumar as his witnesses who allegedly went on January 05, 2006 with respondent to the parental house of the appellant where he was allegedly kicked by the mother of the appellant.

16. If the respondent was abused by his wife or by her mother on June 13, 2004 or on January 05, 2006, then in view of the denial of such incidents by the appellant in her reply dated August 06, 2010, he ought to have produced the best evidence available with him viz his friends or relatives who allegedly accompanied him on such dates.

17. On the other hand, the appellant in her affidavit Ex.RW1/A had elaborated the circumstances to show how she was tormented by her husband in her matrimonial house; why she had left the matrimonial home; the apathy shown by her husband towards her and their child by not even meeting the child once. The appellant rather proved that she was a victim of domestic violence as was always abused, taunted by her husband/respondent. The admission of the respondent that he accused his wife of killing their son and his conduct of leaving his house on September 06, 2003 and not returning till appellant was taken away by her parents and the fact of his filing a divorce petition within two days thereafter on a false ground do show the respect he had for his wife and the way he used to treat her. It is an admitted fact that FIR under Section 498A/406 of the IPC is still pending against him and we note the

efforts put in by the appellant to secure maintenance for self and for her daughter by moving applications every now and then.

18. Thus, looking at the material which has come on record it is clear that wife had sufficient grounds to live separately. We are of the view that learned Judge, Family Court, Dwarka, has misread the evidence and though the appellant left the matrimonial home, but she never wished to bring her marital ties permanently to an end. The desertion is not to be tested by merely ascertaining which party left the matrimonial home first. If one spouse is forced by the conduct of the other to leave, the desertion could be by such conduct of other spouse and compelled to live separately.

19. In the decision reported as (2010) 4 SCC 476 Ravi Kumar vs Julmidevi the Supreme Court has observed as under:-

“13. It may be noted only after the amendment of the said Act by the amending Act 68 of 1976, desertion per se became a ground for divorce. On the question of desertion, the High Court held that in order to prove a case of desertion, the party alleging desertion must not only prove that the other spouse was living separately but also must prove that there is an animus deserendi on the part of the wife and the husband must prove that he has not conducted himself in a way which furnishes reasonable cause for the wife to stay away from the matrimonial home.”

20. Thus, the facts above do show that appellant was forced by the conduct of the respondent to leave the matrimonial home and that it is the respondent who is guilty of constructive desertion and had made the appellant and her daughter run from pillar to post even for their bare minimum maintenance and had rather failed to prove the behavior of the appellant towards him was such

that it ever caused a reasonable apprehension in his mind that it was not safe for him to continue the matrimonial relations with the appellant. The respondent herein had failed to bring his case within the parameters of cruelty and desertion as defined and as such, we set aside the impugned judgment dated November 22, 2013 of the learned Judge, Family Court, Dwarka in HMA No.444/2009 titled 'Sohan Singh Nehra vs Nisha Rani'.

21. The appeal is thus allowed. The impugned judgment and decree dated November 22, 2013 is set aside. HMA No.444/2009 filed by the respondent is dismissed.

22. No order as to cost.

(YOGESH KHANNA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JANUARY 06, 2017

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