

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

ON THE 6TH MARCH, 2025

FIRST APPEAL NO. 1670 OF 2022

SMT. LATA BANSAL

Versus

RAJ BANSAL
&
FIRST APPEAL NO.1980 OF 2022

RAJ BANSAL

Versus

SMT. LATA BANSAL

Appearance:

*Shri Gaurav Mishra- Advocate for appellant-wife in FA No.1670/2022 and
Shri Amit Lahoti with Shri Divakar Vyas – Advocates for appellant-husband in
FA No.1980/2022.*

*Shri Amit Lahoti with Shri Divakar Vyas – Advocates for respondent-husband
in FA No.1670/2022 and Shri Gaurav Mishra- Advocate for respondent-wife in
FA. No.1980/2022.*

JUDGMENT

Per Hirdesh, J:

Regard being had to the similitude of the dispute, both the appeals were heard together and decided by common order.

First Appeal No. 1670 of 2022 has been filed by wife under Section 28 of Hindu Marriage Act, 1955 (in short " HM Act") challenging the

judgment and decree dated 23.09.2022 passed by Second District Judge, Sabalgarh, District Morena in Regular Civil Suit HMA No.08 of 2021, whereby application filed by wife under Section 9 of HM Act for restitution of conjugal rights has been rejected.

2. First Appeal No.1980 of 2022 has been filed by husband under Section 28 of HM Act challenging the judgment and decree dated 23.09.2022 passed by learned Second District Judge, Sabalgarh, District Morena in Regular Civil Suit HMA No.24/2020, whereby application filed by husband under Section 13 of HM Act seeking a decree of divorce on the ground of "cruelty and desertion" has been rejected.

3. It is an admitted fact that marriage of both the parties was solemnized on 20.04.2008 as per Hindu rites and rituals in Teshil Sabalgarh and out of their wedlock, a son, namely, Yash Bansal was born on 11.09.2009.

4. Brief facts of the case in First Appeal No.1670/2022, are that, appellant-wife filed an application under Section 9 of Hindu Marriage Act before trial Court for Restitution of Conjugal Rights against her husband wherein she alleged that on 20.04.2008, she got married with respondent-husband as per Hindu rites and customs. After some time of their marriage, she started living peacefully in her matrimonial house and out of their wedlock, a child, namely, Yash Bansal was born on 11.09.2009. It was alleged that her husband happens to be the owner of the shop, by which he earns around Rs. 50,000/- per month. After a lapse of some time, her husband demanded Rs.5,00,000/- upon which, she said that her father's financial condition is not good and he is not in a position to fulfil his demand, then her husband started misbehaving with her.

5. On 25.10.2014, on the auspicious occasion of *Bhaiduj*, her husband

ousted her from her matrimonial house and sent her at her maternal home by *jeep* and never came to bring her back. It is further alleged that father and brother of appellant-wife several times tried their best on phone and asked respondent to bring appellant back to her matrimonial house and also requested that they are not able to fulfil his demand of Rs. 5,00,000/-, but respondent refused the same. It is further pleaded by appellant that her husband filed an application to harass her under Section 9 of HM Act before learned trial Court which was decided on the basis of compromise arrived at between the parties on 25.08.2015. Thereafter, she went to her matrimonial house with her husband, however, respondent again started harassing and abusing her and started living with his parents in separate house in Sunhera, Sabalgarh. Her husband also used to threaten her that if she will take any action against him, he will divorce her. It is further contended by appellant in her averments that her husband already filed an application under Section 13 of HM Act seeking divorce which is pending before the Competent Court. As a consequence, she filed the present application under Section 9 of HM Act and prays for rejecting the divorce application filed by her husband.

6. Respondent-husband filed his written statement before the trial Court and refuted all the allegations levelled by appellant-wife in her application and seeking dismissal of the same.

7. Learned trial Court after framing the issues on the basis of pleadings made by both the parties and passed the impugned judgment and decree dated 23.09.2022 by which application filed by appellant-wife under Section 9 of HM Act has been rejected.

8. Now, brief facts of the case in First Appeal No.1980 of 2022, are that, appellant-husband filed an application under Section 13 of HM Act

for seeking decree of divorce from respondent-wife and pleaded that from the very beginning of their marriage, behaviour of his wife was cruel towards him and his family members. Out of their wedlock, one son, namely, Yash was born. It was further submitted that without any valid reason, his wife goes to her parental house. His wife used to abuse his parents and insist him to live separately from his parents. He further submitted that respondent and her family members suppressed the fact of illness and mental imbalance of respondent at the time of marriage. He treated his wife in Gwalior, however, the behaviour of his wife remain stayed. It is further alleged that his wife and his family members threatened him and his family members to implicate in various false cases. Four years earlier, appellant filed an application for divorce, but due to assurance given by family members of his wife and other relatives, he withdrew the same. In spite of this, behaviour of his wife could not change. It is further submitted that for last more than two years from the date of filing of divorce petition, his wife has gone to her parental house at Vijaypur and she is not even taking care of the child, who is presently living with him, therefore, prays for granting decree of divorce.

9. Respondent-wife filed his written statement before the trial Court and refuted all the allegations levelled by appellant-husband in her application and seeking dismissal of the same.

10. Learned trial Court after framing the issues on the basis of pleadings made by both the parties and passed the impugned judgment and decree dated 23.09.2022 by which application filed by appellant-husband under Section 13 of HM Act has been rejected.

11. Being aggrieved by the judgment dated 23.09.2022 passed by learned trial Court in First Appeal No.1670/2022, appellant-wife filed this

appeal on the ground that judgment and decree passed by trial Court is illegal, without jurisdiction and contrary to law. Learned trial Court has erred in law in overlooking the provisions contemplated under Section 9 of HM Act and without understanding the scope of Section 9 of HM Act passed the impugned judgment and decree, hence, the same deserves to be set aside. Learned trial Court committed error of law in passing the impugned judgment without considering the material facts whether her husband is living separately without having sufficient cause or not? She further submitted that respondent has no sufficient reason to live separately from appellant. Hence the impugned judgment decree passed in Case No.08/2021 (HMA) deserves to be set aside.

12. Being aggrieved by the judgment and decree passed by trial Court dated 23.09.2022 passed in First Appeal No.1980 of 2022, appellant-husband filed this appeal on the ground that judgment passed by trial Court cannot be sustained in the eye of law and liable to be set aside. He further submitted that trial Court should have considered that respondent should have lived with the present appellant in Sabalgarh despite there being no sufficient reason if the respondent has been choosing to live separately away from him, so there is sufficient evidence of cruelty and desertion on her part. In the present case, clear evidence came on record which suggests that there is continuous period of cruelty committed by respondent-wife towards the appellant and his family members and she used to threaten appellant and his family members to implicate in various false cases which amounts to cruelty. He further submitted that his wife alleged adultery on him that he has illicit relations with other woman which also amounts to cruelty, therefore, he prays for setting aside the judgment and decree passed by learned Family Court in Case No.24/2020

(HMA) and seeking grant of decree of divorce.

13. Respondents of both appeals supported the impugned judgment and decree passed by trial Court.

14. Heard learned counsel for parties and perused the impugned judgment and decree as well as evidence available on record.

15. The pivotal questions for determination of appeals are as to (i) whether respondent-husband is entitled to obtain a decree of divorce on the ground of cruelty or not ? (ii) Whether appellant/wife is entitled to get a decree for restitution of conjugal rights against the respondent or not ?

16. Concept of "mental cruelty" has been elaborately discussed by Hon'ble Supreme Court in the case of **Dr. Narayan Ganesh Dastane Vs. Mrs. Sucheta Narayan Dastane**, AIR 1975 SC 1534 whereby, the relevant extract of the said 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 overlook 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."

17. The aforesaid judgment of **Dr. Narayan Ganesh Dastane (supra)** still holds the field and is source of wisdom time and again in respect of "mental cruelty". The aforesaid decision was referred to with approval in the cases of **Praveen Mehta Vs. Inderjit Mehta AIR 2002 SC 2582, Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, Manisha Tyagi Vs. Deepak Kumar (2020) 4 SCC 339, Vishwanath Agrawal Vs. Sarla Viswanath Agrawal (2012) 7 SCC 288 and U. Sree Vs. U. Srinivas (2013) 2 SCC 114.**

18. On perusal of the record of the trial Court, it transpires that marriage of both the parties were solemnized on 20.04.2008 and out of their wedlock one child, namely, Yash was born, who is aged around 13-14 years. It is crystal clear that appellant-husband in First Appeal No.1980/2022 had not made any pleading in her divorce petition about adultery against his wife, but during the cross-examination, her wife-respondent referred the fact that appellant-husband had illicit relationship with another lady and the same statement was reiterated by her in his petition filed under Section 9 of HM Act seeking restitution of conjugal rights before the trial Court, however, no evidence has been produced in this regard by her before the trial Court. Therefore, such type of serious allegation of adultery made by wife on character of her husband amounts to "cruelty". Both the parties are living separately from each other since 2018. Appellant-husband did not make any allegation regarding character of his wife, but his wife alleged adultery against her husband that he had illicit relations with another woman and she saw her husband with that

lady in an objectionable condition.

19. In **Abhishek Parashar Vs. Smt. Neha Parashar, 2023 (1) JLJ 265** held that making baseless allegation relating to illicit relation with another woman certainly falls within the ambit of “cruelty”. It is further held that wife's behaviour towards respondent and his parents was painful. Making baseless allegation relating to illicit relation with another woman certainly falls within the ambit “cruelty”.

20. In case of **Shyama Bai (Smt.) Vs. Sone Singh Lodhi 1999(1) MPWN 163** the Court observed that in the absence of evidence of adultery or unchastity of the wife/husband the allegation made by the husband/wife has to be held as reckless and untrue. When a wife/husband is falsely accused of adultery and illicit sexual intercourse, such conduct on the part of the husband/wife has to be held to amount to cruelty so serious as to warrant a decree of divorce.

21. In the present case, it is apparently clear that wife alleged allegation regarding illicit relationship with another lady against her husband and that was not proved by any substantial evidence, therefore, in view of this allegation, it amounts to “cruelty” and it appears that the learned Family Court has committed error in rejecting the divorce application filed by husband under Section 13 of HM Act.

22. After going through the record of the trial Court in First Appeal No.1670/2022, it was found that wife alleged adultery against her husband that he had illicit relationship with another woman, so it is sufficient and valid reason for husband to live separately from her wife, therefore, in considered opinion of this Court, trial Court has not committed any error in rejecting the application filed by wife under Section 9 of HM Act seeking restitution of conjugal rights.

23. In view of foregoing discussion, the application filed by wife under Section 9 of HM Act seeking restitution of conjugal rights deserves to be and stands rejected and the application filed by appellant-husband under Section 13 of HM Act seeking decree of divorce on the ground of “cruelty” deserves to be and stands **allowed**. First appeal No.1980/2022 filed by appellant-husband against the judgment and decree dated 23.09.2022 passed by learned Second District Judge, Sabalgarh, District Morena in Regular Civil Suit HMA No.24/2020 is **allowed** by setting aside the same, whereas the First Appeal No.1670/2022 filed by appellant-wife against the judgment and decree dated 23.09.2022 passed by Second District Judge, Sabalgarh, District Morena in Regular Civil Suit HMA No.08 of 2021 is affirmed and First Appeal No.1670/2022 is hereby **dismissed**.

Office is directed to draw decree of divorce accordingly.

A copy of this judgment be kept in connected First Appeal No.1980/2022.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE