

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

NEETU GAUR—Appellant(s)

versus

NAVEEN ANGRISH—Respondent(s)

FAO-M No.201 of 2017

October 03, 2019

A. Hindu Marriage Act, 1955—S.13—Divorce petition by wife—Ground of cruelty—Held, factum of cruelty varies from case to case—Even solitary act of physical violence or inhuman behavior of inexcusable nature may fall within ambit of cruelty—On facts, husband’s act of disappearing to unknown location in harsh winter without leaving behind even children’s woollen clothes was considered as callous and inhuman towards wife as well as children—Falling within the ambit of cruelty.

Held, we are inclined to accept the plea of the appellant-wife that she had been treated with cruelty by the respondent-husband. The factum of cruelty would vary from case to case and no straight jacket formula can be laid down as to what would constitute cruelty in a particular case. Even a solitary act of physical violence or inhuman behavior many a times can be of such inexcusable nature so as to fall within the ambit of ‘cruelty’. Adverting to the case in hand, the very fact that the respondent-husband disappeared to an unknown location and that too in the harsh winter months without leaving behind even the woollen clothes for his children goes to reflect his callous and inhuman behavior towards both his wife and children, which definitely falls within the ambit of cruelty. The conduct of the respondent-husband was most unwarranted and unjustifiable, which showed lack of conjugal kindness as well. Needless to say, it would have amounted to infliction of immeasurable pain and agony so as to endanger both the mental and physical health of the appellant-wife and the children. It is a matter of record that the appellant-wife as a result of the sudden disappearance of her husband was compelled to approach the police on 06.12.2014.

(Para 9)

B. Hindu Marriage Act, 1955—S.13—Divorce petition by wife—Ground of cruelty—Compromise between husband and wife before police—Still, relations far from normal—Husband continued with his inhuman behavior towards wife and children—Disappeared to

unknown location—Complained to police alleging mental illness of wife—Unbecoming behavior as spouse—Created nuisance and ugly scenes—Forcing wife to seek police assistance—Hence, persisted continuously with cruel behavior making it unbearable for wife to live with him—Divorce granted.

(Para 9)

Raman Mahajan, Advocate
for the appellant.

Manish K.Rampal, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. oral

(1) The instant appeal has been filed by the appellant-wife against the judgment and decree dated 21.07.2017 passed by Addl. District Judge, Panchkula vide which the petition filed by her under Section 13 of the Hindu Marriage Act, 1955 (for short ‘the Act’) was dismissed.

(2) Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-wife before the court below may be noticed.

(3) Marriage between the parties was solemnized on 08.03.2007 at Panchkula as per Hindu rites and ceremonies. Two children were born out of the said wedlock, who are under the care and custody of the appellant-wife. The appellant-wife was subjected to continuous physical and mental torture right from the inception of their marriage. The respondent-husband left his job with TATA AIG in March, 2012 to try his luck in real estate and share brokerage. The appellant-wife on the other hand has been working as Assistant Professor at Centre for Research in Rural and Industrial Development, Chandigarh. The respondent-husband would frequently create ugly scenes and indulge in unruly behaviour to the extent of throwing utensils at the appellant-wife in order to petrify her. As a result of which, the appellant-wife would often be compelled to leave the house but he would soon thereafter come and apologize to her with an assurance to mend his ways. On 27.11.2012, when the appellant-wife was yet again physically assaulted by the respondent-husband, she approached the police. The respondent-husband tendered an apology and promised to behave in future. However, the behaviour of the respondent-husband continued to be the same as before. On 06.12.2014 while the appellant-wife was away, the

respondent-husband locked up their house i.e. House No.267, Sector 21, Panchkula and removed all the articles including the woollens of the children and disappeared without even bothering to disclose his whereabouts to the appellant-wife. Faced with such a situation, the appellant-wife approached the police and it was only then that she learnt that the respondent-husband had moved to House No.2850, Sunny Enclave, Mohali. After the intervention of the police, the respondent-husband sent some woollen clothes and other articles to House No.1356, Sector 21, Panchkula. It was further submitted that despite earning a substantial income, he would deprive the appellant-wife and children of the basic necessities and comforts of life. The appellant-wife pleaded that all efforts made by her to salvage their marriage and overlook his faults had been in vain as the respondent was incorrigible. Therefore, she prayed for dissolution of their marriage.

(4) On the other hand, the respondent-husband while refuting and categorically denying the allegations made by the appellant-wife inter alia submitted that in fact it was the appellant-wife, who was ill tempered and would misbehave with him and his family in front of one and all. He alleged that his mother had got a house constructed at her own plot at Mohali by raising a bank loan so that the whole family could live together peacefully. However, on completion of the said house, the appellant-wife flatly refused to shift to the new house and after collecting all her belongings along with the jewellery given to her by his mother went to her mother's house along with the children. He further submitted that the appellant-wife intended to settle abroad along with him, her children and her mother. He claimed that he was agreeable to the said plan but due to the death of his father, he requested her to either settle down in India itself as there was no one to look after his ailing mother or in the alternate to sponsor his mother to accompany them abroad but she refused to do so. It was also submitted that while he was making arrangements for his sister's marriage, the appellant-wife lodged a false complaint against him to the police and he was thus, compelled to enter into a compromise in order to save himself from being arrested.

(5) From the pleadings, following issues were framed by the learned Court below:

1. Whether petitioner is entitled for decree of divorce from the respondent on the grounds mentioned in the petition?
OPP
2. Whether the petition is not maintainable? OPRs

3. Whether the petitioner has no locus standi or cause of action to file the present petition? OPR

4. Whether the petitioner is stopped by her own act and conduct to file the present petition? OPR

5. Whether the petitioner has not come to the Court with clean hands and concealed the true and material facts from the Court? OPR

6. Relief.

(6) Both the parties adduced evidence in support of their respective stands. The appellant-wife herself stepped into the witness box as PW-1 and examined one other witness. She also tendered documents Exs.P-1 to P-3 and Mark A, B, C and E. On the other hand, respondent-husband stepped into the witness box as RW-1 and also tendered documents Ex.R-1 to R-28.

(7) On an analysis of the evidence led, the trial Court dismissed the petition filed by the appellant-wife by holding that the appellant-wife was unable to prove cruelty against the respondent-husband.

(8) We have heard learned counsel for the parties and reappraised the evidence as well as other material available on record.

(9) We are inclined to accept the plea of the appellant-wife that she had been treated with cruelty by the respondent-husband. The factum of cruelty would vary from case to case and no straight jacket formula can be laid down as to what would constitute cruelty in a particular case. Even a solitary act of physical violence or inhuman behavior many a times can be of such inexcusable nature so as to fall within the ambit of 'cruelty'. Adverting to the case in hand, the very fact that the respondent-husband disappeared to an unknown location and that too in the harsh winter months without leaving behind even the woollen clothes for his children goes to reflect his callous and inhuman behavior towards both his wife and children, which definitely falls within the ambit of cruelty. The conduct of the respondent-husband was most unwarranted and unjustifiable, which showed lack of conjugal kindness as well. Needless to say, it would have amounted to infliction of immeasurable pain and agony so as to endanger both the mental and physical health of the appellant-wife and the children. It is a matter of record that the appellant-wife as a result of the sudden disappearance of her husband was compelled to approach the police on 06.12.2014. Not only this, it is also a matter of record that the respondent-husband earlier also had given an undertaking, Ex.PY, to the police on

28.11.2012 wherein he had undertaken not to physically assault the appellant-wife. In fact a perusal of Ex.PY reveals that the appellant-wife had noted therein that since the respondent-husband had apologized to her she was not interested to proceed with the matter. Thus, the trial court fell in serious error by not appreciating that in the undertaking Ex.PY the respondent-husband himself had admitted to his wrong doings and further erred in holding that after the execution of Ex.PY, parties had started living together which in turn implied that the appellant-wife had condoned the respondent-husband for his earlier acts. We cannot overlook the fact that even after the execution of Ex.PY i.e. compromise arrived at between the parties, the relations between them were far from normal. No doubt, the appellant-wife condoned the respondent-husband for his earlier acts of misconduct but his conduct even thereafter, for example when he disappeared to an unknown location on 06.12.2014, as already discussed above reflects to the fact that the respondent-husband continued with his inhuman behavior towards both the appellant-wife and children. Not only this, even after the filing of Section 13 of the Act before the court below, the respondent-husband moved an application Ex.PZ before DCP, Panchkula wherein he alleged that the appellant-wife was not in proper frame of mind and was suffering from depression and hence, the children were not safe with her. It is a matter of record that the respondent-husband continued with his unbecoming behavior as a spouse by creating nuisance and ugly scenes as a result of which, the appellant-wife had to seek police assistance. Hence, we have no hesitation in holding that the respondent-husband persisted continuously with his cruel behavior making it unendurable and unbearable for the appellant-wife to live together as husband and wife.

(10) As a sequel to the above, the present appeal stands allowed and the impugned judgment dated 21.07.2017 passed by the court below is set aside. The marriage between the parties is dissolved by way of decree of divorce. Decree sheet be prepared accordingly.

Tribhuvan Dahiya