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

Date of Decision:- 03.02.2021

\+ MAT.APP.(F.C.) 18/2021

BHARTI BHARDWAJ ..... Appellant

Through Mr.I.S.Dahiya, Adv.

versus

DEEPAK BHARDWAJ ..... Respondent

Through None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

C.M.No.3968/2021

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M.No.3969/2021 (condonation of delay in refiling)

1. This is an application filed by the petitioner seeking condonation of delay in refiling the present petition.

2. Keeping in view that the accompanying petition was filed within the period of limitation, the delay in re-filing which took place mainly during the period when the regular functioning of the Court stood suspended, we are inclined to accept the explanation given in the application and proceed to deal with the appeal on merits.

3. The application is, accordingly, allowed and disposed of.

4. The present appeal under section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") assails the judgement dated 21.11.2019 passed by the Principal Judge, Family Courts, West District, Tis Hazari Courts, Delhi, in HMA NO. 1069/19/11, allowing the divorce petition preferred by the respondent/husband on the ground of cruelty under Section 13(1)(ia) of the HMA. The impugned judgment also disposed of the appellant/wife's application under Section 24 of the HMA by holding that since she had already been awarded maintenance under Section 12 of the Protection of Women from Domestic Violence Act, 2005, she was not entitled to any further maintenance which she sought under Section 24 of the HMA because both of these proceedings were parallel in nature.

5. The facts in brief are that the marriage between the parties was solemnized on 07.02.2010 in accordance with Hindu rites and ceremonies; they had a daughter out of the wedlock on 30.12.2010. The parties have, however, been residing separately since 28.11.2011. A few weeks later, on 17.12.2011, the respondent preferred a petition under Section 13(1)(ia) of the HMA seeking dissolution of the marriage on the grounds of cruelty. The case of the respondent before the Family Court was that notwithstanding the cordial manner in which she was received by his family and all his efforts to maintain congeniality in their marriage, his wife/the appellant treated his family and him with cruelty and cold insolence. The divorce petition contained detailed descriptions of the various instances of cruelty alleged by him, which involved the appellant humiliating him and his family. He claimed that the appellant, who was arrogant, finicky and failed to take any initiative in adapting to the

matrimonial house, used to force him to take her to her parental home very frequently. The respondent further claimed that the appellant was compelling him to leave his family home, his family and reside with her in an accommodation near her parents' house. He claimed that when he failed to abide by this demand of hers, the appellant not only picked a fight with him, but she also left the matrimonial home on 28.11.2011 with their minor child, while threatening to implicate him and his family in false cases.

6. The appellant filed her written petition, opposing the divorce petition and alleging that she was the one who had been ill-treated and tortured by the respondent and his family members, who had created such a toxic environment for her, that she ultimately decided to leave their house. She claimed that the respondent's family were enraged with her for bringing insufficient dowry and often expressed this, they also ostracised her and would not allow her to enter the kitchen or share in household chores. This behaviour compelled her to file complaints against the respondent and his family before the DCP (Women Cell) of the Delhi Police, Kirti Nagar, which complaint is presently under investigation.

7. Before the learned Family Court, the respondent, in support of his allegations, filed his evidence by way of affidavit which set out the date, time and description of all the incidents displaying cruelty on the appellant's part, including the manner in which he and his family were taunted and humiliated by her. He also stated that at a time when he was unwell and had been hospitalised, the appellant-wife did not even care to visit him. In reply, the appellant filed her evidence by way of affidavit, which merely offered a denial of all the allegations levelled by the respondent. However, it transpires, the appellant failed to cross-examine

the respondent on any of the specific incidents of cruelty set out by him. In these circumstances, the Family Court in the impugned judgment has held that the testimony of the respondent was unrebutted and was, therefore, accepted; a decree of divorce was passed in favour of the respondent by holding that the appellant had treated him with cruelty. The findings of the learned Family Court in this regard read as under:

> *44. The petitioner has led his evidence to prove the allegations. The respondent though has refuted all the allegations but testimony of the petitioner has remained unchallenged as he was not crossexamined on several aspects and incidents stated by him. On the other hand, the respondent has baldly denied the suggestions on behalf of the petitioner that she wanted to live separately from the family of the petitioner or she used to quarrel with her mother-in-law regarding household work.*
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> *45. The effect of non cross-examination of a witness was discussed in the judgment reported as State of UP Nahar Singh (dead) & Ors. (1998) 3 SCC 561, Their Lordships observed, "in the absence of cross-examination on the explanation of delay, the evidence of PWI remained unchallenged and ought to have been believed by the High Court. It was observed in Srichand & Shivan Das vs. State (1985) 28 DLT 360, the law is well settled that when the evidence of a witness is allowed to go unchallenged with regard to any particular point. it may safely be accepted as true..... ".*
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> *46. Following the above principles of law, the testimony of the petitioner has not been contradicted in respect of acts of cruelty alleged by him. No suggestion was given to him that he was deposing falsely in respect of the allegations. Thus, the respondent has failed to impeach the credibility of the testimony of the petitioner.*
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> *47. Reverting to the allegations raised by the respondent against the petitioner. Respondent has raised bald assertions in her affidavit Ex.RWI/A. She has mentioned that after marriage, she started residing in her matrimonial house, the petitioner and his*

mother ill-treated her. She was not allowed to enter in the kitchen or to touch any household items. At times, she had to go out without any meals and her mental torture got aggravated day by clay. It was done with a design that she may follow their dictates. The respondent has also stated that the elder brother of the respondent namely Mukesh Bhardwaj and his wife made her life miserable and his mother used
to abuse the respondent in filthy language calling her as 'randi, kangli etc'. She was treated as a maid. Respondent has also alleged that the elder brother of the petitioner had an evil eye on her and his wife assisted him in this evil design. Thus, for temporary peace, she went to her parental home on 28.11.2011.

48. It is an admitted case that the parties to the petition had lived together as husband and wife in the matrimonial house from 07.02,20 J0 till 28.11.2011. During this period also, the respondent used to be away to her parental house. Specifically, she left the matrimonial house on 12.04.2010 and joined back on 25.06.2010 after petitioner had put in lot of efforts to bring her back. He had to suffer humiliation at the hands of the respondent and her family members whenever he want to her parental house to bring her back. Respondent again went to her parental house on 28.07.2010. Immediately, after the birth of their child, she wanted to go to her parents' house. In August 2011, when she went on the occasion of Raksha Bandhan, she did not want to come back to the matrimonial house after the festival. Finally, she left the matrimonial house on 28.11.2011. The respondent though has alleged that she went for a temporary period to gain some peace for herself. But she has not stated even a single instance in her affidavit Ex.RW1/A that she made any effort to join the company of the petitioner. There is no whisper of any attempt made by her to come back to the matrimonial house.

49. Respondent has also admitted that she had lodged a complaint in CAW Cell which got culminated into an FIR bearing No.138/12 and was registered on 27.05.2012 under Section 498-A/406/34 IPC. In her cross-examination, the respondent has further admitted that she had lodged this complaint after she had received the notice of the divorce case

filed by the petitioner. It was argued on behalf of the petitioner that the respondent had filed a false complaint in CAW Cell as she has admitted that the purpose to file the complaint was that she was looking for some counselling. so there was no truth in the complaint. Strangely, the respondent has deposed that she had filed the complaint so that the matter may be settled after counselling.

50. Moreover. the allegations stated by the respondent in the written statement and those referred to in the FIR are quite disparate. In the written statement, the respondent has raised an allegation that her brother-in-law had an evil eye upon her which she has not mentioned in the FIR. Furthermore, she has also not led any cogent evidence to prove the allegations about her ill-treatment by the petitioner and his mother.

51. Pertinently, the mother-in-law and brother-in-law of the respondent have been discharged and only the petitioner is facing trial in the criminal case under Section 498-A/406 IPC. Admittedly, the respondent has not filed any appeal against their discharge.

54. From the evidence of the parties and the material placed on record, it is apparent that initially, there were episodes of maladjustment between the parties which could be taken as normal wear and tear of the matrimonial life. These episodes were recurring and got spread throughout the period for which the parties lived together. It is understandable that it takes time for the newly wedded couple to adjust with each other and the family members of the spouse, specifically when the parties are residing in a joint family. Subsequently, the situation aggravated in the marital life of the parties with the occurrence of the incident dated 12.04.2010 when respondent abruptly left the matrimonial house which is a grave and weighty incident and cannot be ignored or brushed aside. Thereafter the situation worsened as the respondent joined back the matrimony house after about $2^{1}/_{2}$ months when vigorous efforts were made by the petitioner to bring her back. Moreover, she joined the matrimonial house after dictating certain conditions. The respondent since beginning was not interested to live in a joint

family but wanted to live separately. Her parents supported her and they equally insulted the petitioner time and again when he made efforts to make the respondent come back in the conjugal fold. More so, the respondent used to often go to her parents' house. So much so, immediately after her delivery, she wanted to go to her parental house and when it was objected by the petitioner and his mother, major quarrel occurred between the two families. Thus, a healthy relationship could not develop between the parties. Ultimately, due to the conduct and behaviour of the respondent, the conjugal relationship was snapped. On complete consideration of matrimonial life of the parties, petitioner has been able to prove mental pain and agony, suffered by him and that it became difficult for him to live with the respondent.

Accordingly, issue no. 1 is decided in favour of the petitioner and against the respondent.

RELIEF

55. In view of the findings on issue no. 1, the facts & circumstances of the case and the foregoing discussion, the petition is allowed. The marriage between the petitioner/husband ***Deepak Bhardwaj*** *and respondent/wife* ***Bharti Bhardwaj*** *is dissolved by a decree of divorce on the ground of cruelty as per section 13(1) (ia) of Hindu Marriage Act, 1955 w.e.f, 21.11.2019, No order as to costs. Decree sheet be prepared accordingly. File be consigned to Record Room.*

8. In support of the appeal, learned counsel for the appellant submits that the decree of divorce was granted by the Family Court by blindly accepting the bald statements made by the respondent/husband, despite none of them having been proved by the respondent using cogent and reliable evidence. Even though the burden of proof rested with the respondent to prove the allegations of cruelty, he failed to produce any evidence on that aspect, barring his own self-serving statements which were not corroborated by

any witness. He, therefore, prays that the impugned judgment which relies entirely on such unsupported statements, ought to be set aside.

9. We have considered the submission of learned counsel for the appellant and perused the record. Both the parties had accused each other of cruelty in the Court below, but the appellant is aggrieved that the learned Family Court relied solely on the testimony of the respondent to hold her guilty of inflicting cruelty upon him and his family. The appellant has also assailed the judgment for failing to deal with the allegations of cruelty that she had raised against the respondent.

10. The primary ground adopted by the Family Court to hold the appellant guilty of cruelty was that, notwithstanding the reciprocal allegations of cruelty, she had failed to adduce any evidence in support of her allegations and cross-examine the respondent on those aspects or the detailed narration of incidents that he had brought on record to establish cruelty on her part. In support of his allegations of cruelty, it appears that the respondent had placed complete descriptions of these incidents, replete with time and place of occurrence, before the Family Court.

11. Now, given that matrimonial disputes rarely involve production of concrete evidence in documentary or audio-visual form, and mostly proceed on the relative strength of the opposing allegations made by the parties, the entire process of leading and recording evidence has a significant role to play in establishing one's case. Thus, notwithstanding her denials in the written statement, the appellant was expected to properly and specifically cross-examine the respondent to prove her allegations of cruelty against him and disprove those he had levelled against her. The importance of properly discharging this function of cross-examination was

discussed by the Supreme Court in the following paragraphs of its decision in ***Rajinder Pershad Vs. Darshana Devi*** *(2001) 7 SCC 69*:

> *"4. The only point urged albeit strenuously on behalf of the appellant by Mr P.S. Mishra, the learned Senior Counsel is that as there has been no valid service of notice, so all proceedings taken on the assumption of service of notice are illegal and void. He has invited our attention to the judgment of the learned Rent Control Tribunal wherein it is recorded that Exhibit AW 1/6 dated 5-8-1986 was sent by registered post and the same was taken by the postman to the address of the tenant on 6-8-1986, 8-8-1986, 19-8-1986 and 20-8-1986 but on those days the tenant was not available; on 21-8-1986, he met the tenant who refused to receive the notice. This finding remained undisturbed by both the Tribunals as well as the High Court. Learned counsel attacks this finding on the ground that the postman was on leave on those days and submits that the records called for from the post office to prove that fact, were reported as not available. On those facts, submits the learned counsel, it follows that there was no refusal by the tenant and no service of notice.* ***We are afraid we cannot accept these contentions of the learned counsel. In the Court of the Rent Controller, the postman was examined as AW 2. We have gone through his cross-examination. It was not suggested to him that he was not on duty during the period in question and the endorsement "refused" on the envelope was incorrect. In the absence of cross-examination of the postman on this crucial aspect, his statement in the chief examination has been rightly relied upon. There is an age-old rule that if you dispute the correctness of the statement of a witness you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you cannot impeach his credit. In State of U.P. v. Nahar Singh (1998) 3 SCC, a Bench of this Court (to which I was a party) stated the principle that Section 138 of the Evidence Act confers a valuable right to cross-examine a witness tendered in evidence by the opposite party.*** *The scope of that provision is enlarged by Section 146 of the*

Evidence Act by permitting a witness to be questioned, inter alia, to test his veracity. It was observed: (SCC p. 567, para 14)

> *"14. The oft-quoted observation of Lord Herschell, L.C. in Browne v. Dunn [(1893) 6 R 67 (HL)] clearly elucidates the principle underlying those provisions. It reads thus:*
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> *'**I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit.** My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.'* (emphasis supplied)

12. Although the appellant, in the grounds adopted in the appeal, has assailed the reliance of the learned Family Court on the decision in ***State of U.P. v. Nahar Singh*** *(1998) 3 SCC 561* to contend that the same was a criminal case and the precedent arising therefrom could not apply to cross examinations in matrimonial proceedings, which are civil proceedings by nature, there is no merit to this opposition; especially in the light of the observations of the Supreme Court in ***Darshana Devi***'s case which was a civil proceeding. In fact, the standard of proof in a matrimonial proceeding- which is also in the nature of a civil proceeding is not as strict, as in

criminal proceedings. Thus, the case is required to be proved on preponderance of probabilities and not the legal standard of being beyond a reasonable doubt. Keeping in view the aforesaid, it is evident that there was a crucial responsibility placed on the shoulders of the appellant which was to ensure that she challenged the specifics of the allegations raised by the respondent and establish their lack of veracity. Paragraphs 44 to 46 of the impugned judgment clearly show that the appellant had not cross-examined the respondent/husband on these important aspects, and, thus, completely failed to draw out the facts as claimed by her. In fact, even before us, the appellant, other than contending that the onus of proving cruelty rested upon the respondent, has failed to provide any cogent reasons for failing to cross-examine the respondent in support of her own case, or to challenge his allegations of cruelty. It is a settled proposition of law that the Court would normally accept unchallenged and uncontroverted assertions of fact. The failure of the appellant to effectively cross-examine the respondent shows that she neither seriously challenged his version of the factual position, nor established her own version. Therefore, in our view, the Family Court was justified in accepting the unrebutted testimony of the respondent.

13. When we view this in addition to the fact that in her written statement, the appellant had admitted to having levelled false allegations against the respondent and his family under the DV Act, we find there were plenty of holes in the appellant's story. Her feeble explanation for this ill-thought out act of falsely implicating the respondent and his family was that the same was not done malevolently, but only with an intention to ensure that the parties were sent to counselling in order to settle their disputes. That

explanation barely comes to the aid of the appellant considering that the Supreme Court in ***K. Srinivas Rao Vs. D.A. Deepa*** *2013 III AD (SC) 458* has already held that any act of making unfounded complaints to the police shall be treated as an act of mental cruelty. The relevant extracts of this decision read as under:

> *"14.* ***Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse****.*
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> *xxx*
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> *22. We need to now see the effect of the above events.* ***In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection Cell.*** *The statement that the mother of the appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent-wife, which we have already quoted.* ***This statement cannot be explained away by stating that it was made because the respondent-wife was anxious to go back to the appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the respondent-wife has caused***

mental cruelty to the appellant- husband.

24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. ***Staying together under the same roof is not a pre- condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse"s life miserable.*** *This is what has happened in this case.*

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28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant- husband and the marriage has irretrievably broken down." (Emphasis Supplied)

14. Applying the aforesaid ratio of law, there can be no doubt about the fact that appellant's act of lodging serious complaints against the respondent and his family under the DV Act on false grounds was designed to cause him harm and amounted to mental cruelty. Her explanation, in view of this legal position, does not redeem her. At the same time, although this Court remains cognisant to the fact that a pragmatic and not a pedantic approach ought to be adopted in proceedings of such nature by keeping the interest of the minor daughter in mind, this is not a case where the marital relations between the parties can be salvaged in any manner; neither of them are interested in staying with the other. In this regard, before us as well as the learned Family Court, the appellant has not denied that since November 2011, when the parties had last resided together, she has made

absolutely no effort to re-join the respondent's company.

15. For the aforesaid reasons, we are unable to find any infirmity with the findings of the learned Family Court that the respondent had suffered mental pain and agony at the hands of the appellant or its decision to dissolve the marriage between the parties under Section 13(1)(ia) of the HMA.

16. The appeal is, accordingly, disposed of.

REKHA PALLI, J

VIPIN SANGHI, J

FEBRUARY 3, 2021/kk