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SUMAN SINGH

v.

SANJAY SINGH

(Civil Appeal Nos. 7114-7115 of 2014)

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MARCH 08, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR ŠAPRE, JJ.]

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*Hindu Marriage Act, 1955 – s.13(1)(ia) – Divorce on the ground of cruelty – A petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce – The incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition – Few isolated incidents of long past and that too found to have been condoned due to compromising behavior of the parties cannot constitute an act of cruelty within the meaning of s.13(1)(ia) of the Act.*

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Allowing the appeals, the Court

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**HELD: 1.** Almost all the grounds taken by the respondent in his petition were stale or/and isolated and did not subsist to enable the respondent to seek a decree for dissolution of marriage. In other words, the incidents of cruelty alleged had taken place even, according to the respondent, immediately after marriage. They were solitary incidents relating to the behavior of the appellant. Second, assuming that one or more grounds constituted an act of cruelty, yet the acts complained of were condoned by the parties due to their subsequent conduct inasmuch as admittedly both lived together till 2006 and the appellant gave birth to their second daughter in 2006. Third, most of the incidents of alleged cruelty pertained to the period prior to 2006 and some were alleged to have occurred after 2006. Those pertained to period after 2006 were founded on general allegations with no details pleaded such as when such incident occurred (year, month, date etc.), what was its background, who witnessed, what the appellant actually said etc. The incidents which occurred prior to 2006 could not be relied on to prove the instances of cruelty

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because they were deemed to have been condoned by the acts of the parties. So far as the instances alleged after 2006 were concerned, they being isolated instances, did not constitute an act of cruelty. Both the Courts below failed to take note of this material aspect of the case and thus committed jurisdictional error in passing a decree for dissolution of marriage. The High Court did not, in the first instance, examine the grounds taken in the petition to find out as to whether such grounds constitute mental cruelty or not. The finding, therefore, though concurrent did not bind this Court. An incident which occurred somewhere in 2010 when the appellant visited the office of the respondent and alleged to have misbehaved with the respondent in front of other officers would not constitute an act of cruelty on the part of the appellant so as to enable the respondent to claim divorce. In the first place, no decree for divorce on one isolated incident can be passed. Secondly, there could be myriad reasons for causing such isolated incident. Merely because both exchanged some verbal conversation in presence of others would not be enough to constitute an act of cruelty unless it is further supported by some incidents of alike nature. It was not so. [Paras 26, 27 and 30-32] [794-A-H; 795-C]

2. The contention that since the appellant had made allegation against the respondent of his having extra-marital relation and hence such allegation would also constitute an act of cruelty on the part of the appellant is also not tenable. Plea that since both have been living separately for quite some time and hence this may be considered a good ground to give divorce is not acceptable. The appellant is entitled for a decree for restitution of conjugal rights against the respondent. Now that the respondent failed to make out any case of cruelty against the appellant, it was the respondent who withdrew from the company of the appellant without reasonable cause and not the *vice versa*. [Paras 33, 34, 37 and 38] [795-D-E; 796-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7114-7115 of 2014.

From the Judgment and Order dated 23.05.2013 of the High Court of Delhi at New Delhi in F.A.O. No. 108 of 2013 and F. A. O. No. 109 of 2013.

A D. N. Goburdhan, Ms. Pallavi Chopra, Advs. for the Appellant.  
Gaurav Goel, Rajesh Kumar (For E.C. Agrawala), Advs. for  
the Respondent.

The Judgment of the Court was delivered by

B **ABHAY MANOHAR SAPRE, J.**

1. These appeals are filed by the appellant (wife) against the final judgment and order dated 23.05.2013 passed by the High Court of Delhi at New Delhi in F.A.O. No.108 of 2013 and F.A.O. No.109 of 2013 by which the High Court dismissed the appeals filed by the appellant and confirmed the judgment dated 14.12.2010 of the Principal Judge, Family Courts, Rohini which had granted decree for dissolution of marriage in favour of the respondent (husband) and, in consequence, also affirmed the order dismissing the petition filed by the appellant (wife) for restitution of conjugal rights.

D 2. Facts, in brief, to appreciate the controversy involved in the appeals need mention infra.

E 3. The marriage between the appellant and the respondent was solemnized on 26.02.1999 at Delhi as per the Hindu rites. The respondent-husband is working as "Caretaker" in the Government of NCT of Delhi whereas the appellant is a housewife. Out of this wedlock, one daughter was born on 15.06.2002 and the second daughter was born on 10.02.2006. Both daughters are living with the appellant.

F 4. On 11.07.2010, the respondent (husband) filed a petition for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "The Act") in the Family Courts, Rohini, Delhi against the appellant (wife). The respondent sought decree for dissolution of marriage essentially on the ground of "cruelty".

G 5. In substance, the respondent, in his petition, pleaded 9 instances which, according to him, constituted "cruelty" within the meaning of Section 13(1)(i-a) of the Act entitling him to claim dissolution of marriage against the appellant.

H 6. The first ground of cruelty was related to wife's behavior on the next day of marriage, i.e., 27.02.1999. It was alleged that the appellant came out of the bedroom in night dress and that too late when the close relatives of the respondent were sitting in the house. It was alleged that she did not pay respect and wishes to the elders. (Para 9 of the plaint)

7. The second ground of cruelty was again about the appellant's behavior with the respondent on the eve of New Year. However, the year was not mentioned. According to the respondent, he agreed to celebrate the new year with the appellant on her parental house as the parents of the appellant gave repeated calls. After reaching her parental house, most of the time the appellant was busy with her family members and left him alone in the drawing room. Even at the time of dinner, the family members of the appellant did not behave properly. (Para 10).

8. The third ground of cruelty was that the appellant did not show any inclination or enthusiasm to attend any important family function or festivals at the respondent's house whenever held. However, no details were given about the date and the function held. The allegations are general in nature (Para 11).

9. The fourth ground of cruelty was again about the indecent behavior of the appellant towards the respondent's family members. However, no details were pleaded except making general averments (Para 12).

10. The fifth ground of cruelty was in relation to an incident which, according to the respondent, occurred in July 1999. It was alleged that the appellant, on that day, insisted that the couple should live separately from the respondent's parents (Para 13).

11. The sixth ground of cruelty was again general with no details. It was alleged that the appellant was not interested in doing any household work nor was interested in preparing meals and used to insist the respondent to have his lunch from outside. (Para 14).

12. The seventh ground of cruelty was in relation to one incident which, according to the respondent, occurred on Diwali day in the year 2000. It was again about the behavior of the appellant with the family members of the respondent which, according to the respondent, was rude (Para 16).

13. The eighth ground of cruelty was in relation to one isolated incident which, according to the respondent, occurred on 15.04.2001. It was again about the behavior of the appellant with the friends of the respondent who had come to the respondent's house. According to the respondent, the family members did not like it (Para 17).

14. The ninth ground of cruelty was that one day in year 2010,

A the appellant visited the respondent's office and misbehaved with the respondent in the presence of other officials (Para 27).

15. The respondent also alleged some instances in the petition. They, however, again essentially relate to the appellant's behaviour with the respondent and his family members.

B 16. The appellant filed her written statement and denied these allegations. The appellant also applied for restitution of conjugal rights against the respondent in the same proceedings by filing petition under Section 9 of the Act and *inter alia* alleged in her petition that it was the respondent who has withdrawn from her company without there being a reasonable cause. She also while denying the case set up by the  
C respondent justified her case for restitution of conjugal rights.

17. The Trial Court framed the following issues on the basis of pleadings in the case:

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1. **Whether after solemnization of marriage, the Respondent has treated the Petitioner with cruelty? OPP**
  2. **Whether the Petitioner is entitled to the decree of divorce as prayed? OPP**
  3. **Relief**

E The following issues were framed based on the pleadings in the petition under Section 9 of the Act:

1. **Whether the Petitioner is entitled to the restitution of conjugal rights as prayed? OPP**
2. **Relief**

F 18. Parties adduced the evidence. By order dated 14.12.2012, the Family Court allowed the petition filed by the respondent. It was held that the grounds alleged by the respondent amounted to mental cruelty within the meaning of Section 13(1)(ia) of the Act and the same having been proved by the respondent, he was entitled to claim a decree for dissolution of marriage against the appellant. Accordingly, the Trial  
G Court granted decree for dissolution of marriage in favour of the respondent and dissolved the marriage. Since the decree for dissolution of marriage was passed against the appellant, the petition filed by the appellant against the respondent seeking restitution of conjugal rights was dismissed.

H 19. The appellant, felt aggrieved by the aforesaid order, filed

first appeals before the High Court. In appeals, the question was whether the Trial Court was justified in granting decree for dissolution of marriage to the respondent (husband) and, in consequence, was justified in dismissing the petition for restitution of conjugal rights filed by the appellant (wife). A

20. By impugned judgment, the High Court dismissed the appeals and affirmed the judgment/decreed of the Trial Court. The appellant (wife), felt aggrieved, has filed these appeals by special leave against the judgment of the High Court. B

21. Heard Mr. D.N. Goburdhan, learned counsel for the appellant and Mr. Gaurav Goel, learned counsel for the respondent. C

22. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside the impugned order, dismiss the divorce petition filed by the respondent(husband) against the appellant and, in consequence, allow the petition filed by the appellant(wife) for restitution of conjugal rights against the respondent (husband). D

23. The word "cruelty" used in Section 13(1)(ia) of the Act is not defined under the Act. However, this expression was the subject matter of interpretation in several cases of this Court. What amounts to "mental cruelty" was succinctly explained by this Court (three Judge Bench) in **Samar Ghosh vs. Jaya Ghosh** [(2007) 4 SCC 511]. Their Lordships speaking through Justice Dalveer Bhandari observed that no uniform standard can ever be laid down for guidance, yet it is appropriate to enumerate some instances of human behavior which may be considered relevant in dealing with the cases of "mental cruelty". E

24. Their Lordships then broadly enumerated 16 category of cases which are considered relevant while examining the question as to whether the facts alleged and proved constitute "mental cruelty" so as to attract the provisions of Section 13 (1) (ia) of the Act for granting decree of divorce. F

25. Keeping in view the law laid down in **Samar Ghosh's** case (supra), when we examine the grounds taken by the respondent in his petition for proving the mental cruelty for grant of divorce against the appellant, we find that none of the grounds satisfies either individually or collectively the test laid down in **Samar Ghosh's** case (supra) so as to entitle the respondent to claim a decree of divorce. G H

A           26. This we hold for more than one reason. First, almost all the  
grounds taken by the respondent in his petition were stale or/and isolated  
and did not subsist to enable the respondent to seek a decree for  
dissolution of marriage. In other words, the incidents of cruelty alleged  
had taken place even, according to the respondent, immediately after  
B           marriage. They were solitary incidents relating to the behavior of the  
appellant. Second, assuming that one or more grounds constituted an act  
of cruelty, yet we find that the acts complained of were condoned by the  
parties due to their subsequent conduct inasmuch as admittedly both  
lived together till 2006 and the appellant gave birth to their second daughter  
in 2006. Third, most of the incidents of alleged cruelty pertained to the  
C           period prior to 2006 and some were alleged to have occurred after 2006.  
Those pertained to period after 2006 were founded on general allegations  
with no details pleaded such as when such incident occurred (year, month,  
date etc.), what was its background, who witnessed, what the appellant  
actually said etc.

D           27. In our view, the incidents which occurred prior to 2006 could  
not be relied on to prove the instances of cruelty because they were  
deemed to have been condoned by the acts of the parties. So far as the  
instances alleged after 2006 were concerned, they being isolated instances,  
did not constitute an act of cruelty.

E           28. A petition seeking divorce on some isolated incidents alleged  
to have occurred 8-10 years prior to filing of the date of petition cannot  
furnish a subsisting cause of action to seek divorce after 10 years or so  
of occurrence of such incidents. The incidents alleged should be of  
recurring nature or continuing one and they should be in near proximity  
with the filing of the petition.

F           29. Few isolated incidents of long past and that too found to  
have been condoned due to compromising behavior of the parties cannot  
constitute an act of cruelty within the meaning of Section 13 (1)(ia) of  
the Act.

G           30. In our considered opinion, both the Courts below failed to  
take note of this material aspect of the case and thus committed  
jurisdictional error in passing a decree for dissolution of marriage.

H           31. We cannot, therefore, countenance the approach of the High  
Court because it did not, in the first instance, examine the grounds taken  
in the petition to find out as to whether such grounds constitute mental

cruelty or not? The finding, therefore, though concurrent does not bind this Court. A

32. We are not impressed by the submission of the learned counsel for the respondent that an incident which occurred somewhere in 2010 when the appellant visited the office of the respondent and alleged to have misbehaved with the respondent in front of other officers would constitute an act of cruelty on the part of the appellant so as to enable the respondent to claim divorce. In the first place, no decree for divorce on one isolated incident can be passed. Secondly, there could be myriad reasons for causing such isolated incident. Merely because both exchanged some verbal conversation in presence of others would not be enough to constitute an act of cruelty unless it is further supported by some incidents of alike nature. It was not so. B C

33. We are also not impressed by the submission of the learned counsel for the respondent that since the appellant had made allegation against the respondent of his having extra-marital relation and hence such allegation would also constitute an act of cruelty on the part of the appellant entitling the respondent to claim decree for dissolution of marriage. D

34. Similarly, we are also not impressed by the submission of learned counsel for the respondent that since both have been living separately for quite some time and hence this may be considered a good ground to give divorce. E

35. In the first place, the respondent did not seek a decree of dissolution of marriage on these grounds. Second, the grounds of cruelty taken by the respondent in his petition does not include these grounds. Third, even if some stray allegations were made by the wife in her pleading/evidence as were relied upon by the learned counsel are of no relevance because, as mentioned above, these ground were not pleaded in the petition by the respondent for seeking a decree of divorce and nor were put in issue; and lastly, the burden being on the respondent, the same could be discharged by the respondent by pleading and then proving. It was not so done. It is for these reasons, we cannot accept the aforementioned two submissions for affirming the decree of divorce. F G

36. This takes us to the next question as to whether the appellant was able to make out any case for restitution of conjugal rights against the respondent. H

A           37. Having perused her petition and evidence, we are of the view that the appellant is entitled for a decree for restitution of conjugal rights against the respondent.

B           38. In our considered view, as it appears to us from perusal of the evidence that it is the respondent who withdrew from the appellant's company without there being any reasonable cause to do so. Now that we have held on facts that the respondent failed to make out any case of cruelty against the appellant, it is clear to us that it was the respondent who withdrew from the company of the appellant without reasonable cause and not the *vice versa*.

C           39. In view of foregoing discussion, the appeals succeed and are allowed. The impugned judgment is set aside. As a result, the petition filed by the respondent (husband) under Section 13(1) of the Act seeking dissolution of marriage is dismissed. As a consequence thereof, the marriage between the parties is held to subsist whereas the petition filed by the appellant against the respondent under Section 9 of the Act seeking restitution of conjugal right is allowed. A decree for restitution of conjugal right is, accordingly, passed against the respondent.

D           40. We hope and trust that the parties would now realize their duties and obligations against each other as also would realize their joint obligations as mother and father towards their grown up daughters. Both should, therefore, give quite burial to their past deeds/acts and bitter experiences and start living together and see that their daughters are well settled in their respective lives. Such reunion, we feel, would be in the interest of all family members in the long run and will bring peace, harmony and happiness. We find that the respondent is working as a  
E           “**Caretaker**” in the Government Department (see Para 4 of his petition).  
F           He must, therefore, be the “**Caretaker**” of his own family that being his first obligation and at the same time attend to his Government duties to maintain his family.