

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

% Date of decision: 01.05.2020

+ **MAT.APP.(F.C.) 47/2020 and CM APPLs. 5688-5689/2020**

VENKATESH NARASIMHAN Appellant

Through: Mr. I.C. Kumar and Mr. S.N. Jha,
Advocates

versus

V. SUJATHA Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred against the judgment of the learned Family Court, Patiala House Courts, dated 11.11.2019 whereby the marriage between the appellant/respondent and the respondent/petitioner was dissolved on a petition moved by the latter, seeking dissolution on the grounds of cruelty and desertion within the meaning of Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act (hereinafter referred to as the 'Act').

2. The admitted facts of the case are that both the parties were married on 22.05.1992 at Chennai as per Hindu rites, customs and ceremonies. They were blessed with a daughter on 15.10.1994, who is by now a major. The respondent/petitioner has alleged in her petition that the conduct of the appellant/respondent was extremely cruel and he was possessed of a callous and indifferent attitude since the initial years of marriage and he did not give the respondent/petitioner any support, financially or emotionally. In short,

she discovered that he had many personality and behavioural problems but nevertheless, she tried her level best to cope up with her husband's shortcomings with compassion and tried to help him acquire stability and status in life, many times forgiving his violence and encouraging positive skills. However, on repeated occasions, she found to her consternation, that the appellant/respondent made no effort to either settle down in his job or contribute to the household including taking care of the child's educational needs.

3. Very often, the respondent/petitioner found that the appellant/respondent disclosed complete indifference to the challenges being faced by her in the marital life and he was never available to her in times of need, including, when she required his assistance to take care of their daughter, when she had to complete her education/assignment and when she suffered from physical ailments which prevented her from taking on the entire burden of running the household and attending to the daughter, times when she expected some support, physically and emotionally from the appellant/respondent. Things reached a breaking point when despite the request of the respondent/petitioner not to invite his parents to their transit accommodation at Jawahar Lal Nehru University which had limited space and to request them to stay with his sister who was residing in Gurgaon, the appellant/respondent threw a tantrum and left the house in October 2011 without understanding that the reason for the said request was only the pre-board exams of their daughter. Even thereafter, the respondent/petitioner had sent emails to the appellant/respondent to assist her in looking for various course options for their daughter but no help was forthcoming. Thereafter,

there was no cohabitation between the parties. Premised on all these facts, the respondent/petitioner prayed for divorce on grounds of cruelty and desertion.

4. In the written statement that was filed by the appellant/respondent, all that was claimed was that the respondent/petitioner could not get the benefit of her own wrong as she was the one who had left his company without any reason. It was further claimed that the main reason for the differences was on account of the temporary nature of the employment of the appellant/respondent and the disparity in their incomes and education, though the respondent/petitioner had full knowledge of his qualifications at the time of the marriage, which was an arranged marriage. His only claim was that they had lived a happily married life for 20 years and now, with the daughter having turned major and of a marriageable age, it was not in her interest that the divorce petition be allowed, as that would destroy the life of the daughter.

5. On the basis of the pleadings of the parties, the learned Family Court settled the following the issues:

1. *Whether the respondent has committed cruelty upon the petitioner ?* *OPP*
2. *Whether the respondent has deserted the petitioner?* *OPP*
3. *Whether the petitioner is entitled to the relief claimed.* *OPP*

6. The respondent/petitioner examined herself as PW-1. The daughter of the parties was examined as PW-2 while the appellant/respondent examined

himself as DW-1. On an assessment of the evidence and material brought on record, the learned Family Court concluded that in modern times, when wives are also working, it is the legitimate expectation of a wife that her husband, who is a life partner, “*assist her with the upbringing of the child and running of the household.*” It was also held that it was unfair to expect only the working wife to take the entire responsibility of both, child rearing and running of the household. As a result, the petition for divorce filed by the respondent/wife was allowed and the marriage was dissolved.

7. The appellant/respondent has preferred the present appeal on the ground that the petition for divorce has been filed by the respondent/petitioner after nearly 20 years of the marriage and therefore, it ought to have been dismissed. It is further submitted that the respondent/petitioner could not have taken advantage of her own wrong as she has never instituted any proceedings for restitution of conjugal rights, to bring back the appellant/respondent. It is further submitted that as under the Hindu Law, marriage is a sacrament, it could not be broken and the respondent/petitioner has not thought of the welfare of their daughter in seeking divorce from the appellant/respondent and has also instigated the daughter to file a complaint against him under Section 12 of the Domestic Violence Act, for seeking maintenance.

8. Mr. I.C.Kumar, learned counsel for the appellant contended that the sole concern of the appellant/respondent was the future of their daughter as she was of marriageable age and the divorce would impact her matrimonial prospects and her life as an adult. He alluded to a letter dated 02.07.2000, addressed by the respondent/petitioner to the appellant/respondent wherein

she had written off with “*lots and lots of love kisses, yours ever Sujju*”, and a letter dated 11.07.2000, again ending with words “*lots of love, kisses and hugs. Yours ever, Sujata*” and yet another letter dated 29.07.2000 stating that “*I have been thinking a lot of you. It’s been a month since you left. It’s more than a month since you left. Last time we met after 40 days. Now it is very long separation. Lots of love and kisses. Yours Sujju*”, to contend that the language used itself demonstrates that there were no hard feelings between the couple and therefore, the story of cruelty was just a figment of the imagination of the respondent/petitioner on which the marriage could not have been dissolved.

9. We have heard the learned counsel for the appellant/respondent, perused the impugned judgment and examined the Family Court’s record that was summoned. In our opinion, the pleas taken by learned counsel for the appellant/respondent, as recorded above, are no better than a drowning man clutching on to a straw. It is quite evident from the letters written by the respondent/petitioner that while she was doing her very best to preserve the marriage, there was no reciprocation from the appellant/respondent. For instance, the letter dated 11.07.2000, starts with these words: “*I have been writing to you every week regularly. There is no reply from you? I have left 4-5 inlands in our room letter holder. Pick one of them and write back soon.*” In the letter dated 29.07.2000, once again, it starts “*how are you? There is yet no letter from you.*” Therefore, to submit that these letters disclose a ‘happy family’ scenario, is to blink at the truth. In fact, they only reflect the immense effort that the respondent/petitioner was putting in to salvage the matrimonial relationship, with no response at all coming from

the side of the appellant/respondent.

10. Specific and a long list of instances of cruelty have been referred to in the impugned judgement. A few of them are: the absence of any help when the respondent/petitioner was at Chennai when the child was born and she had to travel 40 Kms on a two wheeler for her work; when she took up a job at Goa and expected the appellant/respondent to shift alongwith her, he came much later; when within a day of joining her new job in Goa, the respondent/petitioner suffered a ligament tear and yet the appellant/respondent went off to Delhi to attend the house-warming ceremony of his sister, leaving her high and dry with their six years old daughter; he did not even care to return immediately when he learnt that their daughter had also sustained a fracture; when the respondent/petitioner had joined her duties at Delhi, the appellant/respondent had undertaken to take care of their young daughter during her absence but despite such an assurance, he did not come to stay with the daughter and on account of the concerns for her safety, the respondent/petitioner had to summon her brother from Bangalore to stay with the daughter when she had to leave station on official work; on other occasions too, she had to cancel her official programmes to return back to be with her daughter; there was complete indifference on his part to the health and well-being of the respondent/petitioner; the appellant/ petitioner showed no involvement with the academic progress of the daughter and did not behave as a family man even to spend holidays together. The repeated onslaught on her emotions even subsequent to these instances took a toll on the physical and mental health of the respondent/petitioner. The callous attitude of the

appellant/respondent also impacted the well being of their daughter.

11. The learned Family Court has rightly held that all these circumstances establish that the appellant/respondent was in fact cruel to the respondent/petitioner. Only because the respondent/petitioner continued to live with him, with a forgive and forget attitude just to make the marriage work, could not be taken as condonation of the continuous cruel acts, ill behaviour and misconduct of the appellant/respondent. Thus, the respondent/petitioner was found entitled to divorce on the grounds of cruelty. As regards the plea of desertion, it was held that the appellant/respondent had deserted the respondent/petitioner physically on 04.10.2011, but constructive desertion on his part had taken place for several years prior thereto since he failed to provide emotional, material and conjugal support to the respondent/petitioner. As a result, the marriage between the parties was dissolved.

12. Since the learned Family Court has discussed the facts of the case at some length in the impugned judgment, we do not consider it necessary to further discuss the same. Suffice it is to note that all the relevant events that have continuously occurred in the lives of the parties, reflect a one sided relationship where the appellant/respondent has taken everything for granted, with no sense of responsibility, while the entire burden of trying to keep the marriage alive was left for the respondent/petitioner to shoulder.

13. However, taking note of the plea of learned counsel for the appellant/respondent that his client was concerned with the future of his daughter, who was of a marriageable age and the divorce, if granted, would

adversely affect her future prospects, we consider it necessary to refer to the testimony of the daughter, who was examined as PW-2, as it draws a very grim picture of the matrimonial life of the parties and falsifies the stand of the appellant/respondent. In her affidavit (Ex. PW-2/A), PW-2 has averred the following facts: -

“4. ...That though my father Shri N. Venkatesh physically left our house in October 2011 after an argument with my mother V. Sujatha, even much before this action, I recall that my mother was under great mental stress, harassment and hardship on account of my father’s behaviour, some of which include:

- a) *He would tell very little about himself and his whereabouts but insisted on my mother accepting his decision.*
- b) *xxx xxx*
- c) *xxx xxx*
- d) *I found my mother **to be in great stress and often breakdown in tears** because he would be very obstinate and insistent, repeated his point over and over again **without listening or responding to her.***
- e) *At times, when my mother enquired about his job and his activities, he would avoid the discussion, leave in a huff and remained absent while my mother had to manage the house without any support.*
- f) ***On top of all this, my father along with his parents and sister used to find fault with my mother about the way she ran the house and about the household expenditure, even though she paid it all from her earnings. They always nagged her and put her on the defensive** by repeating that*

she could have done the work herself instead of hiring a maid, that she should not have bought a pressure cooker and so on.

5. *That I was disturbed by the fact that my mother who was so educated and who was the breadwinner of our family broke down so often and ended up being depressed every other week, whereas my father who contributed little was firm and stubborn and never gave up. The situation in our house in 2011 was not a happy one. It was my board year 2011 and my chemistry tuition teacher had left; I was very anxious at the time of my quarterly exam in September because a lot of chapters had to be covered and I could not concentrate on all subjects equally and had great fear of forgetting something important. ... I tended to forget what I knew as soon as I received the question paper and made several careless mistakes in calculation.*

6. *That my teachers wanted to talk to my parents, but my father never attended any parent teacher meeting nor asked me about my exams. My mother always attended the parent teacher meetings; my mother was very worried, tried talking to me and made arrangements for another Chemistry teacher. She also explained the situation to my father and requested him to be supportive but he refused to listen to anything unless she agreed to his decision about his parents. ... His behaviour was quite hostile towards me though I never took part in their arguments or ever took a stand against him; I have always regarded him with respect and have never uttered anything against him. Seeing my father's nonchalant and lackadaisical behaviour, my mother who was very serious about my career and academic growth was even more distressed and suffered mentally witnessing how my father was making no effort to bring me up or support me academically.*

7. *That after my father left, he never got in touch*

with me for about 3 months. But my mother started giving full attention to my problems. She counselled me, taught me to how to face the exams; she made me do some pranayam exercises. There was great peace in the house and by the time of half yearly exams in December 2011 my performance improved. ... I obtained 95.7% in the board examination and secured the award for the best mathematics student of the year. I could do better because the constant conflict created by my father in our house came to an end. my mother had to take on excess responsibility and with that came excess stress. All this affected her mental peace as she would on most days find it very difficult to provide care to me and to also attend to her professional duties.

8. xxx xxx

9. *He always went away to his sister's house and did not stay with us on festivals like Diwali and on holidays, though my mother made all arrangements for the celebration. This also caused grave mental agony to my mother and to myself.*

10. *That in December 2010, my mother had travelled out of Delhi for a conference and my father agreed to come home early during her absence. However, he never returned home till midnight nor informed me where he was and when he will come. When I called him, he briefly replied he will be late. I was alone in the house and scared and had to call my mother and talk to her. As this continued for more than a day, she cut short her official trip and returned to Delhi.*

11. *her mother aged 87 years, who was residing at Pondicherry was seriously ill. She wanted to rush to Pondicherry from Chennai airport but my father would not allow her to go because he wanted us to go to his parent's house in Chennai first. He held on tightly to the auto rickshaw we were sitting in and created a*

scene at the Chennai airport in July 2011 while my mother was very upset and embarrassed.

....

20. *That when my mother used to (sic.) cry silently at home, I used to ask her to take a divorce from my father. However, she would say that she has suffered silently all these years for my sake as I was yet to settle in life. Now that I am an adult and have got admission in a good educational institution, I have myself insisted on my mother to file this instant case and to secure her peace of mind after years of suffering torture, mental cruelty and agony.*

21. xxx

22. *...However, out of sheer ill will, he wishes to add to my mother's woes by contesting her divorce petition and draining her of her time, energy and money. My father who had shown no care or concern for me till now is contesting my mother's petition on the grounds that it will affect my welfare. His total neglect of my well being has caused great mental agony to me and my mother.*

23. xxx

24. *...Besides, he has used the harshest language against me and abused me of bad values for claiming support due from him as my father."*

(emphasis provided)

14. It is very significant that none of the aforesaid specific allegations have been challenged by the appellant/respondent at the time of cross-examination. He has not even questioned the occurrence of such events or claimed that PW2 had misunderstood such events. In other words, there can

be no doubt that the events as presented in the affidavit, Ex. PW-2/A, had in fact taken place and that it correctly reflects the impact of these events on the respondent/petitioner and on the daughter herself. The continuous badgering of the respondent/petitioner by a very insensitive and selfish appellant/respondent is clear as day light from the testimony of the daughter and nothing more needs to be said. In fact, this is a typical case that showcases as to what would amount to cruel behaviour on the part of one spouse to the utter detriment of the other.

15. Every human being has a right to mental peace, happiness and contentment. Marriage is no doubt a sacrament, but it cannot be a one sided affair. Both parties to the marriage are equal partners and are entitled to mutual respect, sharing of duties and responsibilities, affection, emotional bonding, financial and all other support for the well being of one another. If the relationship is so bitter and lopsided that the welfare and well being of one is at the immense cost and well being of the other, there can be no sacrament such as that the appellant/respondent now harps about.

16. The material on record goes to amply demonstrate the sincere efforts made by the respondent/petitioner to salvage the marriage and show that she did more than what was her duty, to preserve it. There is nothing to commend the appellant/respondent. It is indeed to the credit of the respondent/petitioner that presently, the daughter is studying for her PhD in the UK and has done her Masters at ETH, Zurich, Switzerland. She had filed an application under the Domestic Violence Act for seeking 50% contribution from her father, the appellant/respondent herein, towards the expense for applying for her master's program, scholarship and jobs, which

unfortunately, he contested and waited till the court finally directed him to pay some amount to her. She is doing extremely well in her academics, particularly after October 2011. It may not be incorrect to infer that had he not left the respondent/petitioner in October 2011, it may have resulted in the down spiralling of the future of the daughter, about whose welfare the appellant/respondent is now showing such concern.

17. In the light of the foregoing discussion, we find no reason to interfere with the decision of the learned Family Court of dissolving the marriage between the parties on grounds of cruelty and desertion. The impugned judgment dated 11.11.2019, is accordingly upheld and the present appeal is dismissed as meritless alongwith the pending applications. Trial Court Record be returned forthwith.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

MAY 01, 2020
pkb/s