(2025) 12 DEL CK 0019

Delhi HC

Case No: Matrimonial Appeal (F.C.) 30 Of 2024, Civil Miscellaneous Application Nos. 3808 Of 2024 and 40859 Of 2025

Shikha Kumari	APPELLANT
Vs	
Ravikant Ravi	RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 125
- Code of Civil Procedure, 1908- Section 152
- Indian Penal Code, 1860- Section 498A
- Family Courts Act, 1984- Section 19
- Hindu Marriage Act, 1955- Section 13(1)(ia), 13(1)(ib), 15, 23(1)(a)
- Protection of Women from Domestic Violence Act, 2005- Section 12

Hon'ble Judges: Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench: Division Bench

Advocate: Satish Pandey, Sanjeev Sharma, Ankit Kashyap

Final Decision: Dismissed

Judgement

Anil Kshetarpal, J

1. The present Appeal, filed by the Appellant-Wife, assails the correctness of the judgment and decree dated 15.12.2023 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Family Court in HMA No. 1684/2018 whereby the petition filed by the Respondent-Husband under Section 13(1)(ia) Hindu Marriage Act, 1955 [hereinafter referred to as 'HMA'], seeking dissolution of marriage on the ground of cruelty, has been allowed and the marriage between the parties has been dissolved.

2. The issue which arises for consideration in the present Appeal is whether, once the Family Court, on proper appreciation of evidence, has found that the marriage remained unconsummated from inception and that the Appellant's conduct amounted to mental cruelty, would it be appropriate to interfere in Appeal?

FACTUAL MATRIX

3. The brief facts leading to the present Appeal, as pleaded, are that the marriage between the parties was solemnized on 06.05.2017 in District Rohtas, Bihar as per Hindu

customs and ceremonies. It is not in dispute that soon after the marriage, the parties were able to cohabit only for a short period and that the parties have been residing separately since June 2017.

4. It was the case of the Respondent that the marriage remained unconsummated from inception and the Appellant allegedly displayed reluctance towards physical intimacy, household responsibilities and general matrimonial obligations. He asserted that the Appellant repeatedly declined to cohabit, avoided physical relations citing illness or depression, and allegedly threatened him with false criminal cases, including threats of implicating him in rape or abetment to suicide if he insisted on cohabitation. The Respondent further alleged that the Appellant insulted him and his parents, made monetary demands and on 26.06.2017 left the matrimonial home stating that she was going to meet her father but thereafter never returned despite repeated requests.

5. The Respondent claimed that he made several attempts to persuade the Appellant to return to the matrimonial home, but the Appellant refused and warned him that any insistence would result in false complaints against him and his family members. A notice dated 22.04.2018 was also sent by the Respondent seeking annulment/divorce, to which, according to him, no reply was given. Thereafter, the Respondent instituted HMA No. 1684/2018 seeking divorce on 17.07.2018 before the Family Court.

6. The Appellant, in her written statement before the Family Court, denied all the allegations and contended that she was always ready and willing to reside with the Respondent and perform her matrimonial duties. She pleaded that it was the Respondent and his family who treated her with neglect and indifference, failed to provide emotional support and created an atmosphere in which she felt unsafe and humiliated. She further asserted that the Respondent and his family members subjected her to demands for dowry and monetary contributions and that her refusal to meet such unlawful demands resulted in misbehaviour and ill-treatment. The Appellant maintained that the allegations of refusal of cohabitation, threats, or non-consummation were fabricated, and that the divorce petition had been instituted by the Respondent to escape his own matrimonial obligations and to conceal his and his family's misconduct.

7. Upon completion of pleadings, the Family Court framed issues, including whether the Appellant committed cruelty within the meaning of Section 13(1)(ia) of the HMA. After considering the oral testimony of both parties, the circumstances surrounding the matrimonial discord, and the admitted fact of prolonged separation from June, 2017, the Family Court returned findings holding that the Respondent had succeeded in proving mental cruelty. HMA No. 1684/2018 was accordingly allowed, resulting in the Impugned Judgment and decree dated 15.12.2023 dissolving the marriage.

8. **SUBMISSIONS ON BEHALF OF THE APPELLANT**

8.1. Learned counsel for the Appellant submitted that the Family Court erred in placing decisive reliance upon an expression used in the Appellant’s written statement, namely “almost consummated”, and thereafter proceeded on the basis that the marriage was not consummated. It was pointed out that:

i. The phrase was used in a pleading context and, in any event, was not intended as an admission of non-consummation;

ii. The Appellant’s evidence, affidavit and oral testimony, squarely asserts cohabitation and performance of matrimonial obligations; and

iii. The Family Court’s characterization of these words as determinative of the entire controversy is hyper-technical and legally unsustainable.

8.2. It was submitted that the evidence on record demonstrates that the parties co-habited and that the Appellant discharged her marital, conjugal, emotional and mental obligations. The Appellant averred in her affidavit dated 15.10.2022 that she performed her marital obligations, and in cross-examination she admitted cohabitation for the period she lived at the matrimonial home. It was further submitted that the email and WhatsApp communications relied upon by the Respondent were confined to the initial days of marriage, roughly the first 5-10 days, and, as the Appellant has consistently contended, those early exchanges primarily record a request for time to adjust to married life and an agreed pause. The Family Court’s contrary finding flows from a selective, piecemeal reading of pleadings and therefore, erred by giving disproportionate weight to isolated excerpts from these communications while ignoring the context in which they were

exchanged and other communications and acts showing willingness on the part of the Appellant to reconcile.

8.3. Learned counsel contended that the Respondent himself admitted in cross-examination that he did not place on record all WhatsApp chats and that neither transcription of the CD contents nor playing of audio/video material was undertaken during evidence. On these admitted facts, it is submitted, the electronic material accepted by the Family Court is inherently incomplete and unreliable. The Respondent adopted a selective "pick and choose" method to place only those portions of electronic communication favourable to him.

8.4. Learned counsel further submitted that the Appellant and her family repeatedly attempted reconciliation as they visited the Respondent multiple times at his residences in Dhanbad, Jharkhand in February 2018, Noida in March 2018, at the Respondent's sister's residence in July 2017, and even at DLF Mall, Noida in December 2017,in attempts to resolve matrimonial differences. It was contended that the Respondent actively contributed to the breakdown of marital life and that, in such circumstances, he cannot be permitted to take advantage of his own wrong. Reliance is placed upon Section 23(1)(a) of the HMA and the line of authorities emphasising that a petitioner seeking matrimonial relief must come to court with clean hands. Authorities relied upon include *Hirachand Srinivas Managaonkar v. Sunanda* (2001) 4 SCC 125, *Mahendra Manilal Nanavati v*. *Sushila Mahendra Nanavati* (1964) 7 SCR 267, *M. Ajith Kumar v. V. K. Jeeja* (AIR 2009 Ker 100), *Rajneesh v. Savita* (AIR 2003 Raj 280), *T. Srinivasan v. T. Varalakshmi* (AIR 1999 SC 595) and *Renu Bala v. Jagdeep Chillar* (Delhi High Court, 18-08-2010). It is submitted that the Family Court did not properly apply the principle that the court must ensure the petitioner is not seeking to take advantage of his own wrongdoing before granting a decree.

8.5. It was submitted that the Family Court failed to properly appreciate the burden of proof. The law requires the petitioner to prove acts of cruelty by evidence. In the present case, the Respondent did not lead independent, cogent evidence of acts constituting cruelty; instead, the Family Court accepted conjecture, the Respondent's self-serving statements, and partial electronic material. Accordingly, it was urged that such an approach is impermissible and contrary to settled principles of appreciation of evidence.

8.6. Learned counsel also pointed out that the Appellant has initiated independent legal proceedings, including a petition under Section 125 Code of Criminal Procedure, 1973 ['CPC'], a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ['DV Act'], and FIR No. 233/2024 under Section 498A Indian Penal Code, 1860 ['IPC'], in which charge-sheet has been filed. These circumstances, according to the Appellant, negate the allegation that she had abandoned or mistreated the Respondent and infact establish ongoing harassment and maltreatment by the Respondent and his family.

8.7. It was submitted that the Impugned Judgment reflects non-application of judicial mind, inasmuch as the operative decree wrongly mentions names of parties unrelated to the present case [Umesh Batra and Shruti Batra], which reveals cursory treatment and justifies appellate interference. It was urged that such an error is material because it reflects the process by which the decree was prepared and calls into question whether the court applied careful judicial reasoning in disposing of the petition.

8.8. It was submitted that the divorce petition was filed prematurely. The alleged desertion is dated 26.06.2017, while the petition was filed on 06.07.2018, only slightly over one year later. Under Section 13(1)(ib) of the HMA, desertion requires a statutory period to mature before it can be invoked. The Family Court did not examine this legal requirement and erroneously allowed the divorce without sufficient proof.

8.9. Learned counsel for the Appellant further submitted that during the pendency of the present Appeal, the Respondent has allegedly remarried, as reflected from photographs and screenshots of social media profiles that were placed on record through CM APPL. 40859/2025 as well as a copy of the Affidavit of Assets & Liabilities dated 06.03.2025 filed by the Respondent in proceedings under Section 125 of the CrPC. It was urged that such conduct, if found true, would be in contravention of Section 15 of the HMA and therefore relevant to the equities of the matter. It was submitted that this Court may direct the Respondent to clarify his stand on the alleged remarriage.

9. **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

9.1. Per contra, learned counsel for the Respondent supported the Impugned Judgment and submitted that the Respondent proved before the Family Court that the marriage, despite having been solemnised on 06.05.2017, was never consummated, which itself constitutes mental cruelty. It was emphasised that the Appellant left the matrimonial home on 26.06.2017, merely 40 days after the marriage, purportedly to visit her father, but thereafter did not return despite repeated requests and efforts from the Respondent.

9.2. It was submitted that the Respondent even sent a notice dated 22.04.2018 seeking annulment/divorce, but the Appellant did not respond and instead insisted that the Respondent should stay away from her and not attempt physical proximity. It was further argued that the Appellant threatened that if the Respondent tried to establish conjugal relations, she would level allegations of rape and even commit suicide.

9.3. Learned counsel for the Respondent submitted that the Appellant not only failed to fulfil her conjugal responsibilities but also used abusive language and insulted the Respondent's parents without cause. It was further submitted that the Appellant showed no interest in household responsibilities, avoided marital obligations on pretexts of illness, tiredness and depression, and that her father interfered in the matrimonial relationship and encouraged her to threaten the Respondent. It was submitted that despite efforts to bring her back, the Appellant refused to join the matrimonial home and threatened to lodge false criminal complaints if pressed to return.

9.4. It was argued that the Appellant has no valid grounds to seek setting aside of the decree of divorce, as the Family Court has carefully evaluated the evidence led by both sides and reached its conclusion. Learned counsel pointed out that in paragraph 22.2 of the Impugned Judgment, the Family Court has noted contradictions in the Appellant's written statement regarding consummation of marriage including her use of the expression "almost consummated" in Paragraph 4 thereof; that in paragraph 22.4, the Family Court has analysed the evidence and concluded that the marriage was not consummated; and that in paragraph 22.8, the Family Court has held that denial of sexual relations by one spouse constitutes cruelty and is sufficient to grant dissolution of marriage under Section 13(1)(ia) of the HMA.

9.5. It was finally submitted that the Family Court has, in paragraph 22.13, concluded that due to the Appellant's reluctance, the marriage could not be consummated; that despite service of legal notice, the Appellant did not resume cohabitation; that the parties have been living separately since June 2017. It was further emphasised that even during the course of trial, multiple counselling sessions and other settlement efforts failed, demonstrating complete marital breakdown attributable to the conduct of the Appellant. The Family Court also found that the allegations of dowry demand were unsubstantiated.On this basis, it is argued that the finding of cruelty is justified and calls for no interference in appellate jurisdiction.

ANALYSIS & FINDINGS

10. This Court has considered the submissions advanced by learned counsel for the parties at length and carefully perused the record. The issue for determination is whether the Family Court was justified in concluding that the Respondent had proved cruelty under Section 13(1)(ia) of the HMA and, if so, whether its decision calls for interference in this appeal.

11. The scope of interference in an Appeal under Section 19 of the Family Courts Act is limited. It is well settled that an appellate court will not lightly interfere with findings of fact arrived at by a court of first instance unless such findings are perverse, unsupported by evidence, suffer from misconstruction of law, or disclose demonstrable non-application of mind. The appellate court must respect the trial court's evaluation of credibility and the weight assigned to oral and documentary evidence, unless shown to be clearly wrong. Tested on this standard, the Appellant must show substantial error in the Impugned Judgment, which, as discussed below, she has failed to do.

12. The admitted factual background shows that the parties cohabited only for a short duration after their marriage on 06.05.2017 and have remained continuously separated since 26.06.2017. The Family Court noted that despite counselling sessions and several attempts at conciliation during the proceedings, the parties did not resume cohabitation. Long, continuous separation, particularly from the very inception of marriage, constitutes

a material circumstance supporting the conclusion that the matrimonial relationship had fractured irreparably at an early stage. The conduct leading to this state of affairs was examined by the Family Court and found established through the Respondent's consistent evidence.

13. The principal challenge raised by the Appellant is that the Family Court erred in treating the expression "almost consummated" in her written statement as indicative of non-consummation. The record shows that the Family Court did not rely upon this phrase in isolation. It considered it in conjunction with:

i. The Respondent's consistent allegations of refusal of physical intimacy;

ii. The WhatsApp and email communications placed on record, and

iii. The testimonies and the overall conduct of the parties.

The Family Court analysed these aspects in paras 22.2 and 22.4 of the Impugned Judgment and concluded that the marriage remained unconsummated owing to the Appellant's reluctance. No perversity is demonstrated in this conclusion. The Appellant's subsequent assertions of cohabitation did not sufficiently neutralise her averments in her written statement, especially when the surrounding circumstances supported the Respondent's version.

14. The contention that the electronic material was incomplete or selectively produced does not advance the Appellant's case. It is true that the Respondent admitted that not all chats were filed and that no transcription or playing of audio/video material took place. However, the Family Court noticed these lacunae and nonetheless undertook a cautious appreciation of the material that was exhibited. The Appellant did not object to its exhibition, nor did she produce any contrary electronic record to impeach it. The trial court was therefore entitled to assess the probative value of the material on record. The exhibited communications reflect reluctance, hesitation and unwillingness on part of the Appellant to engage in conjugal relations during the crucial initial period of marriage. The Family Court's reliance on this consistent pattern, along with oral testimony and other circumstances, does not call for interference.

15. The Appellant also alleged several reconciliations attempts by visiting Dhanbad, Noida, the Respondent's sister's house, and DLF Mall but cogent evidence to prove these averments was not supported by evidence led by the Appellant particularly when these assertions were denied by the Respondent. The Family Court considered these averments but found them unsubstantiated. There is no material before this Court to conclude that any relevant evidence was ignored or misread. The Family Court also considered the argument premised on Section 23(1)(a) of the HMA and correctly held that the Respondent had not sought to take advantage of any "wrong" on his own part. The plea of reconciliation attempts, therefore, does not undermine the Respondent's case or the findings of the trial court.

16. The allegations of dowry demand raised by the Appellant were rejected by the Family Court for lack of specificity and absence of corroboration. The Appellant did not mention any dates, incidents, or witnesses to support her assertion. On the other hand, the Respondent's allegations, relating to threats of false criminal cases, refusal of cohabitation, insulting behaviour and abrupt departure on 26.06.2017, remained consistent throughout and were accepted by the Family Court on the basis of oral testimony and documentary material. In appellate jurisdiction, this Court finds no reason to disturb these factual conclusions.

17. The fact that the Appellant has initiated proceedings under Section 125 of the CrPC, the DV Act, IPC and FIR No. 233/2024 does not ipso facto negate the Respondent's allegations. These proceedings were initiated subsequently and, as rightly observed by the Family Court, do not explain her conduct between May and June 2017, nor do they controvert the Respondent's case that she refused to return to the matrimonial home despite repeated requests and notice dated 22.04.2018.The existence of parallel litigation does not, on its own, negate the findings of cruelty recorded by the Family Court.

18. It is noted that the Appellant is correct in pointing out the clerical mistake in the operative paragraph of the decree which mentions the names of unrelated parties, namely "Umesh Batra and Shruti Batra." The error is regrettable and reflects a drafting oversight. However, the error is clerical and curable. Such an error is rectifiable under Section 152 of the CPC, which is reproduced as under:

"152. Amendment of judgments, decrees or orders .-

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

It does not, in our view, demonstrate that the Family Court's substantive appreciation of evidence or reasoning is vitiated. We therefore direct that the Family Court shall rectify the clerical error in the decretal portion by issuing a corrected decretal order recording the correct parties' names, within four weeks of receipt of this judgment.

19. The argument regarding the statutory period under Section 13(1)(ib) of the HMA is also misconceived. The Family Court did not grant divorce on the ground of desertion but solely on the ground of cruelty under Section 13(1)(ia) of the HMA. Consequently, the statutory period for desertion is of no consequence to the validity of the ground on which the decree was granted.

20. This Court also considers it appropriate to deal with CM APPL. 40859/2025 filed by the Appellant seeking to place on record certain documents alleging that the Respondent has remarried during the pendency of the present Appeal. Having considered the material sought to be brought on record, this Court finds that even if the allegations are assumed to be correct, the purported remarriage is a post-decree event and has no bearing on the legality, correctness, or sustainability of the Impugned Judgment dated 15.12.2023. The scope of the present proceedings is confined to examining whether the Family Court rightly granted a decree of divorce on the ground of cruelty based on the evidence before it. Post-decree conduct of the successful party cannot be relied upon to challenge or invalidate a decree that is otherwise lawful.Even otherwise, the question whether any independent consequences follow from an alleged remarriage during pendency of an appeal is a matter for appropriate proceedings, if maintainable in law; it does not furnish a ground to reopen or invalidate a decree that was otherwise lawfully passed on the ground of cruelty.

21. Moreover, as held by the Supreme Court in *Lila Gupta v. Laxmi Narain* (1978) 3 SCC 258 and reaffirmed in *Anurag Mittal v. Shaily Mishra Mittal* (2018) 9 SCC 691, a marriage contracted in contravention of the waiting period or during pendency of an appeal is not rendered void unless such nullity is expressly declared by statute. Section 15 of the Hindu Marriage Act, 1955 contains no such declaration. Consequently, any allegation of remarriage-if at all true-has no bearing on the validity or sustainability of the decree under challenge and cannot furnish a ground for interference in appeal. Accordingly, the said application does not advance the Appellant's case and is rejected.

22. This Court has further considered the Respondent's submissions, inter alia, that the Appellant left the matrimonial home within 40 days of marriage i.e., on 26.06.2017, repeatedly threatened the Respondent with false criminal allegations, refused cohabitation thereafter, failed to respond to the legal notice dated 22.04.2018, insulted the Respondent's family and showed no interest in domestic responsibilities. The Family Court analysed these matters in paragraphs 22.2, 22.4, 22.8 and 22.13 of the Impugned Judgment and concluded that the Respondent had proved cruelty. Having examined the record, this Court finds no misappreciation of evidence or error of approach. The finding that the denial of conjugal relations was wilful and persistent, and therefore amounted to mental cruelty, is a permissible conclusion on the evidence. The finding of cruelty has been determined on the basis of a review of the entirety of the matrimonial life of the parties. The Family Court undertook such an appraisal, considered the relevant precedents and applied established legal principles including the illustrative parameters of mental cruelty identified in *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511, and recorded cogent reasons as to why the marriage was dead owing to the Appellant's conduct.This Court is not persuaded that the Family Court's inferences were arbitrary or based upon inadmissible material.

23. For all the reasons recorded above, this Court finds that the Family Court's conclusion that the Respondent had proved cruelty on a preponderance of probabilities is supported by the record and does not warrant appellate interference. The Appeal is thus devoid of merit.

ORDER

24. In view of the aforegoing analysis and findings:

i. The Appeal and pending applications are dismissed.

ii. Impugned Judgment and Decree dated 15.12.2023 passed by the learned Family Court is hereby affirmed.

iii. Learned Family Court is directed to rectify the clerical error in the decretal portion (misnaming of parties as “Umesh Batra and Shruti Batra”) and to furnish a corrected decretal order under its seal and signature recording the parties’ names correctly within four weeks from receipt of the certified copy of this judgment; compliance to be placed on record.

iv. Decree-sheet to be prepared and an appropriate decretal order to be drawn up by the Family Court in accordance with this judgment.