

(2016) 10 DEL CK 0074

DELHI HIGH COURT

Case No: MAT. APP.(F.C.) 36 of 2014.

Sandhya Kumari - Appellant
@HASH Manish Kumar

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 21, 2016

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1)(i-a)

Citation: (2016) 9 ADDelhi 293 : (2016) 234 DLT 381 : (2016) 3 DMC 844

Hon'ble Judges: Pradeep Nandrajog and Pratibha Rani, JJ.

Bench: Division Bench

Advocate: Ms. Juhi Arora, Advocate, for the Appellant; Mr. Pramod Kapur, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J. - Sandhya is aggrieved by the decision dated January 31, 2014 dismissing HMA No.489/2012 filed by her seeking restitution of conjugal rights. Manish is aggrieved by a decision of even date dismissing HMA No.141/2012 filed by him seeking decree for divorce on grounds of cruelty. The two decisions dated January 31, 2014 have been authored by the same learned Judge presiding over the Family Court at Dwarka and we find that the evidence led by the parties is the same in the two petitions; one filed by the wife and the other filed by the husband.

2. The first shot was fired by Manish; apparent from the fact that the petition filed by him bears serial No.141/2012 and the one filed by Sandhya is 489/2012.

3. Case pleaded by Manish was that the marriage solemnized on March 08, 2011 was without any demand of dowry from him or his family, but customary gifts were given by the parents of Sandhya. The couple lived with his parents at P-283, Mohan Garden, Buddh Bazar Road, Uttam Nagar, Delhi. Both were working. The first act of cruelty alleged is that after two days of marriage Sandhya went to her parental

house and returned after one month notwithstanding he making efforts for her to return to her matrimonial home. He could not understand the behaviour of Sandhya who would say that she was uncomfortable in her matrimonial home because there was no air conditioning in the house and that she did not want to perform household chores. The next (second) act of cruelty alleged is when the couple went to Vaishno Devi in April 2011. As per Manish, Sandhya reduced the trip to a nightmare on account of Sandhya constantly nagging him for bringing less money. The further act of cruelty is linked to the first, inasmuch as Manish pleads that half the time Sandhya used to spend in her parental house telling him that she had no time to cook meals in her matrimonial home. The third act of cruelty alleged is that on July 05, 2011 Sandhya telephonically informed him from her office that she was in the family way and had to undergo an ultrasound. Since during those days Sandhya was in her parental home he went to the house of her parents and took her to a doctor. Ultrasound showed a normal foetus. He pleads that on July 12, 2011, Sandhya returned to her matrimonial home, a day which turned out to be a nightmare. As per him Sandhya fought with him. Abused him and his parents. At 5.00 A.M. the next day i.e. July 13, 2011 Sandhya started shouting that she had aborted. He rushed her to a private clinic but Sandhya insisted to be taken to Dada Dev Matra Avm Shishu Chikitshalay. He pleads that Sandhya was brought back by him and she told him that she had to revisit the hospital after four days. He took her to Gupta Nursing Home to get an exact report and (quote) : "The petitioner and his family were shocked to learn that the respondent had already aborted the baby without even taking any advice or informing the petitioner and his family". Meaning thereby cruelty alleged was the unilateral act of Sandhya to abort the foetus. He pleads that on October 04, 2011 Sandhya left the consortium and went to her parental house never to return. She took her jewellery along. Whenever he tried to meet her to counsel her to return she would threaten saying that the two would henceforth meet only in the Court. On December 26, 2011 he received a notice from Crime Against Women Cell and when he reached the Cell he was humiliated by Sandhya.

4. Sandhya's response was that from the inception of the marriage Manish was indifferent towards her. She denied that there was no demand for dowry and asserted that her father spent Rs. 10 lacs in the marriage and apart from jewellery to her, which was taken possession by her in-laws, household articles and a Bajaj Pulsar Motorcycle was given in dowry. She pleaded that just after the marriage her in-laws demand Rs. 5 lacs to purchase a car. She denied having returned to her parental house two days after the marriage. She denied having ever shirked performing household chores or telling her husband that due to lack of any air conditioner in her matrimonial home she could not stay there. She pleaded that the day next after the marriage her husband started inquiring from nearby shopkeepers as to what price he could get by selling the television and the refrigerator which her father had gifted as part of the dowry at the time of the marriage. She pleaded that

on July 01, 2011 her husband, instigated by her parents, left her at her parental home. She pleaded that on July 12, 2011 her father met her in-laws and pleaded with folded hands to accept her in the matrimonial house. Her husband and her in-laws agreed. As per her when she returned to her matrimonial house her mother-in-law abused her. She pleads (quote) : "It is further submitted that not only the mother of the petitioner abused the respondent but the petitioner and his father also joined hands in beating up the respondent despite her plea for mercy and neither gave any food to the respondent nor let her speak to her father on the said day and even on the next day". She pleads that on July 12, 2011 when she returned to her matrimonial home she felt uneasy and her husband, with initial reluctant took her to a doctor for ultrasound. The doctor told her that she had some pregnancy related problem. She pleads that the next day when she went to the toilet the foetus got aborted. She denied that at 5.00 A.M. on July 13, 2011 she created any scene in the house and desired to be taken only to Dada Dev Matra Avm Shishu Chikitsalay. She denied that she was taken to Gupta Nursing Home. As per her, her in-laws and her husband were aware that she had aborted in the toilet in the morning of July 13, 2011. She denies visiting her parental house with the frequency as alleged by her husband. Regarding the trip to Mata Vaishno Devi, admitting the same she denied having ruined the trip. She denied that she taunted her husband for bringing less money at the trip. As per her the elder sister of her husband and her husband were part of the trip and the two used to instigate her husband against her. As per her, her mother-in-law threw her out of the matrimonial home on October 04, 2011. As per her she never threatened her husband of seeing him only in the Court. As per her, she and her parents tried level best for her to return to her matrimonial house. But when things went out of control she had no option but to approach the Crime Against Women Cell.

5. A look at the pleadings in HAM No.489/2012. Sandhya's written statement in HMA No.141/2012 constitutes the pleadings in the petition filed by her seeking restitution of conjugal rights. And the written statement filed by Manish mirrors case set up by him seeking divorce on ground of cruelty in HMA No.141/2012.

6. In HMA No.141/2012 Manish examined himself as PW-1 and his father Manohar Lal as PW-2. Both parroted each other, and what surprises us is that Manohar Lal, who concededly did not accompany the couple to Vaishno Devi in April 2011, in his affidavit by way of examination in chief parroted what his son had deposed to in paragraph 9 of his affidavit i.e. that Sandhya made the entire trip into a nightmare and taunted him for ruining the holiday by bringing less money. Word by word the two affidavits by way of evidence are identical till paragraph 21. Paras 22 to 25 of the affidavit by way of evidence of Manish are irrelevant depositions concerning the paragraphs of the pleadings that the Court had territorial jurisdiction to entertain the petition and that he had not filed any other similar petition. That he had not remedy other than the one he had resorted to.

7. Sandhya examined herself as RW-1 and her father as RW-2. Sandhya deposed in sync with her pleadings. Her father deposed in sync, informing that what transpired between Sandhya, her husband and her in-laws was told by her to him. He corroborated her with respect to what would transpire when his son-in-law with his father would visit their house.

8. Though not exhibited, both parties filed documents pertaining to ultrasound of Sandhya at Singhal Hospital on July 05, 2011 and Freemasons Hall, Janpath on July 11, 2011. Read jointly the two would show that fetal cardiac activity was absent.

9. Relevant would it be to highlight that as per Sandhya, her in-laws were dowry seekers and we find that in paragraph 4 of her affidavit by way of evidence she deposed : "That the petitioner and his parents were not only dowry mongers but also greedy and had since the inception of marriage tortured, taunted and jeered the deponent for bringing insufficient dowry articles." But during cross-examination she admitted (quote) : "It is correct that no demand was raised from the opposite side before marriage." She admitted that through the medium of photographs she could not make good her claim that lot of dowry articles were given at the time of marriage. She admitted that neither she nor her father could produce any bill. Standing by her assertion that a demand for a car was made by her husband, she admitted that no other demand was made. She admitted that she used to keep her salary. Regarding the refrigerator gifted by her parents which was admitted by Manish to have been sold, she admitted during cross-examination (quote) : "It is correct that a bigger refrigerator was purchased by my husband in lieu thereof". Regarding abortion, she stated during cross-examination : "On 30-06-2011 my husband left me at my parental home. My mother in law told me to go to parental home and take rest there. I was at my parental home for 10 days. Vol. I did not receive any call till one week from my husband to take me back. I got pregnant in May, 2011. I had gone to the doctor due to some ladies problem in between 30-06-2011 and 13-07- 2011 but I do not remember the date. The doctor had given me an injection and had advised me rest. I do not remember if I had visited the doctor on 11-07-2011. It is correct that my ultrasound done on 11-07-2011. It is incorrect to suggest that the doctor had told me that cardiac activity in the foetus is absent. Vol. I was told that the heart beat was weak. It is correct that ultrasound report Mark P-1 pertains to me. It is incorrect to suggest that I was aware from before that my baby was not viable. It is incorrect to suggest that I was already aware of these facts and therefore on my own came back to my matrimonial home on 12-07-2011". Pertaining to her assertion on October 04, 2011 when she was thrown out of her matrimonial house and her jewellery was retained by her in-laws, she took half turn during cross-examination. She said that half jewellery was with her and half was retained by her in-laws.

10. As regards the evidence led by the parties in HMA No.489/2012 we find that Sandhya examined her father Om Prakash as PW-1 and herself as PW-2. Their

deposition mirrors the one by way of defence in HMA No.141/2012. Manish Kumar examined himself as RW-1 and we find that his deposition mirrors the one in HMA No.141/2012.

11. Though the learned Judge, Family Court has authored two separate judgments on the same day i.e. January 31, 2014; and in our opinion it would have been advisable to club the two cases together for the reason both parties were mirroring their pleadings and the evidence in the two cases and the factual backdrop was the same, we find that the reasoning by the learned Judge is the same. It had to be. The reason being that as per Sandhya she was thrown out of the matrimonial house i.e. admitted separation but sans the animus. As per her, her husband and her in-laws treated her with cruelty and threw her out from the matrimonial house. As per her, she wanted reunion. Conversely, as per Manish, Sandhya voluntarily abandoned the consortium on October 04, 2011 after a turbulent short span of married life lasting seven months during which period she was cruel towards him.

12. Holding that Manish failed to give specific dates and particulars of the alleged misbehaviour including the trip at Vaishno Devi, the learned Judge has concentrated on whether Sandhya who, pleaded dowry demands and harassment as the cause thereof of her being thrown out of her matrimonial home, had established her case.

13. Holding that even Sandhya has equally failed to establish her case, the learned Judge, Family Court has in paragraphs 33 and 34 of the decision in HMA No.141/2012 and paragraphs 34 and 35 of the decision in HMA No.489/2012 discussed the evidence concerning the abortion of the fetus. In view of the ultrasound report Mark P-1 which Sandhya admitted as hers, and this is the ultrasound report dated July 11, 2011, it has been held : "The true facts that transpired on 12/13-07-2011 have been brought out in the cross examination of the petitioner. It is admitted by her that on 30-06-2011 she was left at her parental home by the respondent on the advice of her mother-in-law to take rest at her parental home. She stayed there for about 10 days. It is further admitted by her that she had visited the doctor between 30-06-2011 and 13-07-2011 and that her ultrasound was done on 11-07-2011. She denied that she was told by the doctor that the cardiac activity of the fetus was absent through, she has volunteered that she was told by the doctor that the heart beat of the child was weak. She has admitted her ultrasound report Mark P-1. In the said report, it is clearly mentioned that the fetus cardiac activity was absent. It was therefore, suggested to the petitioner that when she came to know that the fetus was not viable, she herself returned to the matrimonial home. The admissions of the petitioner coupled with the ultrasound report therefore, shows that the petitioner had been left at her parental home on 01-07-2011 not because of beatings but because she was pregnant and it was considered in her interest that she would get better rest at her parental home. It is also shown that she had difficulty in her pregnancy, because of which she visited the doctor and got the ultrasound done and the fetus was found to be not viable. She

had thereafter, returned to the matrimonial home and has suffered abortion on 13-07-2011. The sequences of the events as established from the evidence shows that it was neither the petitioner who had abused the respondent nor had the petitioner intentionally left the matrimonial home; rather she had stayed in her parental home on account of her pregnancy followed by ill fated abortion".

14. During arguments in the two appeals learned Counsel for the parties conceded to the point that the pleadings and the testimony of both parties concerning acts of oppression and cruelty alleged against each other do not substantiate their assertions and both have spoken gross lies concerning how and under what circumstances Sandhya had an abortion.

15. The discussion by the learned Judge with reference to the documentary evidence and circumstances leading to Sandhya suffering from an abortion is correct. A perusal of Mark P-1 in HMA No.489/2012 would evince that on July 05, 2011 Sandhya was subjected to an ultrasound of the lower abdomen at Freemasons Hall, Janpath and it was detected on the same day that fetal cardiac activity is absent. It is apparent that Sandhya was carrying a dead foetus and abortion was inevitable. Her assertion therefore that on July 12, 2011 her husband and his parents not only abused her and gave her beating which was the cause of the abortion is ex-facie false. Similarly, the stand of Manish that Sandhya got the foetus aborted without his consent and this constitutes an act of cruelty is also false. The reason being that the dead foetus inside the womb of Sandhya was detected on July 05, 2011, and we are rather surprise that Sandhya got the foetus aborted on July 13, 2011. We hasten to add that since both parties have tried to take advantage of an unfortunate incident, there is complete blurring of evidence as to which gynaecologist Sandhya went to armed with the ultrasound report. Both parties have withheld said evidence because its production would be fatal to the respective stand. Human may tell a lie but documents don't. The ultrasound report Mark P-1 tells its own story. The story is that on July 05, 2011 the foetus without any cardiac activity was detected. It was a dead foetus. Abortion was the compulsion of medical science. Both parties have tried to unnecessarily take advantage of the same. There is clear cut evidence that due to a dead foetus Sandhya was not in the best of health. As deposed to by her in cross-examination she went to her parents house on June 30, 2011. She was consulting some gynaecologist. Ultrasound was advised. A foetus without a heart beat was detected. Therefore, neither is the miscarriage/abortion a result of physical beating by Manish or his parents nor it is a unilateral act of Sandhya.

16. Sandhya's allegations regarding dowry demand in the form of a car have remained a mere assertion. Her stand that her father spent Rs. 10 lacs on marriage also remains an assertion. Her admission in cross-examination that after her husband sold the refrigerator which was given by her parents as a gift on the happy occasion of the marriage he purchased a bigger refrigerator belies her assertion that her in-laws started selling the gifts which she had received at the time of

marriage to make money or on account of they being not satisfied with the same. Her admission that she was retaining her salary is also indicative of the fact that neither her husband nor her in-laws had any evil eye on her salary. She partially contradicts herself qua her jewellery. In the pleadings she asserts that her in-laws retained her jewellery when she was thrown out of her matrimonial home, but in cross examination admitted that half the jewellery was with her. She does not explain as to under what circumstances and why she took only half the jewellery with her.

17. Whilst it may be true that Manish's version that on account of Sandhya unilaterally aborting the foetus without his consent has not been established by him; rather has been positively demolished by documentary evidence, even the assertion by Sandhya that it was the brutal assault on her which caused the foetus to abort being false would definitely be a cruel act towards her husband for the reason the charge is too serious and would certainly cause immense mental trauma to a husband. Add on to the same would be the false allegations of a dowry demand. This aspect of the matter has been overlooked by the learned Judge, Family Court. On the issue of abortion the learned Judge has rested her decision on finding both versions to be false. But the truth had to be found. The truth is as found by us above. The truth therefore would be that Sandhya falsely alleged beating by her husband and her in-laws as the cause of inducing the abortion. The learned Judge, Family Court has also overlooked the effect of Sandhya not being able to make good the allegations of dowry demand.

18. Evidence establishes that both Sandhya and Manish gave a very serious twist to the unfortunate abortion which Sandhya had. It establishes that both couple have the propensity to twist facts so as to suit their convenience. From the point of view of Manish, Sandhya's allegation that she aborted as a result of being assaulted by the petitioner and his parents would be an act of mental cruelty. From the point of view of Sandhya, Manish's allegation that she aborted the foetus without consulting him would be an act of cruelty. The fact was that the foetus was dead. Both knew it. Abortion was inevitable. Regarding household goods gifted by Sandhya's parents at the time of the marriage, a bona-fide act of Manish to sell the refrigerator on account of it being small and replacing the same with a bigger refrigerator has been given a colour by Sandhya to assert that the petitioner, to make money, started selling the gifts given by her parents. Similar would be the position i.e. Sandhya exaggerating facts concerning dowry demand.

19. It is thus a case where by exaggerating facts, the couple picked up quarrels imputing allegations against each other. They found excuses to find fault with each other. By their conduct both aggravated the worsening situation. It is a case of mutual cruelty inflicting against each other. Senseless mental torture continued all through when the parties cohabited.

20. The marriage took place on March 08, 2011 and by mid-July, 2011 i.e. in four months the couple had made a fair mess of themselves. From the incident of abortion the two trying to take advantage by painting the backdrop to the incident, as noted above, is an indication of the relations between the two being extremely strained from the very inception of their marriage. It is clear that the two were fighting each other from the beginning of their marital life and during the short period of four months the two have deliberately created problem for each other. The two have exaggerated every minute aspect which occurred in day to day life and were finding fault with each other. Both, by their conduct, aggravated the worsening situation. Senseless mental torture continued all through when the two cohabited for four months. Tolerance, adjustments and respect to each other are totally absent. The marriage is a total wreck. Separated in mid July, 2011 the two could not be reunited in spite of various efforts made for conciliation before the learned Judge, Family Court. Trained Counsellors could not help the couple salvage their marriage.

21. Though irretrievable breakdown of marriage is not a ground for divorce but in the judgments reported as **2006 (2) Mh.L.J. 307 Madhvi Ramesh Dudani v. Ramesh K.Dudani**, **2007 (4) KHC 807 Shrikumar V. Unnithan v. Manju K. Nair**, **(1994) 1 SCC 337 V. Bhagat v. D.Bhagat** and **(2006) 4 SCC 558 Navin Kohli v. Neelu Kohli** the concept of cruelty has been blended by the Courts with irretrievable breakdown of marriage. The ratio of law which emerged from said decisions is that where there is evidence that the husband and wife indulged in mutual bickering leading to remonstrations and therefrom to the stage where they target each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide on the issue of cruelty, for the reason the obvious intention of said spouse would be to continue with the marriage not to enjoy the bliss thereof but to torment and traumatized each other.

22. Bringing the curtains down MATA(F.C.) 57/2014 filed by Manish is allowed. Impugned judgment dated January 31, 2014 dismissing HMA No. 141/2012 is set aside. HMA No.141/2012 is allowed. The marriage between Manish and Sandhya solemnized on March 08, 2011 stands dissolved by passing a decree of divorce. MATA(F.C.) 36/2014 filed by Sandhya is dismissed.

23. Parties shall bear their own costs in the two appeals.