

**(1986) 01 DEL CK 0006**  
**In the Delhi High Court**  
**Case No : First Appeal No. 213 of 1983**

Anil Bhardwaj

APPELLANT

Vs

Nirmlesh Bhardwaj

RESPONDENT

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**Date of Decision :** 29-01-1986

**Acts Referred:**

**Citation :** AIR 1987 Delhi 111 : (1986) ILR Delhi 383

**Hon'ble Judges :** Mahinder Narain, J

**Bench :** Single Bench

**Advocate :** S.P. Pandey and Neelam Grover, for the Appellant;

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## Judgement

Mahinder Narain J.

(1) This is a husbands appeal from a judgment dated 30th March. 1983, passed in Hindu Marriage Act case No. 383 of 1980. by the Additional District Judge, Delhi.

(2) The husband had filed a petition for decree of divorce u/s 13 of the Hindu Marriage Act, 19-55. It was stated in the petition that a marriage between the parties was solemnized according to the Hindu rites on 31-1-1979. The marriage was a simple affair. The petition of the husband was found upon t."ie cruelty. Paragraphs 6, 7 and 8 of the petition read as under :-

"6.That the behavior of the respondent was not normal with the petitioner. She behaved in a very unto ward and abnormal manner with the petitioner and the members of his family. She would not do any of the house-hold duties and would complaint that after attending office, she was dead-tired. She also complained that she was not used to domestic chores as she had never worked in the home and declared that she would not do any house-hold work. Time and again the respondent would ask the petitioner to start residing separately Instead of residing with his parents and other family members. The petitioner fried to reason with her and told her that he was the eldest son in the family and could not dream of residing separately but the respondent would not hear the

petitioner and would get angry.

The respondent did not bother about the love and affection of the family members of the petitioner towards her.

7. That whenever the petitioner visited the house of the respondent i.e. his in-laws, they would advise him to start residing separately adding that their daughter i.e. the respondent was not used to reside in such a congested family. The petitioner told them frankly that he was not prepared to live separately as his parents and other members of the family gave full love and affection to him and to the respondent. The respondent turned cold and blunt towards the petitioner and would not allow him to have sexual intercourse with her or to make love to her. The petitioner and all the members of his family gave all their love and affection to the respondent and treated her as a member of their family but the respondent failed to appreciate the said gestures of the petitioner and the members of In's family.

8. That the respondent resided with the petitioner for a short period from 1-2-79 to 11-3-79, but she never allowed the petitioner to have sexual intercourse with her. Whenever he made an attempt, the respondent grew furious and told him that she was living in hell on account of the un-cooperative and repulsive behavior of the petitioner. She would not show a positive response to the love and affection of the petitioner and his parents and on the other hand either she would lay cold or she would start shouting or screaming causing great mental torture, harassment and humiliation to the petitioner and the members of his family. Life became dry for the petitioner and he lost interest in life as well as the respondent on account of her bickering nature."

In reply to the averments made in paragraphs 6, 7 and 8, the fed in her written statement :--

"6. That para No. 6 of the petition is absolutely incorrect and false. It is false for the petitioner to say that the behavior of the respondent was not normal towards the petitioner or that the respondent ever behaved in any abnormal manner with the petitioner or with any other family member of the petitioner. On the other hand, the behavior of the petitioner and of his family members was very cruel and inhuman towards the respondent. The respondent and his other family members many a times even physically tortured the respondent and gave her severe beatings. It is false for the petitioner to say that the respondent ever told the petitioner or any other member of his family that she will not do any household duties or that she ever complained that she feels tired after attending her office and as such she will not do any household work. It is false for the petitioner to say that the respondent ever told him that she never did any domestic work in her parents house. It is also false for the petitioner to say that the respondent ever asked him to live separately from his parents and other family members. The petitioner or his family members had no love and affection towards the respondent. The entire story set up by the petitioner is incorrect and

false and is concocted one and has been set up to create false ground for getting a divorce. Even the behavior of the father of the petitioner was undesirable with the respondent and was not like that of father-in-law towards the respondent.

7. That para No. 7 of the petition is incorrect and false. It is false for the petitioner to say that the parents of the respondent ever advised the petitioner to reside separately from the other members of his family. It is false for the petitioner to say that the parents of the respondent ever told him that the respondent was not accustomed to reside in the congested family like that of the petitioner. The entire allegations made by the petitioner. The entire allegations made by the petitioner against the parents of the respondent are incorrect and false and are concocted one. It is false for the petitioner to say that the Respondent ever beacons cold and blunt towards the petitioner as falsely alleged in paragraph under reply None of the family of the petitioner had any love and affection for the respondent. it is false for the petitioner to say that the respondent ever refused to have sexual intercoms?, with the petitioner.

8. That Para No. 8 of the petition is again incorrect and false or the reasons stated above. it is correct that the respondent lived with the petitioner only from 1-2-3979 to 11-3-1979. It if false for the petitioner to say that the respondent had refused to perfume her matrimonial obligations with the petitioner or even refused the petitioner for intercourse In fact the respondent lived with the petitioner till 11-3-1979 and she was always ill-treated by the petitioner and his other family members and ultimately on 12-3-1.979 she was forcibly driven out from the matrimonial home by the petitioner and other members and ultimately 12-3-1979 family and the petitioner never cared to take the respondent back, despite various efforts of the parents of the respondent and other relatives. The petitioner and his family members turned out the respondent from the matrimonial house as the petitioner and his parents were greedy and were not satisfied with the dowry given by the parents of the respondent in the marriage The allegation, made by the petiole against the respondent arc absolutely incorrect and false. It is false for the petitioner to say that the respondent ever shouted or caused mental torture. harassment or humiliation to the petitioner or to any other family members of the petitioner it is false for the petitioner to say that his life became dry or that he had lost interest in the life due to the respondent. On the other ban 3, the petitioner and his other family members were cruel and inhuman towards the respondent."

(3) The other other which was argued in the petition was that false allegations were made against the husband with various authorities which amounted to cruelty. In a statement as Public Witness -1 the husband stated

"THE respondent also refused to submit to sexual intercourse unless I arranged a separate residence for her. .... The respondent did net allow me to have sexual relations with her at all till the left my house. Our marriage was not consummated."

When cross- examined .. the husband slated :

"IT is incorrect that our marriage was duly consummated and the respondent never refused to submit sexual intercourse. I did not have any sexual intercourse with. the opposite sex in my life till now. I am ready to have my medical check-up "

The respondent was examined as Rw 1. She stated that I never refused to have sexual intercultural with the petitioner In cross-examination she stated :-

""IT is incorrect that the petitioner had refused to agree to any of my above-mentioned demands or that for any such reason I refused to cooperate with him and denied sexual inter-course to her is incorrect to suggest that I had been treating the petitioner with cruelty and that I was denying sex to him . . ."

(4) I have perused the entire statement of the respondent No- where in the statement which she gave, either in examination-in- chief, or in the cross-examination, where she had stated that on any specific date sexual intercourse had in fact taken place between the parties I am of the view that it was easy enough for the respondent to slate at least one date when sexual intercourse had taken place. It would have been easy for her to state that on the date when the marriage took place, i.e. on 31st of January ,1979, sexual intercourse had taken place. For that matter, it could have been stated that sexual intercourse had taken place between the parties one day after the marriage, two days after the marriage or any number of days after the marriage had been solemnized between the parties. The respondent however, had rut said w.

(5) Accordingly in view of the fact that the respondent had merely said that "she had not refused the have the sexual intercourse with the petitioner", which is a negative term as against the positive assertion of the appellant that no sexual intercourse had taken place between the parties the marriage, that in fact he had never had sexual intercourse with any person in his life. it leads me to believe to believe that the statement of the husband ought to be accepted rather than that of the wife, for had she actually had had sexual intercourse with her husband, she would have said so and even specified the date thereof. Her failure to mention the date cleans that the version given by the husband is correct. .

(6) The court has, on a number of occasions, held that refusal to have sexual intercourse amounts to cruelty on the other party. This was so in Rita Nijhawan Vs. Balakishan Nijhawan, , this is what the court had said :--

"21. Thus the law is well settled that if either of the parties to a marriage being a healthy physical capacity refused to have sexual intercourse to same would amount to cruelty entitling the other party to a decree. In our opinion it would not make any difference in law in law whether denial of sexual intercourse is the result of sexual weakness of the respondent disabling from having a sexual union with the appellant, or it is because of any willful refusal by the respondent; this is because in either case the result is the same namely frustration and misery to

the appellant due to denial of normal sexual life and hence cruelty. "Prior to Gollin's case 1963 2 All Bar 966 in 1963 the Courts in England had been taking the view that unless cruelty was aimed at by either of the parties the same could not amount to cruelty. But that is no longer a correct view and Therefore subsequently the Courts have proceeded on the basis that it is not necessary to prove the culpability of the respondent in order to hold him guilty of cruelty. What has to be found in each case is whether the act is such which the complaining partner should not be asked to endure. The Court of appeal in Sheldon Vs. Sheldon, 1966 2 All 257 granted a decree to the wife on the finding that the husband's persistent refusal of sexual intercourse over a long period without excuse, caused a grave injury to the wife's health and amounted to cruelty on his part. Lord Denning observing that : "the categories of cruelty are not closed. The persistent refusal of sexual mercers is not excluded".

Later on this court reiterated what have been said in Rita Nijha wan's case In atam Parkash Arora Vs. Neelam. 1981 DMC 43(2). a decree was refused only because the husband had failed prove that there was denial of sexual intercourse. in shakuntala Kumari Vs. Om Parkash, 1981 Rlr 12 (3). Justice Leila Seth held that if the wife not willing for normal sexual relations is cruelty on the husband. Para 25 of that judgment reads as under :-

"25. A normal and healthy sexual relationship is" one of the basic ingredients of a happy and harmonious marriage. If this is not possible due to ill health on the part of one of the spouses, it may or may not amount to cruelty depending on the circumstances of the case. But willful denial of. sexual relationship by a spouse when the other spouse is anxious for it, would amount to mental cruelty, especially when the parties are young and newly married."

Again in 1981 Rlr 271 (Neelam Vs. Vinod)(4) this court, while dealing with the matter before it, says :-

"40. In the present case, the problem started on the very first night. The appellant declared that she was not interested in life nor in sexual relationship. One can imagine the shock this must have given the respondent who must have been full of anticipation and desire. The next day she left the house and had to be persuaded to return. She refused to go for her honeymoon. She reluctantly agreed after much persuasion ,to go a week later. She was depressed and disinterested at a time, when a bride would normally be joyous, happy and anxious lo share togetherness."

The Hon"ble Judge dismissed the appeal filed by the wife.

(7) A perusal of the judgment of the trial court would show that he was not considered any of the judgments of this court which have been notice by me above. The trial court has emphasised the words "consummation of marriage"". The learned judge has mis-directed himself by observing that "he (the husband) did not state that their marriage was not consummated at all". In this case, which is filed u/s 13 of the Act. which pertains to divorce on the ground of

cruelty, the word "Consummation" is not mentioned at all. The word "Consummation" now occurs in Section 12 of the Act." by virtue of amendment of Section 12. by-Act 68 of 1976. It is by virtue of the amend ing act 68 of 1976. the word "Consummation" had been incorporated in Section 12 of the Hindu Marriage Act. which relates to marriages which can be declared to be void by a decree of nullity. Prior to this amendment the concept of Consummation of marriage was irrelevant for the purposes of any proceedings u/s 12 of the Act. "Consummation" may need to be adjudicated upon in a petition for nullity of marriage u/s 12 of the Act, but it is irrelevant for purposes of Section 13 of the Act.

(8) Since I am of the view that the appellant husband is entitled to decree of divorce on the ground of cruelty, for the reasons stated above, there is no need for me to make a further inquiry into whether or not the alleged false allegations, which are purported to have been made by the respondent against the appellant husband, would also amounts to cruelty or not and as such there is no need for me to deal with the cases cited in support of this proposition, namely. Shakuntala Kumari Vs. Om Perakash. 1981 Rlr 121(5); Girdhari Lal Vs. Santosh Kumari. (1982) 1 D.M.C. 180(6); Kiran Kapur Vs. Surinder Kumiir. 1982 Rlr 37(7): & Lajwanti Chandhok Vs. O. N. Chandhok, (1981) Ii Dmc 97(8).

(9) It must be added that the counsel for the respondent in view of the judgments of this court, regarding refusal to have sexual intercourse, which refusals had been held to amount to cruelty, did not contest the matter of the alleged false allegations and complaints.

(10) As regards the applications filed by the parties u/s 27 of the Act nothing need to be stated in this judgment for the reason that the proceedings are pending before the Criminal Court u/s 406 of the Indian Penal Code, wherein the matters will be adjudicated noon after the evidence of the parties is concluded in the trial court.

(11) In this view of the matter, I set aside the judgment of the learned Additional District Judge, dated 30-3-1983 and grant a decree of divorce in favor of the appellant, the original petitioner, whose petition u/s 13(I)(ia) for divorce on the ground of cruelty is hereby allowed.

(12) The parties are left to bear their own costs.