
(2007) 03 DEL CK 0255

In the Delhi High Court

Case No : Matrimonial Application 63 of 2005

Bharat Bhushan Sharma

APPELLANT

Vs

Pratibha

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Citation : (2007) 3 CivCC 552 : (2007) 1 DMC 767 : (2007) 2 ILR Delhi 555 : (2007) 3 RCR(Civil) 655

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sanjeev Behl and Party-in-Person, for the Appellant; Girish Kaul and Party-in-person, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This appeal is directed against the judgment dated 23.9.2005 passed by the Additional District Judge, Delhi in HMA No. 485/2001. By the impugned judgment, the learned ADJ dismissed the appellant's petition seeking divorce from the respondent on the grounds of cruelty.

Background facts

2. The marriage of the appellant with respondent was solemnized on 24.11.1999 according to the Hindu rites and ceremonies. It is the case of the appellant that that six days after the marriage on 30.11.1999, parents of the respondent took her away on the pretext of her having to attend classes for a computer course. Thereafter, the respondent joined appellant on 3.2.2000. It is stated that she behaved like stranger; she was insisting on living separately; hardly entered the kitchen to help his mother in the household work and started creating scenes in the house unnecessarily. She again left for maternal house with her brother on 15.3.2000 and the appellant brought her back on 3.4.2000. On 30.4.2000 when she received call that her mother was seriously ill, the respondent left the matrimonial home again. According to the appellant, when he went to the house

of the respondent's parents, he found her mother to be hale and hearty and he was assured that the respondent would join his society within a fortnight. It is stated that on 15.8.2000, the respondent's father along with other relatives, went to the house of maternal uncle of appellant and informed that the appellant's father had evil eyes on the respondent; that he used to insist that respondent should serve liquor to him and made other scandalous allegations. When on 19.8.2000, one Bhudev Shanna along with Mohinder Singh, Pramod Sharma and Naresh Tyagi, Advocate visited the house of the respondent and confronted her father demanding to know the reasons for making such scandalous allegations, the parents of the respondent started threatening that the whole of the appellant's family would be implicated in false cases.

3. In her written statement, the respondent denied the allegations. Further she alleged ill-treatment suffered by her on the hands of the appellant and his parents and the demand made by them to fetch a sum of Rs. 4 lacs from her father. She averred that she was cruelly treated from 3.4.2000 onwards. She made specific allegations in para 7(4) of the written statement that on 15.4.2000 when she was changing her wearing apparels in her room, her father in law pushed the closed doors of the room, lifted the respondent on to his lap and with connivance of the respondent's mother-in-law got her photographed. In para 7(8) she alleged that mother of the appellant used to pressurize the respondent to have illicit relations with people who were promoting the export business of the appellant and upon the respondent's refusal threatened to get the respondent's brother kidnapped. In para 16, she again adverted to the fact that the father of the appellant was having evil eyes on the respondent. After the written statement was filed, the petition was sought to be amended to incorporate specific pleas of cruelty arising out of the scandalous allegations made in the written statement. However by an order dated 15.7.2002 the application for amendment was dismissed by the trial Court on the ground that the appellant could always file a rejoinder to deny the allegations.

4. On behalf of the appellant, three witnesses were examined. These were the appellant himself, his father and mother. Likewise the respondent examined herself and her father and mother as witnesses. Lengthy cross-examinations took place of these witnesses. The trial Court found that each of the witnesses stood by the statements made before the Court on oath and were unable to be shaken in cross-examination. The trial Court after a detailed analysis of the evidence on record concluded that the appellant had failed to prove his version of the events and that the version of the respondent appear to be correct. As regards the allegations made in the statement the trial Court noted that the respondent was not being reckless, but rational, it concluded that she wanted to save her matrimonial life and could not be seen as making the allegations falsely. Accordingly, the trial Court dismissed the petition.

Submissions of Counsel

5. The Counsel for the appellant submits that the Court erred in ignoring the

evidence on record. He submits that the trial Court ought to have held that the allegations made in the written statement were so scandalous and that such allegations definitely constituted cruelty. He submits that it is improbable that if such allegations were true the respondent would not have informed her parents about it and not filed a criminal complaint. Placing reliance on portions of the deposition of the respondent it is submitted that entire story of the respondent was a concocted one which ought to have been disbelieved by the trial Court. Finally it is submitted that it is impossible for the parties to think of living together and that the marriage has irretrievably broken down. Relying on the judgment of Hon''ble Supreme Court in Naveen Kohli Vs. Neelu Kohli, , it is submitted that this Court should grant the appellant divorce.

6. In reply the Counsel for the respondent submits that the scope of the appellate proceedings is limited. The Court in appeal cannot re-appreciate the entire evidence but interfere only when the findings of the trial Court are totally perverse and unsupportable by the evidence on record. It is submitted that trial Court was faced with the situation where all the witnesses had stood firm in cross-examination. The trial Court, Therefore, had to weigh the evidence in order to determine who was speaking the truth. After observing the demeanour of the witnesses and analysing the evidence, the trial Court came to the conclusion that the case of the respondent was more believable and accordingly it held that the petition had to be dismissed. Counsel points out that even today the respondent was willing to live with the appellant and wants to save the marriage.

Do the allegations in the written statement constitute cruelty?

7. There is no doubt that the allegations made in the written statement by the respondent if proved to be wholly unsubstantiated would constitute a scandalous allegation that would amount to cruelty in terms of the judgment of Hon''ble Supreme Court in V. Bhagat Vs. Mrs. D. Bhagat, . However, it is important for the trial Court not to go by only the pleadings but to see if the evidence led by the parties makes good the allegations in the pleadings. It is only at the stage of evidence that the Court is able to decide veracity of the statements made in the pleadings. Additionally, the trial Court has the advantage of observing of demeanour of the witnesses and their reaction to particular questions. The trial Court can assess the evidence in the light of what it has observed of the witnesses.

8. The value of observing the demeanour of witnesses by the Court was explained by Sir John Taylor Coleridge in R. v. Bertrand 1867 LR IPC 520 in the following words:

Those of Their Lordships who have been used, on motions for new trials, to hear the Judge''s notes of the evidence read, probably know well by experience how difficult it is to sustain the attention, or collect the value of particular parts, when that evidence is long; and one cannot but feel how much more this difficulty must press upon twelve men of the ordinary rank, intelligence, and experience of

common Jurymen. But this is far from all. The most careful note must often fail to convey the evidence fully in some of its most important elements, those for which the open oral examination of the witness in presence of prisoner, Judge and jury, is so justly prized. It cannot give the look or manner of the witness: his hesitation, his doubts, his variations of language, his confidence or precipitancy, his calmness or consideration; it cannot give the manner of the prisoner, when that has been important, upon the statement of anything of particular moment; nor could the Judge properly take on him to supply any of these defects; who, indeed, will not necessarily be the same on both trials; it is, in short, or it may be, the dead body of the evidence, without its spirit; which is supplied, when given openly and orally, by the ear and eye of those who receive it.

Later in AIR 1943 159 (Privy Council) Lord Russell of Killowen explained (AIR p. 161):

In Their Lordships' opinion the High Court on appeal was not justified in this case in taking a different view of the plaintiff's credibility from that adopted by the trial Judge. McNair J., enumerates a series of points upon which he bases his view that the plaintiff's evidence is such that reliance cannot be placed upon it, but they are just the sort of points as to which the only person who can effectively form an opinion and draw conclusions is the trial Judge who has the witness before him. He alone knows the demeanor of the witness; he alone can appreciate the manner in which the questions are answered, whether with honest candour or with doubtful plausibility, and whether after careful thought, or with reckless glibness. He alone could form a reliable opinion as to whether the plaintiff had emerged with credit from a cross-examination, lasting the great part of two days, which was to a greater extent repetitions, and sometimes offensive.

9. The cases like the present one are indeed difficult since they raise issues of great sensitivity, which require to be handled with care and caution. While it cannot be said that the kind of allegations made in the written statement would, on prima facie, sound scandalous, it must also be remembered that a daughter-in-law is not likely to make such allegations against her father-in-law lightly or routinely. Her version is vulnerable being tested in cross-examination which will ultimately determine the truth or otherwise of her statements.

10. Matrimonial disputes in Courts tend to turn acrimonious with parties often trading unpleasant allegations against each other. The grounds on which divorce can be sought under the Hindu Marriage Act, 1955 ("Act") are limited. There is yet no scope for a "no-fault" divorce or divorce on the ground of irretrievable breakdown of marriage. This perhaps is one reason why there is a tendency to exaggerate in the pleadings in order to make out a case for cruelty. Such exaggerations get exposed by pertinent cross-examination during trial. Another important factor is that parties are invariably guided by the lawyers who are anxious to ensure that the version of their client is accepted.

11. Parties, left to themselves, may not want to actually say all that is said in the

pleadings. The severity of the charges traded gets considerably modulated, and some times mitigated, in cross-examination. All this will have to be borne in mind by a Court that is evaluating the pleadings.

Has the appellant positively proved the case of cruelty?

12. The party seeking divorce is required in law to prove that such person has been treated cruelly during the time that the parties lived together as husband and wife. This could be termed as the "pre-petition cruelty". What has happened since the judgment of Hon"ble Supreme Court in Bhagat v. Bhagat is that the party seeking divorce has now been provided with an additional ground of "post-petition cruelty". In other words, by referring to the allegations in the written statement filed, the plaintiff can seek to show that he or she has been, on account thereof, subjected to "post-petition cruelty". Thus the plaintiff makes use of the statements made by the defendant to prove the case instead of making good the statements made by him or her against the defendant. In the latter event a Court should not proceed entirely on what is stated in the written statement for determining if there has been cruelty to such person of the plaintiff during the time they lived together. This is because very often, there is a tendency to attack other person as a defensive reaction to the allegations in the petition which the party, against whom such allegation is made, finds wholly untrue. Therefore, it would be unsafe and perhaps impermissible for a Court to proceed to determine issue of cruelty only on the basis of what is stated in a written statement. The correct course appears to be that the Court should in the first place, examine if the appellant has positively proved what has been stated in the petition See, for instance, Heirs of Kantilal Purshotam and Ors. v. Datniben Jagdish Rathod AIR 2003 Guj. 2085. It can certainly then seek to corroborate that finding by the cruelty that is sought to be demonstrated from the allegations in the written statement of the defendant. However, if the first stage has not been crossed, it would not be permissible for the trial Court to rely solely on the statements made in the written statement to return a finding of cruelty.

13. Turning to the facts of the present case, the examination-in-chief of the appellant is bereft of any particular instances of cruelty by the appellant, and in any event of a nature that would warrant the grant of divorce on such ground. The narration of the appellant, in his examination-in-chief, of what transpired between 24.11.1999 when the parties got married and on 3.4.2000 when the respondent joined his company, is basically a grievance about the respondent not wanting to stay with him. That certainly by itself cannot constitute cruelty. It should be recognised as being part of the regular wear and tear of a marriage. In arranged marriages, it is not surprising that the wife would take some time to adjust to her new environment. She has a natural inclination to return to her parents' house till such time she is able to reconcile to the fact that she is required to live in a changed atmosphere.

14. The narration in the appellant's examination-in-chief about the alleged cruelty of the respondent after she joined him on 3.4.2000 reads as under:

On 22/23.3.2000, I went to parents house of the respondent to bring her back to the matrimonial home but her parents refused to send on the pretext that mata puja was to be performed on 27.3.2000 ultimately the respondent joined my society on 3.4.2000. After 4/5 days, she again started treating us with cruelty and she used to quarrel with us on petty matters. The respondent used to complain against my parents loudly in front of other family members. My father tried to make her understand on 15.4.2000 that once she was being treated nicely there was no reason for her to behave in this way. She refused to listen him and started making scandalous allegations. She told my father that he did not want that she would live separately as my father had an evil eyes on her. My father is a religious minded person and was shocked to hear these words from the respondent. The respondent started making allegations against all the members of my family. The respondent used to talk to her mother daily on telephone and the talks continued for 1 or 1/2 hours. Her mother used to threaten us that as the laws were in favor of woman and they would implicate us in false case.

On 3.4.2000 I received a call from respondent's father informing us that her mother was seriously ill and respondent should reach immediately at her parents house. I took her to Gulabi Bagh. But I was surprised to find that her mother was hail and hearty. I asked as to why a false message has been conveyed to which their parents did not reply properly. I realized that it was pre-planned and started raising uncalled for allegations. The respondent stayed back and did not contact me telephone. My father and myself tried to contact the parents of the respondent on telephone so that she could join my society but her parents had been postponing the matter. On 19.8.2000, myself, my maternal uncle P.K. Sharma and Mahinder Singh along with Naresh Tyagi, went to the house of parents of the respondent. We were not treated nicely and ever were given beatings and leveled allegations against my father that my father wanted to take naked photos of the respondent and my mother wanted the same.

My relatives and others asked the parents of respondent as to why necessary allegations were being leveled against my parents to which her father replied that he will feel satisfied once my parents and uncles are behind the bars. He further said that all of them would be implicated in false cases.

On 15.8.2000 respondent father along with Satish Sharma, Om Prakash Sharma, went to the house of maternal uncle of my father at Laxmi Nagar where they informed paternal uncle of my father that my father and my maternal uncle Sh. S.K. Sharma had evil eye upon the respondent. They further informed him that my father asked the respondent to bring liquor and also stated that my father was characterless.

To this Court, it appears on a reading of the above statement that, even without being challenged in cross-examination, it does not really make out a case of cruelty by the respondent-wife.

15. It would be unsafe to import into matrimonial law the concept of "transferred malice". In other words, the misbehavior by relative of a spouse whether it be of her parents or siblings or uncles with the husband cannot be straightaway attributed to the wife herself. Otherwise, one spouse would have to be answerable for the behavior of other members of his or her family and will have to suffer the consequences even though the spouse may not have been cruel. This Court is not prepared to accept that the law, as it stands permits it. If permitted, it can work unfairly against either spouse defending proceedings of divorce. Therefore, it is held that it would be the requirement of the law that a person alleging cruel treatment by the other spouse must positively prove such cruel treatment of that other spouse and not by any relative of such other spouse.

16. There is nothing in the examination-in-chief of the appellant that satisfies this requirement. The allegations and statement against the respondent herself are totally vague and not specific. The instance concerning the appellant's father on 15.4.2000 cannot by itself be labelled as a cruel treatment by the respondent-wife of the appellant-husband. Even in *Bhagat v. Bhagat*, the Hon'ble Supreme Court did not merely rely on averments made in the written statement of the wife, but the fact that she had filed an additional written statement repeating these allegations. Further, questions were put to the husband while he was in the witness box to suggest that "the petitioner has lost his normal mental health, that he is a mental patient requiring expert psychological treatment and above all to brand him and all the members of his family including his grand-father as lunatics". The Court concluded that the wife was "going far beyond the reasonable limits of her defense" and that "these assertions cannot but constitute mental cruelty". In *Vijay Kumar Bhate v. Neela Bhate* (2003) 6 SCC 534, it was held that the allegations made had to be of "such quality, magnitude and consequence" as amounting to "the reformulated concept of cruelty in matrimonial law".

17. In the present case, the respondent has firmly stood by her statement. She has remained unshaken during cross-examination. The other statements made in the cross-examination hardly constitute cruelty by the respondent wife of the appellant husband. The only conclusion, that is Therefore possible to be drawn is that the appellant failed to make out a positive case of cruelty by the respondent.

18. Counsel for the appellant strenuously argued that cross-examination of the respondent wife showed that she had not informed her parents till 30.4.2000 of the demand for dowry of Rs. 4 lakh. It was submitted that even the fact that the father of the appellant had evil eyes on her was disclosed to her parents only after 2 or 3 days after 30.4.2000. This itself, according to the Counsel for appellant, makes the version of the wife wholly improbable and unbelievable. He also refers to the cross-examination of the respondent's mother who confirmed that prior to 30.4.2000, the respondent did not inform her about the dowry demand.

19. The Court is unable to accept the contention of the Counsel for the appellant.

The cross-examination of the respondent-wife as well as that of the mother are consistent and show that as a matter of fact, the respondent informed her parents of both the dowry demand and misbehavior of the appellant's father only after she returned to her parents' home on 30.4.2000. It is also consistent with the respondent's version that her first instinct was to save her marriage and not to complain about these incidents to others or even to her own parents till they actually became unbearable. This again should not be surprising giving the social realities in our country.

20. The cross-examination of the respondent by the appellant has been extensive. However, apart from a series of suggestions there has been practically no question put to her about the incident of 15.4.2000. The suggestions made to her that she was making incorrect statements about her father-in-law were denied by her. Thus, there is nothing in the cross-examination of the respondent that can lead to an inference that she is not speaking the truth.

21. In that view of the matter this Court finds absolutely no infirmity in the conclusion arrived at by the trial Court in the matter as already noticed. The trial Court had additionally the advantage of observing the demeanour of these witnesses. It had to weigh the evidence and take an overall view of the matter. This Court is of the view that the conclusion arrived at by the trial Court is correct and calls for no interference.

Irretrievable breakdown of marriage not a ground for divorce

22. The judgment in Naveen Kohli v. Neelu Kohli JT (2006) 3 SCC 491 is very often cited to press for divorce on the ground of irretrievable breakdown of marriage. As explained by the Hon'ble Supreme Court in Shyam Sunder Kohli v. Sushma Kohli 2004 (2) HLR 513, the ground of irretrievable breakdown of marriage should not be granted at the instance of a party who himself has treated the other party cruelly and generation capacity as failed to substantiate positively his case in the trial Court. In the instant case, the respondent has expressed a desire to keep the marriage alive and has not subscribed to the position of the appellant that there is an irretrievable breakdown of marriage. In any event this Court is not inclined, in the facts of this case, to accede to any such plea particularly since there is no statutory ground available in the law at present to grant divorce on the ground of irretrievable breakdown of marriage.

23. For all the above reasons, there is no merit in the appeal and it is dismissed with costs of Rs. 5,000/- which will be paid by the appellant to the respondent within a period of four weeks from today.