

(2002) 05 DEL CK 0244
In the Delhi High Court
Case No : MAT No. 2 of 1997

Dr.(Mrs.) Kiran Robinson

APPELLANT

Vs

Ajeet Malcolm Robinson and Others

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Divorce Act, 1869 — Section 10

Citation : AIR 2003 Delhi 44 : (2002) 99 DLT 111 : (2002) 2 DMC 462 : (2002) 63 DRJ 708 : (2003) 1 RCR(Civil) 523

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—This is a petition u/s 10 of the Indian Divorce Act, 1869 for dissolution of marriage on behalf of wife-petitioner on the ground of cruelty, desertion and adultery. This trite trinity has been responsible for larger number of broken marriages. Apart from this, there is allegation that respondent is medically unfit to impregnate the petitioner as he is suffering from Polycystic Kidney Disease which means he is capable of sexual intercourse but not able to make the wife conceive.

2. The parties entered into wedlock on 7.8.1991. The petitioner possessed postgraduate degree in Chemistry at the time of marriage and completed her Ph.D. after her marriage. She is presently working as P.G.T. in a Government Senior Secondary School. The respondent is a photographer by profession. After marriage she started living with her in laws at 1 B.P., Maurya Enclave, M.I.G. Flats, Pitampura (Poorvi) Delhi. She stayed there from August, 1991 to 2nd week of September, 1991.

3. It is alleged that respondent No. 1 before marriage was working and studying at Russia and came to India for the purpose of marriage and lived here from

August, 1991 to October, 1991 where after he left for Russia. Since the petitioner was doing research work at Banaras Hindu University, Varansi, she along with respondent No. 1 came there to apprise him about the research work. Respondent No. 1 left for Russia in October, 1991. The petitioner stayed with her parents to prosecute her study from mid of November, 1991 to 23rd December, 1991 and rejoined her husband when he came back from Russia on 25th December, 1991 and stayed with him till 1st week of March, 1992. For completing her remaining research work, she came back to Varansi and remained there up to 23rd June, 1992 and returned to Delhi on 30th June, 1992 and started living with her in-laws. Respondent No. 1 came to Delhi in 1st week of July, 1992 and remained here till November, 1992.

4. It is alleged that respondent No. 1 never wanted the petitioner to accompany him to Russia despite her passport but she could not get her visa as respondent No. 1 refused to cooperate with her. Respondent No. 1 revealed to her that he has married her only with the purpose that his parents are looked after by the petitioner in his absence. According to the petitioner during her honeymoon at Mussoorie, she could not get any love and affection from her husband.

5. Though respondent No. 1 has been proceeded ex-parte as he did not appear after filing written statement yet every allegation including that of adultery has been denied by him. According to him, after living with him for one month, the petitioner insisted on doing her Ph.D. at Varansi where her parents resided but he did not like to her to continue her studies as he wanted him to accompany him to Russia where he was employed. About the allegations of his being medically unfit, he put entire blame on her. According to him, it was the petitioner who alone avoided sex with him as she did not want to conceive. The allegations of mental and physical harassment by him and his parents have been emphatically denied. According to respondent No. 1, petitioner used to go away from the residence without any prior information to the respondent or his parents and would come back very late and respondent and his parents were kept under constant threat of involvement in false cases in case they dared to question her conduct. She even used to leave the station with her boy friends without the consent/knowledge of respondent No. 1 or his parents many a times and always refused to accompany him to Russia. It was her who deserted him by leaving matrimonial house. He also denied having any sexual relations with any girls as alleged by the petitioner. The allegations of mental and physical harassment were also denied by respondent No. 1. According to him, she never wanted to stay with him as she wanted to pursue her research work.

6. Since the respondents were proceeded ex-parte as they did not appear to contest the petition, the petitioner was called up to file affidavit by way of evidence. The petitioner has reiterated and re-affirmed the allegations made in the petition. The relevant documents produced and proved by the petitioner are as under:-

i) Exhibit PW 1/1 is the marriage certificate; ii) Exhibits PW 1/2 to 1/8 are

various degrees possessed by the plaintiff and research work undertaken by the petitioner from time to time.

7. It is settled law that if allegations are not rebutted, then it shall be deemed to be admitted.

8. Infinite kinds of conduct come under the scope of mental cruelty and no one dares attempt to define it in a strait jacketed manner. In the words of Lord Watson, "Any definition would be either so wide as to be nugatory, or too narrow to fit in the ever-varying events of human life. Neither can we define other terms applicable to human conduct, such as "honesty", for instance, or "good faith" or "malice" or "danger" or "reasonable apprehension". Such rudimentary terms elude a periodic definition, they can be ill-used but not defined."

9. In *V. Bhagat Vs. Mrs. D. Bhagat*, , the Supreme Court defines mental cruelty as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

10. Again in *Shobha Rani Vs. Madhukar Reddi*, , the Supreme Court has observed that the word "cruelty" is to be used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.

11. It is not always necessary that a course of conduct be deliberately undertaken for the purpose of causing mental pain and suffering in order to constitute cruelty. Acts of alleged cruelty may be judged by the effect produced and not by the motive provoking them.

12. In the ordinary sense, desertion means abandonment. The essence of desertion is the breakup of the matrimonial home caused by the withdrawal of one spouse. Once the spouse leaves the matrimonial home, he is guilty of desertion. Similarly if one spouse has caused other spouse to leave the matrimonial home and stay apart by creating circumstances, he too is guilty of desertion. Once cohabitation has been brought to an end and conduct of one of the spouse has caused its termination, the spouse causing termination is guilty of desertion.

13. So far as adultery is concerned in ordinary sense it is sexual intercourse of a married person with one of the opposite sex other than the husband or wife, as the case may be. Since it is a crime of darkness and secrecy the direct proof of commission of sexual intercourse may not be possible. Sometimes such direct proof creates suspicion. Adultery can be inferred from circumstances. When a

man or woman stays at a hotel with another man or woman who is not his wife or husband adultery may be inferred as the maxim goes that that they do not sing prayers there. Similarly indecent familiarities also raise the inference of adultery.

14. When tested on the aforesaid principles following instances supported by affidavit of the petitioner establish all the three grounds viz. cruelty, desertion and adultery.

"Whenever her parents visited her, they were insulted and her husband did not say anything. Despite being an educated lady, she used to do all household works like cooking, washing of clothes etc. In each and every work faults were found out and was rebuked from time to time. So much so she was forced to demand her share from her parents property so that he can give it to her husband and in laws. She was abused and beaten very often by her husband as he demanded money to buy U.S. dollars. At one occasion, she gave Rs. 10,000/- to her husband to buy U.S. dollars. Sometime in 1993 her aunt suffered heart attack and was admitted in Sir Ganga Ram Hospital. She requested her in laws and her husband to take her there but they refused to take there and ultimately her aunt died on 29.2.1993. Due to this, she got fever for eight months and was examined by number of doctors including doctors of AIIMS and it was told that his was due to mental harassment. She came to know that her husband has been suffering from polycystic kidneys and was unable to conceive her. Again in July, 1993 she came to know that her husband has sexual relations with Tanya a Russian girl and Monika an Indian girl who were living with her husband in Russia. This fact was even revealed by her husband who showed in time photographs and told her that they are sharing same room with him at Russia. Then she asked her husband about these women who stated beating her and forced her to leave the house and doors of matrimonial home were ultimately shut. Since 15.3.1994 none has approached her for taking her back".

15. As a consequence, petitioner is entitled for dissolution of marriage on the aforesaid three grounds. Petition is allowed. Marriage is hereby dissolved. Decree of divorce be prepared.