

"V
C.A.No. 5649 OF 1998

ITEM No.102

COURT NO.7

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 5649/1998

Pushpavathi\$Lalitha

Appellant

VERSUS

Manickasamy

Respondent

Date : 1.2.2001. This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K.SABHARWAL

HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s) Dr. A.Francis Julian,adv.for
M/s. Arputham, Aruna & Co.

For Respondent (s) Mr. R.Mohan,Sr.Adv.for
Mr. T.Raja,adv.

UPON hearing counsel Court made the following
ORDER

.....L.....I.....T.....T.....T.....T.....T.J

.SP2

The appeal is allowed.
With costs.

.SP1

(Suman Wadhwa)
PA to Addl.Regr.

(S.Malkani)
Court Master

Signed order is placed on the file.

.PA
.PL55

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5649 OF 1998@@

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Pushpavathi\$Lalitha

...Appellant

Vs.

Manickasamy

...Respondent

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

The marriage between the parties was solemnized on the 11th September, 1980. The wife is said to have left the matrimonial home on 11th June, 1981. A son out of the wedlock was born on 26th December, 1981. A petition for divorce was filed by the respondent-husband seeking divorce on the ground of cruelty and desertion under Sec.13(1)(1a)and (b) of the Hindu Marriage Act 1955. The trial court by judgment and decree dated 24th February, 1986 allowed the petition and granted the divorce on both the grounds. That was, however, reversed in appeal by the District Judge, Pondicherry, by judgment and decree dated 23rd January, 1987 and petition for divorce was dismissed. The second appeal filed by the husband having been allowed by the High Court by the impugned judgment dated 22nd December, 1997, this appeal has been filed by the wife.

For this appeal, the ground of desertion is not relevant. That was the ground which was negated by the District Judge and is not the ground on which the second appeal was allowed by the High Court and decree for divorce granted in favour of the husband. The only ground relevant for the purposes of decision of this appeal is that of cruelty.

The facts constituting cruelty as pleaded in the divorce petition were briefly that the wife was not freely moving with the husband and his family members; she was leading secluded life; her father and mother used to visit husband's house frequently and other similar facts. These facts have, however, become irrelevant now since the High Court has not reversed the judgment and decree of the First Appellate Court by coming to the conclusion that the aforesaid facts as held by the trial court constitute cruelty and findings of trial court were wrongly reversed by the District Judge. The High Court by impugned judgment passed in the Second Appeal has granted the decree of divorce by coming to the conclusion that the unfounded allegations made by the wife constitutes mental cruelty. The High Court says:

.....L.....I.....T.....T.....TJ.
.SP1

The wife has alleged so many serious allegations against the husband and mother-in-law both in the counter and in the evidence, she has not established the same by examining any independent witness. To prove that the husband demanded some more articles from her father, the wife has not examined her father to sustain the same. The above

said unfounded allegations cannot but constitute mental cruelty.

Despite all these, if the wife wants to live with her husband/appellant, it has to be concluded that she has resolved to live in agony and only to make the life miserable one. According to the husband, in his evidence he has categorically stated that he does not want to live with the respondent/wife. In view of the above, it is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together or living together again.

The learned counsel appearing for the respondent/wife has submitted that in view of the petty quarrels between the spouses, it cannot be said that reunion is not possible. In view of the allegations made against the husband and her mother-in-law taking into consideration of the totality of the facts, it cannot be said that the dispute is due to petty quarrels and so the submission of the learned counsel cannot be sustained."

.....L.....I.....T.....T.....T.....T.....T.J
.SP2

Admittedly there is no plea either in the plaint or in memo of appeal before High Court that any allegations made by the wife in the written statement constitute mental cruelty. Whether given facts constitute mental cruelty or not depends upon facts and circumstances of each case. What is mental cruelty as envisaged under Section 13(i)(ia) this Court in S.Hanumantha Rao vs. S. Ramani 1993(3) SCC@ 620 said

.....L.....I.....T.....T.....TJ.
.SP1

Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in

which they were made (V. Bhagat vs. D.Bhagat(Mrs.) 1994(1) SCC 337. In the present case the husband has not even taken a ground in the memo of appeal that the averments made by the wife constituted mental cruelty. Each and every allegation made against husband by the wife in the written statement defending a petition for divorce filed against her cannot constitute mental cruelty. The decision in V. Bhagat's case referred by the High Court in reversing the judgment and decree of the First Appellate Court has no relevance in the present case for coming to the conclusion that the allegations made by wife in the written statement constitute mental cruelty. The Court had cautioned in that case that unusual step of granting the divorce was being taken only to clear up the insoluble mess when the Court finds it in the interests of both the parties. The Court also opined that merely because there are allegations and counter allegations, a decree of divorce cannot follow nor can it follow merely on account of delay in disposal of divorce proceedings. The parties have not lived together as husband-wife for last number of years by itself cannot be a ground for annulling a marriage by granting decree of divorce in absence of the existence of one or the other ground permissible under the Hindu Marriage Act, 1955. It is clear that in this case the

marriage has been dissolved and decree of divorce passed by the High Court on the facts on which it was not even sought by the respondent-husband.

For the aforesaid reasons, we set aside the impugned judgment of the High Court and allow the appeal with costs and restore the judgment and decree of the First Appellate Court.

.....J.
(Y.K.Sabharwal)

New Delhi;
February 1, 2001.

.....J.
(Brijesh Kumar)