

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

POONAM—Petitioner

versus

BHUPENDER—Respondents

FAO No. 77 of 2015

October 29, 2019

Hindu Marriage Act, 1955, Section 13(1)(i-a)—Divorce—Cruelty—Statement of 17 years old daughter of parties that she preferred living in hostel rather than with her own mother, mature to comprehend situation and cannot be considered as tortured—Further, acts and conduct of wife in lodging numerous criminal complaints against husband, coupled with fact as per her own admission of contesting against him in Zila Parishad elections are symptomatic of serious marital discord between parties—Thus, conduct of wife not only towards children, but also towards husband led to a lot of mental anguish—Hence, order of divorce upheld.

Held that, it would be most relevant to refer to the deposition of PW-7/Pooja, who is the daughter of the parties and was aged about 17 years at the time of her deposition before the Ld. Family Court. Admittedly, the marriage between the parties took place on 09.03.1996 and the parties lived together till 2009. It means at the time of separation i.e. in 2009, PW- 7/Pooja was about 13 years old. As such, she was mature enough to comprehend the nature of relations which existed between her parents. Moreover, it is admitted on record that since the year 2009, both PW-7/Pooja and her younger brother have been living with the respondent-father. It is also a matter of record that both the children were sent away by the father to a Boarding school though the reason given by the husband for admitting them to the Boarding School was the unhealthy and un-conducive atmosphere prevailing at home, whereas, the appellant-wife on the other hand alleged that it was due to the respondent-husband's alleged involvement with his employee, the children were packed off to a Boarding School. In this background, the deposition of PW-7/Pooja, becomes very crucial, who has given lucid details of the conduct of the appellant-mother both inside and outside the home. Her deposition cannot by any stretch of imagination be said to be a tutored version, as she along with her brother had lived with her parents for almost 13 years and hence, they were grown-up and mature enough to clearly comprehend the

entire situation prevailing at home. So much so, the daughter went on to depose that she preferred living in the hostel rather than with her own mother, who would visit her school at Chandigarh and create ugly scenes leading to huge embarrassment for her. No daughter, much less, a girl of 17 years of age would level such false allegations against her mother.

(Para 11)

Further held that undisputedly the parties have been living separately for the last more than 10 years. The acts and conduct of the appellant-wife in lodging numerous criminal complaints against the respondent-husband, coupled with the fact as per her own admission of contesting against him in the Zila Parishad elections are symptomatic of serious marital discord between the parties.

(Para 12)

Further held that we have no hesitation in drawing an inference that the conduct of the wife not only towards the children, but also towards the respondent- husband would have led to a lot of mental anguish leaving the husband to feel deeply hurt and with no other option but to bring to an end their marital relationship. It is very apparent as already discussed above that there are no chances of any reconciliation between the parties, who have been residing separately since 2009. Our interaction with the parties has also left us in no manner of doubt that the marriage between the parties has broken down beyond repair.

(Para 13)

None for the appellant(s)

Manish Soni, Advocate
for the respondents(s).

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred by the wife – Poonam, impugning the judgment and decree dated 08th December, 2014, passed by the Ld. District Judge, Family Court, Gurgaon (hereinafter referred to as 'Ld. Family Court'), vide which the petition filed by the respondent-husband/Bhupender, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), was allowed.

(2) A few facts necessary for adjudication of the instant appeal, as pleaded in the petition filed by the respondent-husband (petitioner therein) before the Ld. Family Court, may be noticed.

(3) The marriage between the parties was solemnized on 09th March, 1996 at village Bodia Kawalpur, District Rewari, as per Hindu rites and rituals. A daughter and a son were born out of the wedlock on 29th December, 1996 and 14th December, 1997, respectively. The behaviour of the wife towards the husband was unbecoming of a spouse right from the beginning of their marriage. The wife pressurized the husband to live separately from his parents. Since the husband refused, the wife left the matrimonial home and deserted him. Despite earnest efforts and repeated requests of the husband, the wife refused to return to the matrimonial fold. In order to salvage his marriage, the husband shifted from the village to a separate accommodation in Sector 10-A, Gurgaon in the year 2001 and lived there till 2003. However, this arrangement did little to help matters as the behaviour of the wife worsened with the passage of time. The uncalled for behaviour of the wife had an adverse impact on the children as well and ruined the atmosphere in the house. Finally, in the year 2009, the husband along with the children shifted to another flat in Gurgaon itself, while the wife stayed behind in the flat which had been taken on rent by the husband from a friend. The wife instituted false and frivolous cases against the husband including an FIR under Section 323, 452 and 506 IPC, as a result, the husband was restrained from entering the house where she was living. He still tried to reason out with her and provide for her. Despite this, she instituted a petition under Section 125 Cr.P.C. and filed a false complaint under Sections 498-A, 406 IPC against him, but the allegations contained therein were found to be false. She, thereafter, instituted a case under the Domestic Violence Act and a criminal complaint under Section 498-A, 406, 506, 323, 307, 494, 468, 471 IPC, which was still pending. A complaint too was made before the Women's Cell, Delhi. In July, 2010, when the husband contested the elections for Zila Parishad, the wife deliberately contested against him. During the campaigning for the said elections, she along with her family indulged in negative campaigning with the sole intention of harassing him. Due to the ugly scenes created by the wife, the children also refused to interact with her and felt scared going to their school, as she would create ugly scenes there as well. Resultantly, they had to be shifted to Boarding schools in order to keep them away from all the unpleasantness which the wife would create. Hence, the husband filed the petition before the Ld. Family Court for dissolution of their marriage under Section 13 of the Act.

(4) Per contra, the appellant-wife (respondent therein) categorically refuted and denied the allegations of the husband, in her

written statement filed before the Ld. Family Court. She inter alia submitted that in fact it was the husband who was abusive and violent towards her making it difficult for her to live with him. The husband would make demands of dowry from her and her family even though he and his family were well provided for and owned considerable property. It was claimed that in a Panchayat which had been convened, the husband and his family admitted to their wrong doings and it was only in pursuance of the agreement arrived at between the parties, they had shifted to a separate accommodation in June, 2003 and thereafter, to their own flat in 2006. It was further claimed that the husband was involved with one of his employee's namely Sheetal and it was in this background that the children were sent to the Boarding school and she was abandoned by him. She admitted contesting the elections of Zila Parishad against her husband, but denied that she had indulged in negative campaigning or causing harassment to him. She accordingly prayed for dismissal of the petition filed by the husband.

(5) From the pleadings of the parties, the following issues were framed by the Ld. Family Court:-

1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition ? OPP
2. Relief.”

(6) Both the parties adduced evidence in support of their pleas before the Ld. Family Court. The husband examined himself as PW-4, besides, examining six other witnesses including his daughter Pooja as PW-

(7) On the other hand, the wife stepped into the witness-box as RW-7 and examined as many as six other witnesses in support of her case. Both the parties also tendered relevant documents in support of their respective cases.

(8) After analyzing the evidence led by the parties and also the other material on record, the Ld. Family Court allowed the petition filed by the husband and granted a decree of divorce on the ground of cruelty.

(9) We have heard learned counsel for the appellant and have reappraised the evidence and other material on record.

(10) During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court, but it bore no fruit. This Court also interacted with the parties at considerable

length, but the parties maintained their respective stands as taken before the Ld. Family Court and reiterated their allegations against each other. Thus, all efforts made by this Court as well as the Mediation and Conciliation Centre of this Court to bring about a reconciliation between the parties proved futile.

(11) In the case in hand, the husband had sought divorce on the ground of cruelty. It would be most relevant to refer to the deposition of PW-7/Pooja, who is the daughter of the parties and was aged about 17 years at the time of her deposition before the Ld. Family Court. Admittedly, the marriage between the parties took place on 09.03.1996 and the parties lived together till 2009. It means at the time of separation i.e. in 2009, PW-7/Pooja was about 13 years old. As such, she was mature enough to comprehend the nature of relations which existed between her parents. Moreover, it is admitted on record that since the year 2009, both PW-7/Pooja and her younger brother have been living with the respondent-father. It is also a matter of record that both the children were sent away by the father to a Boarding school though the reason given by the husband for admitting them to the Boarding School was the unhealthy and un-conducive atmosphere prevailing at home, whereas, the appellant-wife on the other hand alleged that it was due to the respondent-husband's alleged involvement with his employee, the children were packed off to a Boarding School. In this background, the deposition of PW-7/Pooja, becomes very crucial, who has given lucid details of the conduct of the appellant-mother both inside and outside the home. Her deposition cannot by any stretch of imagination be said to be a tutored version, as she along with her brother had lived with her parents for almost 13 years and hence, they were grown-up and mature enough to clearly comprehend the entire situation prevailing at home. So much so, the daughter went on to depose that she preferred living in the hostel rather than with her own mother, who would visit her school at Chandigarh and create ugly scenes leading to huge embarrassment for her. No daughter, much less, a girl of 17 years of age would level such false allegations against her mother.

(12) Undisputedly the parties have been living separately for the last more than 10 years. The acts and conduct of the appellant-wife in lodging numerous criminal complaints against the respondent-husband, coupled with the fact as per her own admission of contesting against him in the Zila Parishad elections are symptomatic of serious marital discord between the parties.

(13) We have no hesitation in drawing an inference that the conduct of the wife not only towards the children, but also towards the respondent-husband would have led to a lot of mental anguish leaving the husband to feel deeply hurt and with no other option but to bring to an end their marital relationship. It is very apparent as already discussed above that there are no chances of any reconciliation between the parties, who have been residing separately since 2009. Our interaction with the parties has also left us in no manner of doubt that the marriage between the parties has broken down beyond repair.

(14) It may be mentioned that during the pendency of the appeal, the appellant-husband, who was present in the Court stated that though it was just next to impossible to reconcile with the appellant-wife, however, he was ready to pay an amount of Rs. 50.00 lakhs towards permanent alimony as full and final settlement to the appellant-wife.

(15) As a sequel to the above and keeping in view the facts and circumstances of the case, we feel that no interference in the judgment and decree passed by the Ld. Family Court is called for. Consequently, the present appeal stands dismissed and the judgment and decree dated 08th December, 2014 of the Ld. Family Court, is upheld. It is, however, made clear that the respondent-husband shall remain bound by his statement made in Court. He will deposit a sum of Rs. 50.00 lakhs on account of permanent alimony in the appellant-wife's Bank account towards full and final payment, within a period of one month from the date of passing of this order. It is made clear that in case the respondent fails to pay the aforesaid amount of permanent alimony to the appellant within the stipulated period, the present order would be of no avail and the instant appeal shall stand allowed, as the dismissal of the appeal as indicated above, is inter alia predicated on the payment of permanent alimony.

Ritambra Rishi