

**Court No. - 39**

**Case :-** FIRST APPEAL No. - 295 of 2020

**Appellant :-** Rohit Chaturvedi

**Respondent :-** Smt Neha Chaturvedi

**Counsel for Appellant :-** Satish Chaturvedi

**Counsel for Respondent :-** Yogendra Pal Singh

**Hon'ble Saumitra Dayal Singh,J.**

**Hon'ble Shiv Shanker Prasad,J.**

1. The matter is listed in top ten cases. List revised. Heard Sri Satish Chaturvedi, learned counsel for the appellant.

2. The present appeal has been filed under Section 19 of the Family Court Act, 1984 arising from the judgment and order dated 17.3.2020 passed by Additional Principal Judge, Family Court, Court No.2, Ghaziabad in Divorce Petition No. 1374 of 2014 (Rohit Chaturvedi Vs. Smt. Neha Chaturvedi). By that order the learned court below has dismissed the divorce case proceeding instituted by the present appellant, under section 13 of Hindu Marriage Act, 1955, hereinafter referred to as the Act.

3. The appeal was admitted vide order dated 23.11.2020. Lower court record has been received. In such circumstances, on the urgency pressed by the appellant, by order dated 10.10.2022, we directed the appeal be listed in top ten cases.

4. Undisputedly, the parties married on 5.5.2013. According to both parties their marriage was not consummated. As to the reason both blame the other. As to cohabitation, it appears that the parties were living together till 01.07.2014. Since July, 2014 they have not lived together for a single day. As to the grounds claimed for divorce sought, the present appellant/plaintiff cited cruelty. As to the acts for cruelty, it has been submitted that the respondent

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refused to consummate the marriage. She misbehaved with the parents of the appellant on 15.11.2013 and had assaulted them. Thereafter, on 4.8.2014, she had instigated a mob to chase and assault the appellant accusing him to be a thief. Further allegation was made with respect to criminal case lodged by the respondent alleging demand of dowry etc. In that regard reference has also been made to certain letters written by the respondent to the S.S.P., Ghaziabad dated 14.08.2014 and 20.01.2015. During the course of the divorce proceedings, additional act for cruelty was pleaded of the respondent having made a scandalous allegation against the appellant, of illicit relationship with his sister-in-law (bhabhi).

5. Learned court below has made a detailed consideration of the submission advanced by the parties. It has found that though it was an undisputed case between the parties that the marriage between them was consummated, it could not be concluded that the blame for the same rested on the respondent. That facts alleged by the plaintiff-appellant was found to be not proven. Learned court below has further considered certain occurrences wherein the respondent claimed to have tried to meet the plaintiff- appellant but that she was prevented. It is in that context that learned court below has made a discussion of the occurrence dated 4.8.2014. In that regard it has been noted that the respondent had gone to meet the appellant at his residence at Neelkanth Apartment, G.T. Road, Ghaziabad. However, she was prevented to enter the residential society at the instance of the plaintiff-appellant and his family members. Finally, when the plaintiff-appellant came out, the respondent further claimed to have made efforts to speak to him. Since the plaintiff-appellant avoided to meet him, she ran behind him. Up to that extent the incident is not disputed by the respondent. What transpired thereafter is disputed. According to

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the plaintiff-appellant, the respondent started shouting "चोर चोर" whereupon a mob gathered and chased down the plaintiff-appellant and assaulted him and also restrained him and his parents. On the otherhand, the respondent claims that the mob, on its own, chased the plaintiff-appellant and restrained him and others. However, she did admit to the fact that the police also came to the spot and restrained the plaintiff-appellant and his parents.

6. From the above it does appear that there are serious disputes between the parties. It is also noteworthy that both parties claim that the marriage was never consummated over a long period of ten years. There also appear to exist serious dispute as may have led to the incident on 4.8.2014. Prima facie it may not be accepted that mob would have chased the plaintiff-appellant, on its own and restrained him and his parents and further handed them over to police without any other occurrence. Suffice to note that such conduct may not be a normal conduct within the members of family. To instigate a mob on a false allegation only for the purposes of causing embarrassment may never be accepted as normal conduct. At the same time, no formal arrest was made and no F.I.R. was lodged on such false allegation. Thus, it may not complete the ingredients of cruelty that are necessary to be established for the purposes of grant of decree of divorce.

7. If courts were to recognize and act on small disputes or occurrences and read them as completion of ingredients of cruelty, many marriages where parties may not be enjoying best relations may stand exposed to dissolution without any real cruelty being committed.

8. Cruelty is not defined under the Act yet it has to be an act serious enough as may not allow a prudent person an opportunity

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or conviction to resolve matrimonial discord being faced by them or as may not burden them to continue to live in matrimony. Such acts, by very nature must include things or occurrences of very serious nature having deleterious effect on the relationship such as may be seen to prevent the parties to seek reconciliation.

9. There is no material before us as may lead us to a conclusion that the allegation made by the respondent as to criminal offence were plainly false. Evidence does not appear to have been led to that extent before the learned court below. Therefore, it is difficult to act on those allegations as well, to infer commission of cruelty.

10. As to the allegation of illicit relationship, we find that allegation was clearly not made as may allow the allegation of cruelty to arise at the instance of the present appellant.

11. In paragraph E of the additional pleas raised by the plaintiff-appellant only this much has been stated that after some time the in-laws of the respondent went to their native place at Etahawa U.P. and the brother of petitioner went to his job. Petitioner instead of sleeping in the room of respondent used to sleep with his bhabhi & her children and always maintained a distance from the complainant. To infer existence of illicit relationship, it is not to be left to the imagination of the Court what the parties may have intended to say by way of fact allegation. The allegation of one party having illicit relationship with another must be clear. Here, the respondent may have only stated this much that instead of respecting the matrimonial relationship between the parties, the present plaintiff-appellant chose to sleep in another room occupied by his sister-in-law and her children. Thus, the allegation of illicit relationship was not made by the respondent.

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12. In view of the above, we find that the allegation of cruelty was not made out. To that extent, learned court below has not erred in refusing to dissolve the marriage between the parties.

13. However, at the same time we find that the learned court below has erred in not considering the grant of alternative relief in terms of section 13A of the Act. The dispute between the parties having arisen immediately after their marriage and it being a proven fact that their marriage has neither been consummated nor they have cohabited for nine years clearly indicates lack of bond and/ or healthy relationship between the parties. No fact has come on record as may indicate to the court that the parties have reconciled their disputes to the point that they may be willing to cohabit. Further, in absence of any proceedings for restitution of conjugal rights by either party, the learned court below ought to have granted a decree for judicial separation by way of alternative relief. It is so because besides the facts noted above, the occurrence of 04.08.2014 stood established to the extent that the plaintiff-appellant appears to have been restrained by a mob instigated by the respondent. That and other disputes between the parties are not seen to have been reconciled to any extent.

14. In such facts, we find limited interference is required to be made at this stage in as much as ten years have passed since the marriage was solemnized between the parties. They have not cohabited for more than nine years now. There is no child born to the marriage and there is no hope seen existing of any reconciliation today.

15. Accordingly, the decree is modified. We consider it just in the circumstances noted above to grant a decree of judicial separation to the plaintiff-appellant.

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16. At this stage, Sri Rahul Singh Tomar, Advocate, holding brief of Sri Yogendra Pal Singh, learned Counsel for the respondent appeared. He first sought adjournment. Upon that request declined, he has requested the Court to record his presence. His presence is thus recorded.

17. The appeal is partly **allowed**. No order as to costs.

**Order Date :-** 3.11.2023

Abhishek Singh

**(Shiv Shanker Prasad, J.)      (S.D. Singh, J.)**