* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.04.2025
Pronounced on: 01.07.2025

\+ MAT.APP.(F.C.) 23/2024, CM APPL. 2813/2024 & CM APPL. 2814/2024

DEEPTI KHATANA .....Appellant

Through: Mr. Mimansak Bhardwaj, Ms. Vidya Mishra & Ms. Manisha, Advs.

Versus

RAHUL KHATANA ....Respondent

Through: Mr. Arush Bhandari, Adv.

\+ CONT.CAS(C) 135/2025

DEEPTI KHATANA .....Petitioner

Through: Mr. Mimansak Bhardwaj, Ms. Vidya Mishra & Ms. Manisha, Advs.

Versus

RAHUL KHATANA .....Respondent

Through: Mr. Arush Bhandari, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

CONT.CAS(C) 135/2025

1. The present contempt petition under Sections 11 and 12 of the Contempt of Courts Act, 1970, has been preferred by the petitioner alleging wilful disobedience by the respondent of the Order dated

28.10.2024 passed by this Court in MAT APP.(F.C) 23/2024, by re-marrying despite a restraint order.

2. This Court, *vide* Order dt. 28.10.2024, had passed the following directions reproduced hereunder:-

> *"1. Despite opportunity, neither any reply to the application for condonation of delay nor to the stay application, has been filed by the respondent.*
> *2. Today, learned counsel for the respondent prays for and is granted, further six weeks time to file the replies to the applications, if any. Rejoinders thereto, if any, be filed within four weeks thereafter.*
> *3. Noting the position as above, till the next date, the operation of the impugned judgment will remain stayed and consequently the respondent will restrained from marrying again."*

3. The respondent is alleged to have re-married on 16.08.2024, i.e., prior to passing of the Order dated 28.10.2024. The appellant has not challenged the said date of re-marriage of the respondent before us. As re-marriage of respondent was prior in time to the aforesaid Order dated 28.10.2024 passed by this Court, there is no merit in this contempt petition. The same is accordingly dismissed.

4. Be that as it may, it was also contended by the learned counsel for the appellants that respondent remarried in contravention of Section 15 of Hindu Marriage Act, 1955 ('HMA') which provides that either party has the right to marry again after dissolution of a marriage, if there is no right of appeal against the decree or the period

of appeal has elapsed without an appeal being filed or, if filed, has been dismissed. Reliance to this effect is placed on the judgement of the Supreme Court in ***Anurag Mittal vs. Shaily Misha Mittal***, (2018) 9 SCC 691, wherein it was opined that during the pendency of an appeal against dissolution of an earlier marriage, there is a restriction on second marriage under Section 15 of the HMA till the dismissal of such appeal.

5. In answer, the learned counsel for the respondent placed reliance on the Judgement of this Court in ***Seema Devi vs. Shree Ranjit Kumar Bhagat*** 2023 SCC OnLine Del 2257, and of the Supreme Court in ***Krishnaveni Rani vs. Pankaj Rai and Anr***., (2020) 11 SCC 253, to highlight that a marriage validly contracted after divorce and after the expiry of the period of limitation to file an appeal, cannot be rendered void on the belated filing of an appeal.

6. In the present case, the divorce decree was passed by the learned Family Court on 15.07.2023, while the appeal against the divorce decree was filed on or about 11.01.2024, that is, after almost 5 months of the divorce, that is, beyond the period of limitation. Therefore, in accordance with the judgement of the Supreme Court in ***Krishnaveni Rani*** (supra) and this Court in ***Seema Devi*** (supra), the remarriage of the respondent cannot be rendered void.

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7. This is an appeal filed under Section 19 of the Family Courts Act, 1984 read with Order XLI of the Code of Civil Procedure, 1908

('CPC') against the Judgement dated 15.07.2023 passed by the learned Family Court-I, South-District, Saket Courts, New Delhi in H.M.A. No. 277/2022, titled as ***"Rahul Khatana v. Deepti Khatana",*** whereby an *ex-parte* decree of divorce has been passed against the appellant under Section 13(1)(ia) and 13(1)(ib) of the HMA on grounds of cruelty and desertion.

8. In brief, the facts necessary for the disposal of this appeal are that the appellant and the respondent got married on 03.03.2006 as per the Hindu rites and customs at the Village Paali, Faridabad, Haryana. Both the parties lived together as husband and wife in the matrimonial house in a joint family along with the parents and younger brother of the respondent. From their wedlock, two sons were born. Due to the differences between the parties, they started living separately since 01.04.2019.

9. It is stated that on 16.02.2019, an Order was passed on the First Motion of divorce by mutual consent under Section 13B(1) of the HMA on the basis of a compromise/M.O.U., entered between the parties. However, the Second Motion of divorce could not be passed. Later on, the respondent filed this petition for divorce under Section 13(1)(ia)&(ib) of the HMA on 22.02.2022 in which the Impugned *ex-parte* Judgement was passed on 15.07.2023.

10. It is contended by the appellant that the respondent has falsely stated in para 37 of his divorce petition that there have not been any previous proceedings in between the parties concerning the marriage. During the course of the arguments, it is also stated by the learned counsel for the appellant that earlier a case under section 9 of Hindu

Marriage Act, 1955 was filed which was decreed in favour of the respondent *vide* order dated 10.01.2013.

11. It is contended by the learned counsel for the appellant that the appellant could not attend the date of hearing before the learned Family Court, Saket, New Delhi as during those days, she was not well and the respondent also assured the appellant that he will withdraw the divorce petition from the learned Family Court, Saket, New Delhi. Because of these reasons, the appellant could not follow the matter. Thereafter, the appellant was proceeded *ex-parte* on 10.01.2023, and the Impugned *ex-parte* decree of divorce was passed.

12. It is further stated that the learned Family Court has passed the Impugned order without appreciating the material evidence, wrongly observing that the appellant has treated the respondent with cruelty. In fact, it is the respondent who has deserted the appellant and has forced her to leave his company. Reliance is placed on the Judgement of this Court in ***Mrs. Nisha Rani vs. Sh. Soham Singh Nehra*** 2017 SCC OnLine Del 6404, wherein it has been opined that in order to prove desertion, the party alleging desertion ought to prove that he/she has not conducted himself/herself in a manner which furnished reasonable cause for his/her spouse to stay away from the matrimonial home.

13. It is highlighted that the appellant has also filed a petition under Section 125 of The Code of Criminal Procedure, 1973 ('CrPC'). It is further stated that the appellant always wanted and still wants to live with the respondent.

14. On the other hand, the respondent has denied the allegations made in the appeal, stating that the same are false, frivolous, and

exaggerated. It is stated by the respondent that the appellant would regularly leave the matrimonial home and threaten the respondent that she will never return to the matrimonial home. The appellant even filed a complaint against the respondent in the CAW cell, which was later compromised in the year 2009.

15. It is also stated in the reply filed by the respondent, that he filed a petition under Section 9 of the HMA on 14.12.2011, wherein the appellant chose not to appear and was proceeded *ex-parte*. The learned Family Court, on 10.01.2013, passed a decree allowing the petition filed by the respondent seeking restitution of the conjugal rights. It is further stated in the reply filed by the respondent that despite a decree for restitution of conjugal rights, there was no conciliation between the parties and the appellant continued to live separately. The respondent along with the appellant further filed a petition under Section 13B(1) of the HMA for seeking divorce through mutual consent, however, after filing of the first motion, the appellant did not come forward and refused to file the second motion. Thereafter, being absolutely aggrieved by the action of the appellant, the respondent was constrained to file the petition seeking divorce under Section 13(1)(ia) and (ib) of the HMA, which was rightly allowed by the learned Family Court *vide* the *ex-parte* Impugned Order.

16. In the reply, it is further highlighted that the appellant was served with summons to appear before the learned Family Court on 02.05.2022, and thereafter, began harassing the respondent. To this effect, the respondent has placed on record two police complaints filed by the respondent. While one highlights an alleged incident dated

31.07.2022, wherein the appellant broke the glass of the respondent's car, while the other alleges that on 29.08.2022, the appellant reached the shop of the respondent and acted violently beating him up and also threw materials and goods of his shop around.

17. It is also highlighted that there is no proof of the appellant being unwell during the pendency of the divorce petition before the learned Family Court, neither is there any material on record to show that the respondent had agreed to withdraw the petition.

18. It is also stated in the reply that the respondent got re-married on 16.08.2024 and further that there is a delay of 149 days in filing this appeal, which is not liable to be condoned.

19. We have considered the submissions of both sides and perused the record as well as the Impugned *ex-parte* Order.

20. Cruelty for the purposes of Section 13(1)(ia) can be physnb ical or mental. It is settled law that the instances of cruelty are not to be taken in isolation but cumulative effect of the facts and circumstances emerging from the evidence on record is to be taken up and then a fair inference whether a petitioner has been subjected to mental cruelty due to the conduct of the other spouse is to be drawn.

21. In the case of ***N.G. Dastane vs. Sucheta Narayan Dastane***, (1975) 2 SCC 326, the Supreme Court has held that cruelty is not solely about physical harm but also included mental cruelty, focusing on whether the conduct caused a reasonable apprehension of harm or injury for the petitioner. It was observed that:

> *"30. ...The inquiry, therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the*

petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. ...”

22. The legal position on mental cruelty was again examined in the case of ***A. Jayachandra vs. Aneet Kaur,*** (2005) 2 SCC 22, wherein the Supreme Court has observed as under:

“10. ...The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty….

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12. To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. ...”

23. In the case of ***Roopa Soni v. Kamalnarayan Soni,*** 2023 SCC OnLine SC 1127, while dealing with cruelty, it was opined by the Supreme Court as under:

“ 5. The word “cruelty” u/s 13(1)(ia) of the 1955 Act has got no fixed meaning, and

> *therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances."*

24. On the other hand, desertion for the purposes of Section 13(1)(ib) of the HMA can be stated to arise in instances where the deserting party has left the company of the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition for divorce on ground of desertion. Furthermore, it has been opined in the case of ***Nisha Devi*** (supra) that in order to prove desertion the party alleging desertion ought to prove that he/she has not conducted himself/herself in a manner which furnished reasonable cause for his/her spouse to stay away from the matrimonial home.

25. We shall now proceed to analyse the facts of the present appeal in light of the aforementioned judicial precedents.

26. The factum of marriage between the parties on 03.03.2006 as well as the birth of the two children are admitted facts between the parties.

27. In his petition before the learned Family Court, the respondent had set forth various allegations of cruelty alleging that the appellant used abusive language against him, refusing to cook food and breakfast for him and his family, used to leave the matrimonial house without informing the respondent, would threaten to implicate the respondent and his family members in false cases of dowry and cruelty and also made multiple false police calls against the

respondent and his old aged parents. He has also averred that the appellant refused to cohabit with the respondent. It was further stated in the petition filed by the respondent, that the appellant herein left the matrimonial house on 01.04.2019 and since then, she refused to join his company.

28. In cases of cruelty, the entire case of a petitioner hinges upon the allegations of cruelty and proof of the same. The burden of proof undoubtedly lies on a petitioner who alleges the same and the standard of proof required is preponderance of probability. It is imperative to appreciate the cumulative effect of the conduct of the parties and the happenings that occurred over a period of time in their matrimonial life to ascertain the ground of cruelty. It is required to be assessed that the conduct complained of must be serious and that it would be more tragic for the petitioner to live with the respondent. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

29. The respondent, in the present case, has led his evidence and substantiated all the above stated allegations, and it is on the basis of this testimony that the learned Family Court had rightly passed the *ex-parte* decree of divorce, believing the allegations of cruelty and desertion raised by the respondent in the divorce petition. The appellant was proceeded against *ex-parte* before the learned Family Court and as such neither she put her defence before the Family Court nor controverted the allegations of the respondent. Even before this Court, the appellant has not pleaded any valid or contentious point

controverting the allegations of cruelty, except mere denial.

30. As per the contention of the appellant, earlier, the parties had filed a joint petition for divorce by mutual consent in which an order under Section 13B(1) of the HMA was passed between the parties. This assertion of the appellant coupled with the fact that she knew about the filing of the divorce petition, would go to rebut her claim that she always wanted and still wants to reside with the respondent.

31. Neither any plausible explanation is put up before us as to the reason of not attending the proceedings of the divorce petition despite due service of notice of the petition nor any valid assertion is put before us to controvert the allegations of cruelty and desertion as put forth by the respondent in the divorce petition.

32. In the given case, the respondent has proved his allegation of cruelty. The appellant had chosen not to contest the said petition despite having knowledge of the filing of the said divorce petition also go on to substantiate the averments of the respondent.

33. Admittedly, the parties have not cohabited since 01.04.2019. Even prior thereto, they separated, and despite the passing of an *ex-parte* decree for Restitution of Conjugal Rights under section 9 of the HMA in favour of the respondent on 10.01.2013, there was no resumption of marital relations. The parties later on decided to take the divorce by a mutual consent. However, after passing of the first Motion, the second Motion could not be passed between the parties. All this goes to show that the relationship between the parties had deteriorated to such an extent that it was not possible for them to live together without mental agony, torture and distress and that their

marriage was beyond repair and there was no chance of revival leading to filing of divorce by mutual consent.

34. The appellant, in the present appeal, contends that since the respondent assured her to withdraw the divorce petition, she did not follow the matter. Therefore, it is revealed from her own contentions in this appeal that she was having full knowledge of the filing of the divorce petition by the respondent, but had chosen not to appear or to file reply thereto before the learned Family Court despite receiving of notice of the divorce petition on 02.05.2022. She was proceeded *ex-parte* on 10.01.2023 after around seven months of receiving of notice, resulting in passing the Impugned decree of divorce by the Family Court on 15.07.2023. During this period of more than a year, she never tried to ascertain the status of said divorce petition filed by the respondent. The respondent, on the other hand, has alleged conduct of the appellant which would belie her claim of the appellant having assured her that he will be withdrawing the divorce petition. Accordingly, the above contention of the appellant does not find favour with us.

35. The parties are admittedly separated since 01.04.2019. The respondent has claimed to have re-married after the passing of the decree of divorce. From the circumstances as reflected from the assertions of the appellant herself, it can be easily inferred that the appellant did not want to contest the divorce proceedings.

36. No ground is put forth to set aside the Impugned Judgement passed by the learned Family Court in the given facts and circumstances of the case. The non-disclosure of previous litigation

between the parties by respondent in his divorce petition, has not impacted divorce decree in any manner and on this count, the arguments of learned counsel for appellant finds no force with us.

37. Even otherwise, there is a delay of 149 days in filing the present appeal and no sufficient grounds are put forth by the appellant to condone the said delay. The appeal is liable to be dismissed as not maintainable on this ground also.

38. We, therefore, find no merits in the present appeal. The appeal is accordingly dismissed, both on delay as also on merit. Pending applications, if any, are also disposed of accordingly.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

JULY 01, 2025/*Pr/Kz*

Click here to check corrigendum, if any