

Delhi High Court

Smt. Anubha vs Shri Vikas Aggarwal And Ors. on 27 September, 2002

Equivalent citations: 100 (2002) DLT 682, I (2003) DMC 139

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Bench: J Kapoor

JUDGMENT J.D. Kapoor, J.

1. Here is a case of an unfortunate hapless young bride who strayed in a dark tunnel without any hope to see the light at its end as she got entrapped in the marital knot on the temptation of a greener pastures as the groom was NR and might have painted a rosy picture about the lift in the United States. It is common knowledge that for those who are more conscious about the material comforts than the mental happiness in life look for sojourns abroad particularly in countries like United States and grab the opportunity as it come to them. However such illusion is so short lived that the moment they land there it evaporates making their life miserable and the place a tiny hell. Such brides end up as emotional wreck carrying albatross of marriage around their neck during the golden period of their youth.

2. Plaintiff, a young girl of 24-25 years is seeking decree of declaration that she is entitled to live separately from her husband, the defendant, and also for a decree for maintenance in her favor in the sum of US dollar 1500 per month or Rs. 65,250/- per month or equivalent thereof besides the pendente lite expenses as she was deserted and abandoned after being subjected to cruelty. Her marriage rocked at the threshold as she was back to her parents hardly after two months of her marriage.

3. The matrimonial alliance of the parties was a result of matrimonial advertisement. Plaintiff is highly educated woman. She possesses degree of B.Sc(Honours) Physics from University of Delhi having attained distinction and is a Gold Medallist in Master's of Business Administration. The defendant is a Domicile and citizen of India but was a NRI at the time of marriage and was residing at Connecticut in USA. He possessed a RH-1 B visa which means he had the right to work. He was employed as a Software Engineer with M/s Lexibridge on a salary of US Dollars 4,000 per month plus perks and bonus etc. He is an Electronic & Communication Engineer from the Birla Institute of Technology, Ranchi, Bihar. Their marriage took place in Delhi on 11th May, 1999 according to Hindu rites. They also last resided at Delhi after marriage and before leaving for United States.

4. I deem it needless to refer to various instances showing the defendant and his parents in poor light and greedy persons that took place during the negotiations for marriage as these may not be of any significant relevance so far as the nature of relief sought by the plaintiff is concerned. It appears the marriage itself bore ill omen for the plaintiff as immediately after 'Vida' in the early morning of 12th May, 1999 when the plaintiff and the defendant left for Dhanore, the defendant's parental home their car had an accident near Gajraula and from that very moment, the defendant and his parents and other members of the family started cursing and calling her 'inauspicious' and a harbinger of bad luck. Plaintiff's story is like this.

5. She and defendant returned to New Delhi in the late night on 12th May, 1999 and stayed in a suite at the Taj Palace Hotel till 16th May, 1999. During the stay, the plaintiff's life was made miserable. She was mentally tortured by the defendant for more dowry. The defendant told her that in case her father did not come up with the requisite sum of Rs. 10 lacs he would take her to America and throw her in front of a speeding vehicle since in America if he broke her legs like this, he would get millions in damages and in case she dies he would get billions. The defendant also told her that he had a premarital affair in America with one 'Maria' and stated that in case the plaintiff's father did not give more money he would leave her for the said Maria. The defendant also threatened her that while he could always have a new wife for life but neither she nor her younger sister would ever be able to get married. Thus even during the honeymoon, the plaintiff was treated with extreme cruelty by the defendant.

6. On 22nd May, 1999 the defendant left for Connecticut USA, with the plaintiff, latter as the defendant's dependent on an H4 VISA. The couple reached there are following day. On reaching there, there was no respite for the plaintiff from her husband's behavior and his wild attitude despite all his assurances of 20th and 21st May, 1999. At Connecticut, the defendant treated the plaintiff like a slave. She was virtually confined to the house. She was not given any money at all. She was not even allowed to telephone her family except in the presence of the defendant. The plaintiff continued to be harassed, beaten, shouted at and physically and mentally tortured for dowry every day. The neighbours seeing the plaintiff's plight even lodged a police complaint against the defendant on 15th June, 1999 at the Ansonia Police Station, Connecticut. The defendant, it seems received a warning and had to apologise to the Police.

7. From 17th June, 1999 onward the defendant started torturing the plaintiff even more. She would be locked out of the house by the defendant without any food and money and he sued to repeatedly threaten to call of the marriage in case her parents did not pay up Rs. 10 lacs. The plaintiff's condition become pathetic day by day. She was reduced to a skeleton and was brought to the stage of total depression of mental break-down in a period of two months.

8. On 22nd July, 1999 the defendant came home and told the plaintiff that he was going to Virginia without the plaintiff and stated that the time of two months granted to her father of pay Rs. 10 lacs had expired. The defendant then arranged Service of notice of divorce on the plaintiff arranging with the landlady to take over the possession of the premises on 23rd July, 1999 and himself leaving for Virginia where apparently he is now residing. The defendant filed 'No Fault Divorce' Petition in US Court within two months and 10 days of the marriage with a willful attempt to abandon the plaintiff in order to leave for Virginia the next day without her. This came as a blot from the blue from the plaintiff who was rendered homeless and penniless in a totally alien and foreign land where she had nowhere to go and all this in a period of two months and 10 days of her marriage. On the plaintiff's call, her father's friend Shri Krishan Lal came to Connecticut from New York and gave her shelter at his home. He also arranged for the plaintiff's return back to Delhi by Air India flight leaving New York on 28th July, 1999. The plaintiff reached Delhi on 29th July, 1999.

9. On reaching Delhi she discussed the matter with the parents of the defendant, his sister and brother-in-law who made it clear that unless the plaintiff's father pay Rs. 10 lacs in cash the

marriage would not survive nor would the defendant take the plaintiff back. Hence this petition.

10. On having been served with the summons of the suits the defendant filed the written statement and subsequently vide order dated 24th August, 2000 his defense was struck off for his persistent defiance and refusal to appear in the Court to be confronted with the affidavit. He preferred an Appeal against this order but did not succeed. The plaintiff was called upon to file affidavit by way of evidence which she did.

11. Vide order dated 5th November, 1999 this Court passed the following order:--

"For the present, in the interest of justice, and since no permanent prejudice is likely to be caused to the defendant if the hearing in divorce case pending in the Superior Court, State of Connection, USA is deferred for a short period, I restrain the defendant from proceeding further in the Superior Court, State of Connecticut, USA for a period of thirty days from today."

12. In spite of this order the defendant proceeded with the "No Fault Divorce Petition" proceedings. When this fact was brought to the notice of this Court, this Court passed an order dated 9th March, 2000 and asked the defendant for recording of the statement under Order X of the CPC. On his failure to appear defense was struck out and contempt proceedings were initiated.

13. Section 18 of the Hindu Adoption and Maintenance Act, 1956 entitles the Hindu wife to be maintained by her husband during her life time. According to this provision a Hindu wife does not forfeit her claim to maintenance even if she is living separately from her husband. She is entitled to live separately from her husband in the following circumstances:--

"(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is another cause justifying living separately."

14. Sub-section (3) of Section 18 provides that the Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste immoral or ceases to be a Hindu by

conversion to another religion.

15. On the other hand the plaintiff is firstly claiming maintenance inspite of her living separate from her husband mainly on the ground that the defendant is guilty of desertion that is to say of abandoning her without reasonable cause and without her consent and willfully neglecting her and secondly that he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful and injurious to live with him.

16. Though the defense of the defendant was struck out but the defenses raised by him in the written statement need passing reference. According to the defendant the plaintiff does not satisfy any of the ingredients of Section 18 of the Act and in nay case she is staying away from him on her own and voluntarily and is not entitled to claim any relief. So far as allegations of physical and mental and emotional cruelty perpetrated by the defendant unto the plaintiff is concerned the defendant has put the boot on her legs. He has painted her a fickle minded woman as she had married him under the pressure of her parents though she was having an affair with one body in India and, therefore, was completely withdrawn from him and did not have any mental, emotional and physical interest in him. He admits that he belongs to a most orthodox family. He has levelled allegation of her living unchaste life. According to him the plaintiff had no interest whatsoever in the defendant as when the defendant used to go work, the defendant found that the plaintiff would go around with the boys in neighborhood and when such conduct was objected to, the plaintiff created havoc at residence and even on road. Similarly when the plaintiff and the defendant went to New York with the defendant's friend to see the fire works, the plaintiff straightway started talking, mixing, dancing and even hugging the strangers and shouted at the defendant even on road. Further she developed intimate relationship with one of the friends of the defendant as he found a letter written by such friend of the plaintiff in the plaintiff's purse itself.

17. Again on 20th July, 1999 when the plaintiff got an admission letter from University of Connecticut she asked for 30,000 dollars for studies inspite of the fact that she knew that he would be moving to Varginia on 23rd July, 1999. He threats not to accompany him led to the lodging of the police report by him. Thus according to him during the short period of cohabitation he suffered severe mental stress which forced him to file the divorce proceedings. According to him it is the plaintiff who has inflicted severe cruelty upon him and it was at the instance of the plaintiff that 'No Fault Divorce Petition' was filed in the USA.

18. The first and foremost question that arises for determination is whether a decree of divorce obtained by the defendant during the pendency of the proceedings of the present case from the Court at Connecticut in the USA in the given facts and circumstances is enforceable in law or not. In the present case the marriage was solemnised at New Delhi according to the Hindu rites. The parties to the suit are Hindus by religion and the marriage and divorce of Hindus in India re governed by the provisions of the Hindu Marriage Act, 1955 and all exist in Hindu Laws. The marriage of Hindus can be dissolved if any on the grounds as envisaged under Section 12 are there. Section 12 reads as under:--

12. Divorce - (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably or unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

19. According to the provisions of the Hindu Marriage Act, 1955 only the District Court within the local limits of whose original civil jurisdiction-(i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at the time, residing outside the territories to which the Act extends, or has not been heard of as being alive for a period of seven years or ore by those persons who would naturally have heard of him if he were alive, has jurisdiction to entertain the petition.

20. The principles governing the recognition of the foreign judgments on matrimonial disputes have been laid by the Supreme Court in Y. Narasimha Rao and Ors. v. Y. Venkatalakshmi and Anr. . In the said case the decree of dissolution of marriage was passed by the Circuit Court of Missouri, USA. The Court assumed the jurisdiction over the matter on the ground that the husband has been a resident of State of Missouri for 90 days next preceding the commencement of the action and that petition in that Court. The decree was passed only on the ground that there remains no reasonable likelihood that the marriage between the parties can be preserved and, therefore, the marriage is irretrievably broken. Admittedly the wife did not submit to the jurisdiction of the Court though from the record it appeared that she had filed two replies of the same date which were identical in nature except that one of the replies begins with an additional averment without prejudice to the contention that this respondent is not submitting to the jurisdiction of this Hon'ble Court. Apart from that the wife also stated the following things among other things:

"(i) the petition was not maintainable, (ii) she was not aware if appellant 1 had been living in the State of Missouri for more than 90 days and that he was entitled to file the petition before the court, (iii) the parties were Hindus and governed by Hindu law and they were married at Tirupati in India according to Hindu law, (iv) she was an Indian citizen and was not governed by laws in force in the State of Missouri and, therefore, the court had no jurisdiction to entertain the petition, (v) the dissolution of the marriage between the parties was governed by the Hindu Marriage Act and that it could not be dissolved in any other way except as provided under the said Act, (vi) the court had no jurisdiction to enforce the foreign laws and none of the grounds pleaded in the petition was

sufficient to grant any divorce under the Hindu Marriage Act.

21. It was not in dispute that the wife was neither present nor represented in the court and the court passed the decree in her absence."

22. After having dealt with various provisions particularly Section 13 of the Civil Procedure Code which pertains to the validity and recognition of foreign judgments the Supreme Court laid down the following principles for recognising the foreign matrimonial judgment in this country "From the aforesaid discussion the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties."

23. The aforesaid rules deduced by the Supreme Court were held to be just and equitable for the following reasons:-

"It does not injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law. They cannot be heard to make a grievance about it later or allowed to bypass it by subterfuges as in the present case. The rule also has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of the Private International Law of the different countries with regard to jurisdiction and merits based variously on domicile, nationality, residence - permanent or temporary or ad hoc, forum, proper law etc. and ensuring certainty i the most vital field of national life and conformity with public policy. The rule further takes account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to women, the most vulnerable section of our society, whatever the strata to which they may belong. In particular it frees them from the bondage of the tyrannical and servile rule that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction and judges the merits of the case."

24. In the instant case the decree of dissolution of marriage shows that the plaintiff who was arrayed as defendant there did not file an appearance. It was, therefore, an uncontested petition and an ex parte divorce. As laid down by the Supreme Court the first and foremost requirement of recognising a foreign matrimonial judgment is that the relief should be granted to the petitioner on a ground available in the matrimonial law under which the parties are married or where the respondent voluntarily and effectively submits to the jurisdiction of the forum and contests the claim which is based on a ground available under the matrimonial law under which the parties are married. Again if there is a consent divorce the jurisdiction of the forum granting the divorce should be in

accordance with the provisions of matrimonial law of the parties.

25. The ground on which the marriage of the defendant was dissolved is not available in the Hindu Marriage Act. The parties are Hindus. Their marriage was solemnised according to the Hindu rites. Their matrimonial dispute or relationship was, therefore, governable by the provisions of Hindu Marriage Act. Since the plaintiff did not submit to the jurisdiction of the USA Court nor did she consent for the grant of divorce in the US Court the decree obtained by the defendant from the Connecticut Court of USA is neither recognisable nor enforceable in India.

26. Another legal objection raised by the defendant is that the averments in the petition do not prima facie disclose that the ingredients of Section 18 of the Act are satisfied and, therefore, the petition is not maintainable and in any case the plaintiff is staying away from the defendant on her own and voluntarily part from leading an unchaste life and these facts disentitles the plaintiff to claim any relief under the provisions of Section 18 of the Act.

27. I am afraid none of the aforesaid contentions holds water particularly in view of the circumstance of defense of the defendant having been struck out the consequence of which is that every kind of defense barring the legal defenses stands forfeited and the averments made in the petition supported with the affidavit are assumed to be correct. The instances and the incidents cited by the plaintiff which have been detailed above leave no manner of doubt that the plaintiff was subjected to not only physical but mental cruelty of extreme nature.

28. The concept of matrimonial cruelty no more confines to the physical violence. It is a thing of the past. It is no more necessary to prove the ground of cruelty by showing the endangering of life, limb or health through physical or personal violence. The view which has been holding the field for several decades that cruelty occurs when there is bodily harm and injuries is no more valid in the modern times as the "cruelty" has widened its net to mental cruelty also. Any conduct which causes such mental pain and suffering as would make it impossible for the aggrieved party to live with the guilty party comes within the ambit of mental cruelty. The test is that the mental cruelty must be of such that the parties cannot reasonably be expected to live together. The underlying reason is that a physical blow speaks for itself whereas the insults, humiliations, and the like may need the interpretation of underlying intention. Greater suffering results from psychological sufferings than bodily harm.

29. In *V. Bhagat v. Mrs. D. Bhagat*, the Supreme Court has defined the mental cruelty and has observed that 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 and it is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. In another case *Sobha Rani v. Madhukar Reddi*, the Supreme Court observed that the word 'cruelty' is to be used in relation to human conduct or human behavior and it is the conduct in relation to or in respect of matrimonial duties and obligations and again it is a course of conduct of one which is adversely affecting the other that may amount to cruelty.

30. In the instant case the parties were highly educated but unfortunately the defendant was still languishing in the orthodoxy. Thus the plaintiff had every reason to leave the defendant or her matrimonial home as the circumstances created by the defendant were such that forced her to leave. The desertion is not a withdrawal from a place. The essence of the desertion is the break up of the matrimonial home and the spouse who physically leaves the home is not necessarily the deserter as he or she may be forced to leave by the action of the other spouse. Thus, the defendant is guilty of desertion also.

31. It appears that the element of suspiciousness afflicting the defendant emanating from the orthodoxy over-powered the defendant so much that he started suspecting the plaintiff whenever she used to talk to her neighbours in USA. However the allegations are very difficult to accept and hard to ram down the throat. According to the defendant the plaintiff was such a free lancer that too in a strange country that immediately after landing there she started roaming with the boys in the neighborhood and once when the plaintiff and the defendant went to New Yorks with the defendant's friend to see the fire works, the plaintiff straightway started talking, mixing, dancing and even hugging the strangers in the presence of the defendant's friends. There is allegation that she developed intimate relations with one of his friends.

32. Chaste life in context of marital life means a life which is sexually virtuous. Literal meaning of word "chaste" in context of sexual life means sexual purity or virginity or celibacy. But in context of sexual relationship of husband and wife, it necessarily means sexual virtuality. In other words any sexual relation of a married person and in the relevant context sexual relations of a wife with one of the opposite sex other than the husband fall within the vice of "unchaste life". Had it not been so, the device said to have been worn by wives centuries ago whose their husbands went on war or remained absent for long while on crusades to prevent them having sexual intercourse would not have been known as "chastity belt". Thus sexual relations within the marriage are virtuous as they have element of purity. If these are outside the marriage, these are not only unchaste but immoral too.

33. Even if we assume the allegations of the defendant true still the conduct of the plaintiff cannot be termed as "living unchaste life". Word "unchaste" appearing in Section 18 is nothing but an adulterous life. As adultery is a ground of divorce, a woman living adulteratous life disentitles herself to the right of maintenance. By no standards much less in the modern times and society women who are no more chattle or confines of four walls of the marital home the conduct of talking to strangers or mixing with friends, relatives of the husband be derised as living an unchaste life. It appears the defendant was a prisoner of orthodoxy and suspiciousness and no wonder subjected the plaintiff to mental cruelty of extreme nature. Defendant cannot therefore deprive the plaintiff of her right of maintenance on the ground of her "living an unchaste life".

34. As observed above, since the plaintiff has proved the ground of not only of cruelty but desertion also which in this case is "constructive desertion" as she had to flee from the USA from the conduct of the defendant and the circumstances created by him, she is entitled to the suit reliefs.



35. In the result the suit is decreed declaring that the plaintiff is entitled to live separate from the defendant and for a decree of maintenance. The defendant is the only son of his parents. His father is a retired Chemical Engineer. He has sisters who are married and settled. The defendant is said to be earning 6,000 US dollars per month which approximately comes to be Rs. 2.5 lacs per month. However, there is no documentary proof of this. Defendant has even otherwise denied it through affidavit. However, it is not understandable as to what is preventing the plaintiff from getting any job as she had acquired MBA degree and had also undergone a training a Management Trainee. The parties appear to be belonging to middle class families. However, taking overall view of the matter I deem that the maintenance @ Rs. 10,000/- per month would meet the interest of justice. This maintenance is fixed from the date of the suit. However she will be entitled to this maintenance till she remains unemployed. The plaintiff is also awarded Rs. 20,000/- towards litigation expenses. So far as the contempt proceedings initiated against the defendant are concerned these will be decided separately being independent proceedings.