

Court No.46

(A.F.R)

**Reserved on 09.12.2021
Delivered on 16.02.2022**

Case :- FIRST APPEAL No. - 351 of 2020

Appellant :- Smt. Mohit Preet Kapoor

Respondent :- Sumit Kapoor

Counsel for Appellant :- Ashok Kumar Goyal, Ritesh Upadhyay

Counsel for Respondent :- Vishal Mohan Gupta, Dinesh Kumar Maurya, Sanjay Kumar Dwivedi

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Krishan Pahal, J.

1. This is wife's appeal directed against the judgment and order dated 19.03.2020 passed by the Additional Principal Judge, Family Court, Bareilly under Section 13 of the Hindu Marriage Act. The marriage of the appellant with the respondent was held on 15.12.2013.

2. The divorce petition had been filed by the respondent husband on 6.3.2017 on the ground that the appellant, his wife, had left her matrimonial home on 10.1.2015 without any rhyme or reason, in his absence, alongwith her family members. At that point of time, the appellant wife was pregnant for two months. It was alleged in the divorce petition that while leaving her matrimonial home, the appellant took all her jewellery as also Rs.36,000/- in cash kept by the respondent in his safe. On 25.1.2015, the respondent went to bring the appellant back to his home when she refused to maintain any kind of relationship with him.

3. It was further contended that on 22.8.2015, the appellant had given birth to a girl child. She was admitted in the hospital by the respondent who had borne all expenses of birth of his daughter. The appellant wife went to her paternal home after birth of the child. After about eight to ten days, the respondent went to bring the appellant back to his home when she denied to meet him and did not allow him to even see his child. On 15.1.2017 the respondent again went alongwith his relative to bring the appellant to his home when she had denied to accompany him. It is, thus, stated in the divorce petition that the appellant was residing separately since 10.1.2015 and she has refused to keep relationship with the respondent.

4. The plea in the divorce petition, thus, is that the appellant wife had

deserted her husband/respondent without any rhyme or reason and refused to cohabit with him. The cause of action for filing the divorce petition stated to have arisen on 10.1.2015 when appellant wife had left her matrimonial home along with her father and brother and lastly on 15.1.2017 when she refused to accompany the respondent to her matrimonial home. Another ground for seeking divorce is that the appellant had refused to do the household work and misbehaved with the family members of the respondent. She used to go to her paternal home or to her relatives without any information to the respondent or his family members.

5. The trial court had framed four issues; Issue nos. 1 and 2 framed by the trial court read as under:

*“1. क्या विपक्षी द्वारा याची के साथ विवाह के पश्चात विभिन्न अवसरों पर क्रूरता का व्यवहार किया?
2. क्या विपक्षी ने याची को दिनांक: 10.01.2015 से बिना किसी युक्तियुक्त कारण के परित्यक्त कर रखा है?”*

6. In support of the averments in the divorce petition, the respondent husband had produced five witnesses including himself as P.W-1. P.W-2 Amit Kapoor is brother of the respondent; P.W-3 is father-in-law of P.W.-2 Amit Kapoor and P.W-4 is neighbour of the respondent; P.W-5 is an acquaintance. In rebuttal, appellant-wife entered in the witness box as O.P.W-1 and her father Atar Singh as O.P.W-2.

7. An application under Section 24 of the Hindu Marriage Act was filed by the appellant on 6.9.2017 which was contested by the respondent by filing his objection on 26.2.2018. By the order dated 10.7.2018, while allowing the application under Section 24 of the Hindu Marriage Act, an amount of Rs.5,000/- per month was awarded to the appellant and Rs.2000/- for her daughter towards monthly maintenance. In addition to the same, Rs.20,000/- in lumpsum was awarded towards the cost of the proceedings.

8. A written statement in rebuttal was filed by the appellant wife on 06.10.2018 wherein she had categorically denied the assertion that she had left her matrimonial home on 10.1.2015 rather it was stated therein

that the appellant lived with the respondent, her husband, in his house upto July, 2016. A child was born out of the wedlock on 22.8.2015 in Rashmi Goyal Hospital situated at Rampur Garden Bareilly. The appellant was admitted in the hospital by the respondent on 22.8.2015 who had signed the consent letter for the surgery. It is emphatically denied that the appellant had refused to have sexual relationship with the respondent. It was further stated that after the birth of the girl child the respondent did not care to take the appellant to his home from the hospital and she had to go to her father's home. After about a period of four months, the respondent went to the house of the appellant's parents and when the matter was amicably settled and the appellant came to live with the respondent in his house. On 13.6.2016, their daughter had to undergo an operation for which she was admitted in Medanta Medicity Hospital Gurgaon when both the appellant and respondent were with their child. After surgery, the appellant-wife came back to the house of the respondent and stayed there until 21 July, 2016 when she was turned out of her matrimonial home along with her infant daughter. It is alleged in the written statement that the original documents such as Aadhar Card, Pan Card, Driving licence, Voter Id, Marriage certificate and other documents pertaining to the educational qualification of the appellant-wife were in the possession of the respondent and he was misusing them by forging her signature.

9. An F.I.R under Section 498, 506 I.P.C and $\frac{3}{4}$ of D.P Act was lodged in P.S Prem Nagar Bareilly on 27.01.2018 by the appellant-wife against the respondent in respect of which investigation was going on whereas interim protection had been granted by this Court in a writ petition filed by the respondent. It is denied by the appellant that she took her jewellery while leaving the home of the respondent. It is also denied that the respondent went to the house of the parents of the appellant on 25.1.2015.

10. Some photographs have been filed by the appellant along with the written statement to prove that she along with her daughter were living alongwith the respondent. It was lastly stated that on 15.12.2015 marriage

of the brother of the respondent was solemnised wherein the appellant had participated. Some of the photographs in which the appellant and respondent could be seen with the wife of the elder brother of the respondent were of the month, February, 2016. It is lastly stated that the respondent had filed Income Tax Returns of the appellant by forging her signature for the assesment year, 2013-14 till 2016-17.

11. The contention of the appellant, thus, is that she was turned out of her matrimonial home by the respondent on 21.7.2016 without any reasonable cause and the respondent did not care for his wife and the infant child.

12. Noticing the pleadings of the parties, the evidence on record, in his statement as P.W-1, the respondent has admitted factum of marriage though denied the demand of dowry and stated that his wife/appellant used to threatened him that she would implicate him in a false case of dowry. The averment of desertion on the part of the wife as on 10.1.2015, as stated in the divorce petition, has been reiterated in the examination-in-chief. It was also stated that the appellant was admitted in the hospital by the respondent during birth of their child and the respondent borne all the expenditures therein. It was also admitted that during surgery of their daughter on 13.6.2016 in Medanta Medicity Hospital, the appellant was present. However, it is denied that at that point of time the appellant, his wife, was living with him. The photographs marked as paper nos.30Ga/4, 30Ga/5, 30Ga/6, 30Ga/7, 30Ga/8, and 30Ga/9 were admitted by the respondent. It was also admitted that the marriage of his brother on 15.12.2015 was attended by the appellant and the said date is also the wedding anniversary of the appellant and the respondent. Paper no.20/14 is the photograph of 15.12.2015 which was the date of marriage of the brother of the respondent, his own wedding anniversary. It is admitted that in the said photograph, wife and daughter of the respondent could be seen with him. Paper no.30Ga/10 is the photograph wherein the appellant, respondent and brother and sister-in-law of the respondent could be seen together. This document is also admitted. Other photographs marked as

paper no.30Ga/11, 30Ga/13, 30Ga/15, 30Ga/16, 30 Ga/17 and 30Ga/18 are also admitted to the appellant which are photographs of his daughter with his parents. Paper no.30Ga/18 is the photograph which is admittedly of the respondent and his wife, but he has refused to recognize the place where it was taken.

13. As noted above, it is pertinent to state here that in one of the photographs paper no.30Ga/6, the respondent could be seen along with his wife (appellant) and daughter. The respondent has admitted that the said photograph was taken after birth of his daughter when she was about four to five months. There are photographs of mother and daughter of the respondent with him which are admitted though it is not specified by him as to when and where those photographs were taken and what was the age of his child at that point of time. One of the photographs marked as 30Ga/9 is of the drawing room of the house of the respondent where his daughter, who was about 7-8 months old, could be seen on a walker. In the cross examination, the respondent had categorically stated that his brother Amit got married on 15.12.2015. In the marriage anniversary of his brother which was on 15.12.2016, the appellant was not present. We are surprised to note at this moment that the family court had recorded a finding that the appellant had attended the wedding anniversary of his brother-in-law on 15.12.2016 and the photograph paper no.30Ga/9 was of the said function which was held in the house of the respondent. It is difficult to understand as to what was the basis of the said finding.

14. Contrary to this, the appellant in her statement before the family court has categorically asserted that her parent's house and her matrimonial house are located barely at a distance of 400 metres. Her husband took her to the hospital when their child was born on 22.8.2015. Paper no.30Ga/9 has been proved to be the photograph of her child which was taken in the drawing room of the house of the respondent. Paper no.30Ga/10 is the photograph of the appellant along with the respondent and her sister-in-law and brother-in-law Amit Kapoor. This photograph was stated to have been taken in the month of February, 2016 when they

went to attend a marriage in the family. Paper no.30Ga/11 is also the photograph of the appellant and her sister-in-law (wife of Amit Kapoor-brother of respondent). Paper no.30/12 is the photograph of the respondent, his daughter alongwith his mother and was stated to have been clicked in the drawing room of the house of the respondent. Paper no.30Ga/14 is the photograph of their marriage anniversary on 15.12.2015 (which incidently was the date of marriage of brother of the respondent). Paper no.30Ga/15 is the photograph of Amit Kapoor (brother of the respondent), daughter of the appellant and mother of the respondent. Paper no.30Ga/17 is the photograph which as per the statement of the appellant is of their marriage anniversary which is also admitted to the respondent as he stated that the said photograph was taken in the marriage of his brother Amit wherein his wife could also be seen. Paper no.30Ga/18 is the photograph wherein the appellant and respondent could be seen together and it was stated by the appellant that the said photograph was clicked in a Mall in Delhi on 14.2.2016 whereas the respondent had refused to recognise the place where it was taken.

15. The appellant in her statement has categorically stated that she was kicked out of her matrimonial home on 21.7.2016 and the first information report was lodged against the respondent thereafter. She was confronted on the allegations of demand of dowry in the cross examination. The appellant has asserted in cross that the marriage of her brother-in-law was held after two years of their marriage on 15.12.2015, and their marriage anniversary also fell on the said date. She had reiterated that she remained in the house of the respondent till July, 2016 and at that point of time she was not pregnant. She had categorically denied of leaving her matrimonial home in January, 2015.

16. In support of the plea of desertion, the respondent has produced other witnesses also. P.W-2 is the brother of the respondent namely Amit Kapoor. He has stated that the appellant had left their home on 10.1.2015 alongwith her father saying that she would come back after few days. He states that the father of the appellant remained in their house for around

30-45 minutes. In cross, he states that whatever has been stated in paragraph-5 in his examination-in-chief with regard to the appellant taking her jewellery and money while leaving on 10.1.2015, was based on the information given to him by his brother, the respondent herein.

17. P.W-3 is the father-in-law of P.W-2-Amit Kapoor. He states that he was an acquaintance of the family of the respondent since, 2012 and in the year 2015, the talk of marriage of his daughter with Amit Kapoor, brother of the respondent, was going on. On 10.1.2015, he went to the house of the respondent to invite them for his wedding anniversary. While he was in the house of the respondent, father of the appellant came at around 6.00 p.m and took the appellant alongwith him. He then stated that on 25.1.2015 he along with the respondent went to the house of the appellant to bring her back when she refused to come back with the respondent. In cross, P.W-3 states that on 25.1.2015 he went to the house of the respondent by chance and he was not called by the respondent. He then stated that when P.W-1 respondent got his wife admitted for delivery, he was informed by P.W-1 on telephone and he (P.W-3) also reached the hospital when he came to know about the birth of their child.

18. P.W-4 is a neighbour named as Ram Chandra Lal Srivastava whose house is located in front of the house of the respondent. He states that he saw the appellant leaving her matrimonial home alongwith her father about five years back while he was standing outside his house. After that he had never seen the appellant in her matrimonial house.

19. P.W-5 namely Ashok Kumar Khanna is an acquaintance of the respondent who stated that he knew the family since 2002. He states that the appellant had left her matrimonial home in January, 2015 at around 6.30 p.m and he had seen her leaving. He further states that he knew father of the appellant and had seen him going along with the appellant. The statement in paragraph-'6' in the examination-in-chief of this witness is verbatim the same as that of P.W-4 namely Ram Chandra Lal Srivastava. P.W-5 also admitted in the cross that the statement in para-6 of the examination in chief made by him was based on the information given

to him by P.W-4 namely Ram Chandra Lal Srivastava and this fact has not been disclosed by him while making the said statement.

20. On appreciation of the oral evidence led by the respondent husband, at least, this can be elicited that P.W-3, P.W-4 and P.W-5 are the persons who had no knowledge as to whether the appellant had actually left her matrimonial home on 10.1.2015 with the intention to end her matrimonial relationship. The statement of P.W-3 in this regard is not credible, in as much as, he admitted that he was not related to the family on two crucial dates, i.e. on 10.1.2015 and 25.1.2015. His statement that the appellant had left her matrimonial home along with her father on 10.1.2015 and refused to come back on 25.1.2015 when he also went along with the respondent to bring her back, is sketchy. He seems to be either a chance witness or brought up by the respondent. At least the statements of P.W-3, P.W-4 and P.W-5 cannot be proof of desertion on the part of the appellant.

21. We are left with two witnesses, i.e the respondent himself and his brother Amit Kapoor. P.W.-2-Amit Kapoor was the resident of the same house. He states that the appellant had left along with her father on 10.01.2015 saying that she would come back within few days. In the examination in chief this witness states that his brother went to the house of the appellant on 25.1.2015 but she refused to come back.

In cross, P.W-2 states that he brought the appellant back to his house many a times but did not remember the exact number, though lastly he brought her back in December, 2016. He further clarified that the statement made by him in para-5 in examination-in-chief that the appellant took his jewellery and cash alongwith her clothes while leaving her matrimonial home on 10.1.2015 was based on the information given by his brother/respondent.

22. P.W.1, the respondent husband reiterated his averments in the divorce petition by making statement in cross that the appellant had left her matrimonial home on 10.1.2015 and after fifteen days, i.e 25.01.2015 he himself went to bring her back. She, however, refused to accompany him. Their child was born in the hospital on 22.8.2015 and he got

admitted his wife in the hospital. For the treatment of his daughter, he took her to Medanta Hospital Gurgaon and got her admitted therein on 13.06.2016. P.W-1 has, however, denied that his wife was residing with him on 22.08.2015 and 13.06.2016. He also admits that the appellant along with her daughter attended the marriage of his brother Amit solemnized on 15.12.2015. In the cross examination, P.W-1 has denied that the appellant had attended the marriage anniversary of his younger brother Amit on 15.12.2016. The photographs shown to P.W-1 had been admitted being of himself, his family and his daughter alongwith the appellant.

23. A perusal of this part of statement of P.W.-1 indicates that the photographs of his daughter upto the age of 7-8 months were taken at different point of time and location and some in his house also. In one of these photographs, the child could be seen in the walker in a room of the house of the respondent. P.W.-1 admitted the photograph marked as paper no.30Ga/9 which is of his daughter when she was aged about 7-8 months at that point of time. On appreciation of the statement of P.W-1/husband, it is evident that the appellant and her daughter were well photographed in the house of the respondent, i.e the matrimonial home of the appellant. In various photographs, P.W.-1 himself could be seen alongwith his daughter in his own house. There is a categorical statement of the appellant O.P.W-1 that she was residing in her matrimonial house both at the time of birth of her daughter and her treatment in Medanta Medicity Hospital Gurgaon and thereafter till July, 2016. The distance between two houses, i.e paternal home of the appellant and her matrimonial house (the respondent's home) is barely 400 metres. In these circumstance, the statement of P.W.-1 that the appellant had deserted him by leaving her matrimonial home on 10.01.2015, in his absence, permanently is unbelievable. There is admission of the respondent/P.W-1 that his wife though attended the wedding of his younger brother Amit on 15.12.2015 but was not present in his marriage anniversary on 15.12.2016. The statement of P.W-2 in the cross examination that he went to bring the

appellant back many a times and lastly brought her back in December, 2016, also shows that the appellant came to her matrimonial home at least after 10.01.2015.

24. From the evidence on record, thus, it cannot be accepted that the appellant had left her matrimonial home on 10.01.2015 with the intention to end her matrimonial relationship. The statement of appellant O.P.W-1 that she came back to her matrimonial home after four months of birth of her daughter when the respondent himself brought her back and remained there till July, 2016 is found to be more convincing. The plea of desertion on the part of the appellant without any reasonable cause and denial of matrimonial obligation on her part, therefore, is not found proved.

25. While recording finding on the issue no.2 of desertion, the Family Court has recorded that the appellant could not explain as to how and why she attended the wedding anniversary of her brother-in-law on 15.12.2016 when she was thrown out of her matrimonial home by her husband on 21.07.2016. The findings returned by the trial court on the issue of desertion is as follows:

"प्रश्न यह है कि जब दिनांक 21.07.2016 को यदि मारपीट कर जान से मारने की धमकी देते हुए घर से निकाल दिया तो दिनांक: 15.12.2016 को विपक्षी याची के बड़े भाई की वर्षगाँठ में शामिल कैसे हुई। इससे पुनः विपक्षी के अभिवचनों तथा साक्ष्य में संदेह पैदा होता है कि याची द्वारा विपक्षी के साथ क्रूरता की गयी। मारपीट की गयी और घर से निकाला गया। इससे इस तथ्य की भी पुष्टि हो रही है कि याची के घर में शादी तथा वर्षगाँठ के समय विपक्षी आयी, उसने शादी व कार्यक्रम में शिरकत की और फिर मायके चली गयी। शादी व वर्षगाँठ में विपक्षी के आने व शामिल होने के तथ्य को याची नकार नहीं रहा हैं फोटोग्राफ को भी नकार नहीं रहा है लेकिन इसका तात्पर्य यह नहीं है कि विपक्षी याची के साथ रह ही थी। विवाद इतना है कि दिनांक: 15.01.2015 को विपक्षी याची के घर से अपने पिता के साथ बहाना करके मायके गयी कि दिनांक 21.07.2016 को विपक्षी को याची ने मारपीटकर घर से निकाला। तथ्यों एवं साक्ष्यों के विश्लेषण से यह स्पष्ट है कि यदि दिनांक: 21.07.2016 को मारपीटकर विपक्षी को घर से निकाला गया होता तो दिनांक: 15.12.2015 को शादी के वर्षगाँठ जो सुमित के बड़े भाई अमित कपूर की थी, में विपक्षी शामिल नहीं होती।

साक्ष्य से यह भी स्पष्ट है कि याची के साथ विपक्षी ने संसर्ग करने के मना कर दिया और दिनांक: 10.01.2015 के बाद विपक्षी याची के साथ पति-पत्नी के रूप में नहीं रही। दहेज के सम्बन्ध में प्रताड़ना व क्रूरता इस न्यायालय में विपक्षी ने साक्ष्य से साबित करने का प्रयत्न नहीं किया। वजह वह बेहतर समझती होगी। इससे याची के इन तथ्यों की पुष्टि हो रही है कि दिनांक: 15.01.2015 से विपक्षी ने उसका बिना किसी युक्तियुक्त कारण के परित्यक्त कर रखा है। तदनुसार यह वाद बिन्दु निस्तारित किया जाता है।"

26. This finding of the Family Court is against the evidence on record, the categorical statement of the respondent P.W.1 that her wife did not attend the wedding anniversary of his younger brother Amit on

15.12.2016. It seems that the Family court has misread the statement of P.W-1.

27. As regards the legal position, on the issue of desertion, the Apex Court in *Savitri Pandey vs Prem Chandra Pandey* reported in *(2002) 2 SCC 73* considering its earlier decisions has held that the desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by other without that other's consent, and without reasonable cause. To constitute the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there:

(i) the factum of separation.

(ii) the intention to bring cohabitation permanently to end (animus deserendi).

28. Similarly two elements are essential so far as the deserted spouse is concerned:

(1) the absence of consent, and

(2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form necessary intention aforesaid.

29. It was held that for holding desertion as proved the inference may be drawn from certain facts viewing them as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of desertion. Desertion may also be constructive which can be inferred from attending circumstances. It has also always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.

30. In the instant case, from the act and conduct of the parties, it cannot be inferred that the appellant had deserted her husband (respondent) with the intention to bring cohabitation permanently to an end by leaving her matrimonial home on 10.01.2015 in the absence of her husband. The appellant was pregnant at that time and she may have gone to her parents house which was barely 400 metres, for sometime. Further, the act of the

appellant in visiting her parents house frequently without taking consent of her husband and other family members cannot constitute the offence of desertion on her part. P.W-2, brother-in-law of the appellant had stated that he brought her back many a times from her parents house and lastly she came in December, 2016. The plea of desertion taken by the respondent can not be accepted from the facts and circumstances of the case, in as much as, such an inference cannot be drawn from the attending circumstances which speak otherwise. It may be inferred that there were differences between husband and wife but the act of desertion, without reasonable cause, with the intention to bring cohabitation permanently to end is not proved, at least not on 10.01.2015. The cause of action as alleged to have been accrued firstly on 10.01.2015 and lastly on 15.01.2017, the period of two years of desertion, is not proved from the material on record.

31. Further, the appellant has come out with the categorical statement that she alongwith her daughter was thrown out of her matrimonial home by the respondent in July, 2016. The respondent admittedly did not bring any legal action with a view to assert his right to reconstitute his conjugal rights. When application under Section 24 of the Hindu Marriage Act was filed, the respondent contested the same on various pleas and did not come forward to pay interim maintenance even for his daughter. In this appeal, the respondent did not appear in spite of filing of the caveat application and service of the notice upon him, on account of which the status quo order was passed on 05.10.2020. The respondent or his counsel never participated in this proceeding which shows that the respondent husband himself is not willing to take care of his wife and even his minor daughter. It seems that he has deserted her wife on his own and is running away from his responsibility of a father towards his minor daughter.

32. For the above discussion, the findings returned by the Family Court on issue no.2 that the appellant had deserted her husband without any reasonable cause from 10.01.2015 and further on 15.01.2017 deserve to be set aside.

33. On the issue no.1 of cruelty, the Family Court has returned the following finding:

“उपरोक्त वाद बिन्दु के परिप्रेक्ष्य में उभय पक्षों द्वारा प्रस्तुत अभिलेखीय तथा मौखिक साक्ष्यों का तथ्य परख विश्लेषण किया जिससे यह स्पष्ट है कि याची ने साक्ष्य से यह साबित किया है कि विपक्षी उसके साथ पत्नी के रूप में संसर्ग नहीं करना चाहती थी। करने से मना करती थी। मात्र 400 मीटर दूर मायका होने के कारण बिना बताये वह मायके चली जाती थी। रिश्तेदारी में भी चली जाती थी। याची द्वारा दिये गये साक्ष्य को विपक्षी ने न तो जिरह में नकारा है और न ही कोई सुझाव दिया। याची ने साक्ष्य से यह भी साबित किया है कि विपक्षी बहू की हैसियत से न तो घर में खाना बनाती थी और न ही घर का काम करती थी। याची के माता पिता व घरवालों के साथ दुर्व्यवहार करती थी। इस तथ्य का भी जिरह में खण्डन नहीं हुआ और न ही सुझाव दिया गया जबकि याची ने साक्ष्य से साबित किया कि वह विपक्षी को प्रेम से रखता था। विपक्षी को संतान उत्पत्ति के समय अस्पताल में पति की हैसियत से न केवल भर्ती कराया बल्कि उसके इलाज का पूरा खर्चा उठाया। यही नहीं अपनी बेटी के सर्जरी के लिए न केवल मेदांता में पत्नी व बेटी को ले गया, उसका पूरा खर्च उठाया। अपने भाई की शादी की वर्षगांठ में मोहित प्रीत को बुलाकर उसे पूरा प्रेम व सम्मान दिया। उसके बावजूद मोहित प्रीत ने दहेज प्रताड़ना की एफ०आई०आर० करायी, वह भी तलाक के मुकदमे के बाद। तलाक के मुकदमे में दहेज प्रताड़ना का कोई हवाला नहीं है। यदि दहेज को लेकर मोहित प्रीत को प्रताड़ित किया गया तो न केवल उसके जवाबदावे में यह तथ्य आते बल्कि साक्ष्य में भी इन तथ्यों को विस्तार से कहा जाता। यदि मारापीटा गया और उसके बाद विपक्षी मायके चली गयी तो मेडिकल हो सकता था, रिपोर्ट कर सकती थी, ऐसा कुछ भी नहीं हुआ। इससे यह स्पष्ट हो रहा है कि विपक्षी अपने व्यवहार व आचरण से याची के विरुद्ध क्रूरता की गयी व उसके परिवार के साथ दुर्व्यवहार किया गया। तदनुसार यह वाद बिन्दु सं० 1 याची के पक्ष में सकारात्मक रूप से निस्तारित किया जाता है।”

34. The conclusion drawn by the trial court is that the appellant used to go her parent's house without any information to the respondent or his family members and she did not do daily chores of the house being a daughter-in-law. We may record that not a single instance of such an act of the appellant has been brought on record either by the respondent or his brother who entered in the witness box as P.W-2. The general allegations and casual statement of the respondent in the divorce petition has been treated as a gospel truth by the Family Court without any cogent evidence on record. The act of the appellant in visiting her parent's house, in any case, even without the permission of the respondent does not amount to cruelty. The facts that the appellant was admitted in the hospital by the respondent at the time of her delivery or he had borne expenses for treatment of their daughter do not go against the appellant rather these facts support the case of the appellant that she did not leave her husband that too permanently with the intention of bringing the cohabitation to an end and has never done any act to deprive the

respondent from the pleasure of fatherhood. The ground of cruelty on the said assertion is not made out.

35. Last ground to hold cruelty on the part of the appellant is that she had lodged a criminal case against her husband and in-laws on the false plea of demand of dowry and her statement that she was thrown out of her matrimonial house by the respondent by beating her is false. The Family Court while recording the said finding has completely ignored the fact that the first information report was lodged by the appellant on 27.01.2018 much after the divorce petition was instituted on 6.3.2017. The act of the appellant in lodging the first information report on the plea of demand of dowry may not be approved by the Family Court but the said issue was not subject matter of scrutiny in the divorce proceeding. Surprisingly, the family court has lost sight of the fact that the plea of cruelty was taken as a ground of divorce in the plaint filed on 06.03.2017. The plaintiff, i.e the respondent herein was required to prove the existence of such acts or conduct of the appellant which amounted to cruelty prior to the date of institution of the divorce suit. Any subsequent conduct of the appellant in lodging the first information report after she was thrown away from her matrimonial home by the respondent cannot be treated as an act of cruelty on the part of the appellant.

36. The respondent husband could not prove cruelty from any act or conduct or behaviour of the appellant by leading any evidence much less cogent evidence. The findings on issue no.1 on the plea of cruelty returned by the family court are, thus, liable to be set aside.

37. For the foregoing discussion and reasons, the divorce decree granted by the trial court cannot be sustained in the eye of law. The judgment and order dated 19.03.2020 passed by the Additional Principal Judge, Family Court Bareilly is hereby set aside.

38. The divorce petition no.284 of 2017 (Sumit Kapoor vs Smti Mohit Preet Kapoor) under Section 13(1) of the Hindu Marriage Act is dismissed as such.

39. However, before parting with this judgment, we would like to address one more issue which is of maintenance to wife and daughter deserted by the respondent.

40. It is evident from the record that the appellant got interim maintenance under Section 24, pursuant to the order dated 10.07.2018 whereby Rs.5,000/- was fixed for the appellant and Rs.2,000/- for her daughter on monthly basis by the Family Court. After dismissal of the divorce suit on 19.03.2020, the interim maintenance has been stopped.

41. While admitting this appeal and passing the interim order of status quo, this Court did not clarify that interim maintenance would payable to the appellant and her daughter. The result is that during the pendency of the appeal, the appellant and her daughter have been left to survive on their own. They have no financial support as the appellant has no income. The question is as to whether after dismissal of the divorce suit, the appellant is entitled for maintenance while living separately in case her husband refuses to maintain her. This issue can be answered with the help of the provisions contained in Section 18 of the Hindu Adoption and Maintenance Act, 1956 which provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim for maintenance, in case her husband is guilty of desertion or abandoning her without reasonable cause or is guilty of willfully neglecting her. The right to claim interim maintenance by instituting a suit under Section 18 of the Hindu Adoption And Maintenance Act, 1956 is a substantive right and can be availed by the appellant by bringing her own action.

42. However, as to the dependant daughter, who is aged about six years, the obligation is upon the respondent by virtue of Section 20 of the Hindu Adoption and Maintenance Act, 1956. The appellant needs money to provide education, clothing, food and participation in extra curricular activities for the upbringing of her daughter. The meagre amount of maintenance of Rs.2,000/- per month for the minor daughter as fixed by the Family Court has also been stopped since the year, 2020 after the

decree of divorce was passed in favour of the respondent.

43. Considering the fact that the respondent is a Chartered Accountant and is engaged in this profession since the year 2012, we find it fit and proper that an amount of Rs.30,000/- per month shall be paid by the respondent towards maintenance of his daughter. The said amount shall be payable w.e.f February, 2022 and shall be transmitted in the Saving bank account of the appellant by 10th of each succeeding month. For February, 2022, the payment shall be made by 10th March, 2022.

44. Further, as there was an order of status quo in this appeal, for the period from the date of admission of the present appeal till the date of its disposal, the appellant would be entitled to interim maintenance as fixed by the Family Court vide order dated 18.09.2018. The arrears of monthly maintenance to the tune of Rs.5,000/- for the appellant and Rs.2,000/- for the daughter, from the date of admission of the appeal i.e 5.10.2020 till the date of the decision, is to be paid within a period of four months from the date of receipt of the copy of this order.

45. Any default on the part of the respondent in making the above payment timely, would entitle the appellant to institute the execution proceeding before the competent Court.

46. With the above observations and directions, the appeal is **allowed**.

Order Date :- 16.02.2022

Harshita