

**Court No. - 39**

**Case :-** FIRST APPEAL No. - 472 of 2018

**Appellant :-** Manjusha Servesh Joshi

**Respondent :-** Sarvesh Kumar Joshi

**Counsel for Appellant :-** Gunjan Sharma, Namit Kumar Sharma

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

**Hon'ble Donadi Ramesh, J.**

1. Heard Sri Navin Kumar Yadav, holding brief of learned counsel for the appellant.

2. Office report reveals, service is not complete. None appeared to oppose the appeal. Even before the Court below, the respondent has not participated in the proceeding despite service.

3. Present appeal has been filed under Section 19 of the Family Court Act arising from judgment and order dated 27.02.2018 passed by Judge, Family Court/Fast Track Court No. 1, Barielly in Marriage Petition No. 149 of 2014, filed under Section 13 of the Hindu Marriage Act (hereinafter referred to the 'Act').

4. Undisputedly, the marriage between the parties was solemnized on 03.07.1999. Two children were born to the parties in the year 2000 and 2003 respectively. Both are in the custody of the present appellant. Before the learned Court below, it has been established that the parties cohabited till April, 2011. During that period, the appellant secured job in Suriname (South America), where the parties cohabited. They developed serious differences at Suriname. During that period, the appellant describes to have been physically and verbally assaulted by the respondent. Numerous incidences of cruelty were cited. She also alleged adultery committed by the

respondent. Since, the job assignment of the appellant got over, she returned to India along with her two children. Thereafter, the respondent is disclosed to have persuaded the appellant to revisit South America. The appellant along with her children is described to have gone back on the assurance given by the respondent. However, his cruel behaviour continued. Again, allegations of adultery have been made.

5. Since, the respondent did not appear in the proceedings, the Court below proceeded *ex parte*. In that, the evidence of the appellant (PW-1) and her sixteen years old minor daughter (PW-2) were recorded. More than the appellant, the minor daughter of the appellant wholly supported the allegation of cruelty. She described acts of cruelty by disclosing that the respondent used to throttle the appellant on many occasions. She also made specific allegation of the respondent having physically assaulted the appellant as also her two children. Further, she clearly disclosed that the respondent used to lock up the appellant and her two children, from outside and leave for days. For those reasons, the appellant and her children are described to have returned permanently on 31.08.2013. PW-2 further disclosed that a criminal case had been registered by the appellant against the respondent at Suriname, with respect to physical assault made.

6. The above evidence led by the PW-1 and PW-2 was not doubted or controverted, to any extent. No material existed to doubt the correctness of those statements made by the witnesses, especially PW-2.

7. Having heard learned counsel for the appellant and perusal of the record, we find it difficult to sustain the finding of the learned Court below that the allegations of cruelty were vague and generic

or formal. Though, cruelty as a ground for divorce remains hard to define and no straight jacket formula has been adopted at the same time, once the minor child of the parties had specifically deposed that the respondent had tried to throttle her mother on many occasions and that he habitually locked up his family from outside and left them to fend for themselves in that situation for days, no other evidence of cruelty was required to be led in face of that un rebutted evidence.

8. Thus, the allegation of adultery may have remained to be established, yet the act of cruelty committed by the respondent was more than enough to grant the decree of divorce. We also take note of the fact that the parties have lived separately for more than 11 years as the respondent has perhaps not returned to the country and has not made any effort to cohabit with the appellant for long years. As to any other relief, learned counsel for the appellant states that the appellant seeks no amount towards permanent alimony or other relief.

9. Accordingly, the appeal is allowed. The judgment and order dated 27.02.2018 is set aside. Marriage between the parties is dissolved from today, on the ground of cruelty.

10. Let the record of Lower Court be returned forthwith.

**Order Date :- 22.7.2024**

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**(Donadi Ramesh, J.) (S.D. Singh, J.)**