



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 3383 OF 2019 (FC)

BETWEEN:

HAMSA,
AGED ABOUT 39 YEARS,
W/O SHYAM V,
R/AT NO.6,
CUBBAN PET MAIN ROAD,
BENGALURU - 560 002.

...APPELLANT

(BY SMT. J. SHILPA, ADVOCATE FOR
SMT. RAMA RAMACHANDRA IYER, ADVOCATE)

AND:

SHYAM V,
AGED ABOUT 42 YEARS,
S/O R. VENKATESH,
R/AT NO.1322, 9TH BLOCK,
JAYANAGAR,
BENGALURU - 560 009.

...RESPONDENT

(BY SRI. S. VENKATESWARA BABU, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 19.03.2019 PASSED IN M.C.NO. 2692/2012 ON THE FILE OF THE VI ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, PARTLY ALLOWING THE PETITION FILED UNDER SECTION 13(1)(ia)AND (ib) OF THE HINDU MARRIAGE ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This is respondent's appeal against the judgment and decree dated 19th March 2019, passed in M.C.No.2692/2012, on the file of learned VI Addl. Principal Judge, Family Court, Bengaluru, (for short 'trial court').

2. For the sake of convenience, we refer to the parties as their ranks before the trial court.

3. It is the case of petitioner (husband) that he married respondent according to Hindu customs and rituals on 26.11.2007 at NGR Kalyana Mantapa, Bannerghatta road, Bengaluru. Prior to marriage, petitioner was residing in his parents house situated at Jayanagara at Bengaluru. Respondent is also a resident of Bengaluru. After marriage, respondent joined the petitioner and both of them were residing in the parents' house of the petitioner. From their wedlock, they were blessed with a son by name Manish who was born on



11.02.2009. Till birth of Manish, the relationship between petitioner and respondent was cordial and they were leading happy marital life. Thereafter, she started quarrelling with the petitioner, as well as his parents. She was insisting the petitioner that he has to send his parents out of that house and they alone has to reside in the said house belonging to the parents of the petitioner. She also started forcing the parents of the petitioner to live separately from them and permit them to reside in the said house. They refused to do so, therefore she lodged the complaint in Tilak Nagar police station against petitioner, as well as his parents. It is stated in the petition that both the parents of petitioner are aged and suffering from age related diseases. It is also stated that father of the petitioner was suffering from some skin disease and therefore respondent was not permitting him to touch her son though they were residing in the same house. It appears after filing of the complaint, the SHO of Tilak Nagar police station called both side and discussed the matter and thereafter he directed the petitioner, as



well as his parents to make separate residence for the respondent. Accordingly, petitioner has taken a house on lease at Arakere in Bengaluru. Petitioner, respondent and their child started residing in the said house.

4. It is the further case of the petitioner that for a few days, they led peaceful life in the separate house and thereafter, respondent started making grievance that the said house was not good and the locality was also not good and she again started telling the petitioner that they have to reside in the house belonging to his parents at Jayanagar, Bengaluru, and his parents should live separately, for which petitioner did not agree. Therefore, she started quarrelling with the petitioner on trivial issues.

5. It is also stated in the petition that when petitioner refused to ask his parents to vacate the said house and live separately, she was visiting the house of his parents and abusing them in filthy language, insulting them and forcing them to vacate the said house and allow them to reside in the said house. It appears respondent again



went to Tilak Nagar police station and lodged the complaint against parents of the petitioner on the ground that they were harassing her. It appears that the SHO again called both parties and after hearing them, directed the respondent to reside in the house situated at Arakere without causing any difficulties to the senior citizens i.e., parents of the petitioner. It is further stated in the petition that the respondent complained to Mahila Association in this regard and along with 15 to 20 Mahila Association members, she went to the house of parents of the petitioner and forcibly trespassed into the said house and manhandled both the parents of the petitioner with the support of members of Mahila Association.

6. It is the further case of the petitioner that being fed up with the behaviour of the respondent, parents of the petitioner filed a suit before the Court of learned XVII Addl. City Civil Judge, Bengaluru, in O.S.No.2432/2012, for the relief of permanent injunction, restraining both petitioner and respondent from interfering



in their peaceful possession and enjoyment of the house. It also appears that parents of the petitioner could get temporary relief from the court.

7. It is the further case of the petitioner that respondent again started torturing the petitioner and has not permitted him to lead peaceful life. In view of the said harassment, he attempted to commit suicide by consuming poison. In this regard, he was admitted to Sanjay Gandhi hospital at Bengaluru for treatment. When he was admitted as an inpatient, respondent without taking care of him and without informing him, left the house situated at Arakere, along with her child and started residing in her parents' house. Petitioner tried his level best to take back her and also held panchayaths to persuade her to join him and live happily, however, she did not agree for the same. The respondent has been residing in her parents' house since 2012 and did not return inspite of request of the petitioner. With these reasons, he prayed to grant decree of divorce by



dissolving the marriage between petitioner and respondent on the ground of cruelty and desertion.

8. It is the case of the respondent that since she was staying with the petitioner in his parents' house, both petitioner, as well as his parents ill-treated her and cruelly treated her. After birth of the child, again they started humiliating her and insulting her. Petitioner had neglected respondent as well as her child and not providing basic necessities. Even petitioner was assaulting her. Looking to the situation, parents of the respondent advised and requested the petitioner to look after respondent and her son properly, however, petitioner did not mend his behaviour. The respondent could not tolerate the ill-treatment of the petitioner. Therefore she lodged the complaint before Tilak Nagar police station. The SHO of Tilak Nagar police station advised both side parties and accordingly petitioner arranged for separate residence for himself and respondent at Arakere and both of them started residing in the said house.



9. It is the further case of the respondent that while residing in the house at Arakere, petitioner completely neglected the respondent and her son. He was not providing basic necessities to them. Petitioner was leaving home even without having breakfast and returning home at late night. Therefore, respondent found it very difficult to stay alone along with her kid in the said house.

10. It is the further case of the respondent that since petitioner did not look after her properly when she was residing in the house at Arakere, she again lodged the complaint in Tilak Nagar police station against petitioner and his parents. Once again the police officer called both side and told respondent to stay in the house of the petitioner i.e., at his parents' house situated at Jayanagar. The parents of the petitioner took fifteen days time to say in this regard. Thereafter, they allowed the respondent to stay in their house. The petitioner and his parents were not permitting her to live happily in the said house. Whenever she was going out of the house, they used to



lock the house and were not available at home, because of which, she had to wait outside the house. On one Ugadi festival, petitioner along with his sister threw the respondent out of the house and then locked the house. Respondent had stayed in front of the said house for about four days. Even then they did not open the door and allowed her to go inside the house. The Police Inspector also advised her to stay in the house given to her at Arakere. She once again tried to go to the house of the petitioner at Jayanagar along with some members of Women's Association and at that time also, parents of the petitioner did not allow her to enter the house.

11. It is the further case of the respondent that petitioner thereafter did not come to the house situated at Arakere wherein she was residing and even failed to pay the rent of the said house. Petitioner was also not paying any amount for purchase of provisions for the maintenance of the family. In view of these reasons, she left the said house and started residing in her parents'



house. She also denied other allegations made against her in the petition and prayed for dismissal of the petition.

12. To prove his case, the petitioner examined PWs.1 and 2 and got marked documents from Exs.P-1 to P-4 and closed his evidence. The respondent examined herself as RW-1 and got marked documents from Exs.R-1 to R-4.

13. The learned trial judge after hearing the arguments of both side and appreciating the pleadings and evidence on record, allowed the petition and granted divorce under Section 13(1)(i-a) of Hindu Marriage Act i.e., granted divorce on the ground of cruelty and rejected the petition filed under Section 13 (1)(i-b) of Hindu Marriage Act and ordered to dissolve the marriage of the petitioner and respondent. The same is challenged by the respondent-wife in the present appeal on the grounds stated in the appeal memo.



14. We have heard the arguments of learned counsel appearing for both side and perused the materials on record.

15. Following question arises for our determination :

Whether the learned trial Judge is justified in granting decree of divorce on the ground of cruelty?

Our answer is in the affirmative for the reasons stated below :

It is not in dispute that the petitioner and respondent are husband and wife. Their marriage was solemnized on 26.11.2007 in accordance with Hindu customs and rituals. After marriage, they resided together for few years. From the said wedlock, both of them were blessed with a son by name Manish on 11.02.2009. It is also not in dispute that initially after marriage, both of them resided in the house of parents of the petitioner for some time and after birth of the child, differences arose between them. Respondent is said to have insisted the petitioner to send his parents out of the house so that both of them can reside in the



said house. Petitioner did not agree for the said demand of the respondent. Thereafter, there were frequent quarrels between them.

16. It is not in serious dispute that parents of the petitioner are aged. The house wherein they were staying belongs to them and they have two children i.e., petitioner as well as his sister. The sister of the petitioner was already married prior to the marriage of the petitioner. Both the parents of the petitioner were suffering from age related ailments and father of the petitioner was suffering from some skin disease.

17. In the entire counter statement filed by the respondent, she has not disclosed what was the reason for ill-treating her by the petitioner as well as his parents. Even during cross-examination of RW-1, she had not disclosed the reason for harassing her or ill-treating her by the petitioner as well as his father. On the contrary, it is the contention of the petitioner that after birth of the child, the respondent intended to reside independently in the



house belonging to his parents. Therefore, she was insisting him to send his parents out of the said house, so that they can independently reside in the said house. During the course of the evidence, petitioner has made out a new case that was not pleaded in the petition; that parents of respondents were rich and respondent wanted to have a luxurious life, for that reason, she insisted petitioner to send his parents out of their said house so that they could live in that house. He refused to do so and hence started harassing him.

18. PW-1 in his evidence has reiterated the petition averments. In his cross-examination he has stated that for three years immediately after the marriage, they were residing in the house of his parents and during the month of October or November 2011, they started residing in a house taken on lease at Arakere and he paid Rs.40,000/- as an advance amount to obtain the said house on lease and every month had been paying the rent of Rs.4,000/-. He and respondent resided in the said house for about



nine months. There also respondent quarreled with him and during the year 2012, she took all her belongings and locked the said house. Thereafter, he had not stayed in the said house.

In his cross-examination, respondent had suggested her defence and they were denied by PW-1.

19. PW-2 is the father of the petitioner. He has stated that initially for few months, the relationship between his son and daughter-in-law were cordial. Thereafter, she was frequently quarrelling with petitioner on trivial issues. She was insisting her husband to live separately from his parents. Therefore, he took a house on lease by paying advance amount at Arakere and put the petitioner and respondent in the said house so that they could lead their marital life happily, peacefully and independently. PW-2 also stated that he spent for the purchase of TV, utensils, furnitures etc., and gave them to his son. When they were staying separately, respondent was quite oftenly visiting his house and started



harassing him on one or the other reason and she was insisting him to vacate the said house and allow them to reside in the said house. In this regard, she has also filed a fake complaint to the police against him.

20. PW-2 has also stated that on one day respondent brought about 20 to 40 ladies in front of his house. In their presence, she used abusive words against him and his wife, insulted and defamed them in the locality. In his cross-examination, he has also stated about filing of the suit against the respondent as well as his son for permanent injunction not to disturb their peaceful possession and enjoyment of the house wherein they were residing.

21. In the cross-examination of PWs.1 and 2, nothing was brought out to discard or disbelieve their evidence. As already stated above, in the cross-examination of PWs.1 and 2, it was not brought out that they had any ill-will against her to treat her cruelly.



22. Respondent also led her evidence. In her cross-examination she admitted that up to March 2012, she resided with the petitioner in his parents' house. She lodged two to three complaints to the police, prior to March 2012. She also admits in the cross-examination that her in-laws were aged and they were affectionate towards her and her child. She also admits that during April 2012, she contacted Women's Association and requested them to help her to stay in her parents in-law's house. Thereafter she went to the house of her father-in-law along with about 20 members of the Women's Association. But, she denied that along with members of the Women's Association, she trespassed into the house and damaged the furniture of the said house.

23. In the cross-examination, she has also admitted that she lodged the complaint to the police and police secured both side and conciliated and during the said conciliation, police directed her husband to provide her separate house. Accordingly, separate house at Arakere



i.e., rented house was taken on lease and in the said house, she resided for few time with the petitioner. She also admitted that her husband was paying the rent for the said house. She has admitted that when she was residing at Arakere, she brought members of mahila sangha and along with them, she went to her in-laws house. But, she denied that she along with mahila association made galata in the house of her in-laws.

24. Respondent has not disclosed as to why she made galata or what was the reason for her to take members of Women's Association to the house of her in-laws. It is not in dispute that the matter was conciliated in the police station, thereafter she started residing separately in the house at Arakere along with petitioner. When such was the case, unnecessarily harassing the parents of the petitioner, taking the members of Women's Association to their house, certainly is a cruelty against aged parents of the petitioner.



25. From the evidence of both parties, it could be gathered that respondent was intending to reside in a house situated at Jayanagar belonging to the parents of the petitioner. The contention of the petitioner that respondent was insisting him to send his parents out of their house, so that they could reside there peacefully cannot be ruled out; Otherwise when separate accommodation was provided to her, there was no reason for her to often go to the house of parents of the petitioner and quarrel with them. It appears neither she was living happily nor allowing petitioner and his parents to live happily. Helplessly they were forced to file a suit against their son and daughter-in-law to protect peaceful possession and enjoyment of their house.

26. As already stated above, petitioner was the only son of his parents. His parents were aged and suffering from age related diseases. Under these circumstances, it is a moral and legal duty of the petitioner to look after them and help them during evening of their life. From the



evidence led by both parties, any prudent person can infer that respondent was not permitting the petitioner to look after his parents or allowing his parents live peacefully in their own house. That is why she was creating all sorts of problems. This behavior of the respondent certainly amounts to cruelty and falling within the purview of Section 13(1)(i-a) of Hindu Marriage Act.

27. According to the declaration made in the assets and liabilities statement, respondent contends that she has been residing separately from 2009, however petitioner has contended in the petition that from the year 2012, they are living separately. Petitioner has been residing in his parents' house, as well as respondent is residing in her parents' house. It appears inspite of conciliation by the trial court and referring the matter to the mediation, the dispute did not resolve and both parties are not ready to mend their ego and live together happily or settle their disputes.



28. The facts and circumstances of the case indicates that there was irretrievable break down of marital relationship between the petitioner and the respondent. Looking to the facts and circumstances of the case and evidence available on record, it is a fit case to grant divorce. The trial court considering the evidence of both parties, rightly decreed the petition which does not call for any interference by this court.

29. Learned counsel for the appellant submits that respondent is ready to join and reside with the petitioner to lead happy marital life. Facts available on record shows that both are not ready to live together. It is worth to note that, as already stated above, the matter was conciliated by the court and parties did not agree to settle. The matter was referred to mediation and it was also failed. For last about twelve years, both of them are not able to reside together or settle their disputes. Under these circumstances, the contention of the respondent that



she is ready to reunite with the petitioner and lead marital life appears to be not probable.

30. Petitioner contends that he was working as a salesman in Adilakshmi Silks and Sarees and earning monthly salary of Rs.12,000/-. Respondent has disputed the same and according to her, petitioner is earning more income than what is stated in the salary certificate. She has not produced any records to show that the salary certificate produced by the petitioner is not reliable and he has been earning more income than what is stated in the salary certificate. She did not deny that he was serving as a salesman in Adilakshmi Silks and Sarees. She has also contended that respondent has other immovable property which was let out by him. However, she has not placed any evidence on record to show that petitioner has any other properties which is fetching rent and on that basis, he has been surviving. It is the contention of the petitioner that his father, as well his mother own a house property and a commercial shop and they let out it to



others and they are earning income. The income of his parents cannot be considered as the income of the petitioner. Therefore, it cannot be taken into account while awarding the permanent alimony.

31. During arguments, learned counsel for the appellant has not urged regarding granting of permanent alimony. To avoid further litigations in this regard, it is just and necessary to assess the permanent alimony payable to the respondent-wife. The materials placed on record indicates that petitioner has been earning monthly salary of Rs.12,000/-. The age of the petitioner is between 46 to 50 years. 25% of the said income could be added as income towards future prospects and the multiplier applicable in this case is `13' taking his age as 46 to 50 years. Out of the said income, 25% is to be paid as permanent alimony to the respondent. Further, the petitioner has to look after his parents, as well as the educational expenses of his son, who is said to be studying in SSLC. Both petitioner and respondent have marriage



prospects since they are between the age group of 40 to 46 years. Considering all these facts, the permanent alimony payable to the respondent is fixed at Rs.6 lakhs.

32. Son of the petitioner and respondent is residing with his mother-respondent. He is minor and studying in SSLC. Respondent has no source of income and she is home maker. Hence petitioner shall bear education and medical expenses of his son till he completes graduation or upto 21 years of age.

33. In view of the aforesaid discussion, we proceed to pass the following :

ORDER

The Appeal is ***allowed in-part.***

The impugned judgment and decree passed by the learned VI Addl.Prl.Judge, Family Court, Bengaluru, in M.C.No.2692/2012, dated 19.03.2019, is confirmed, subject to modification that petitioner shall pay permanent alimony of Rs.6 lakhs to the respondent within a period of



two months from the date of receipt of copy of this judgment.

Petitioner is liable to meet the educational and medical expenses of his son Manish, till his son completes graduation or upto the age of 21 years whichever is earlier.

Registry to transmit the records along with copy of this judgment to the concerned Court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

bk/
List No.: 1 Sl No.: 15