

IN THE HIGH COURT OF TRIPURA
AGARTALA

MAT APP. NO. 15 OF 2012

Sri Nihar Ranjan Bhowmik,
son of late Anil Chandra Bhowmik,
resident of vill Naraura,
Bishalgarh,
P.S. Bishalgarh, P.O. Naraura
District : Sipahijala Tripura
..... Appellant

- Vs -

Smt. Nupur Debnath(Bhowmik),
wife of Shri Nihar Ranan Bhowmik,
daughter of Sri Sudhanagshu Debnath,
resident of Dalura, Khayarpur Mudda para,
P.S. East Agartala
District : West Tripura
.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE U.B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Ms. S. Deb Gupta, Advocate
Mr. N. Sarkar, Advocate
Mr. D. Bakshi, Advocate

For the respondent : Mr. A. Sen Gupta, Advocate

Date of hearing : 16.09.2015

Date of judgment & order : 16.10.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

This is an appeal under section 19(1) of the Family Courts Act from the judgment and order dated 10.10.2012, passed by the Judge, Family Court, West Tripura, Agartala in Title Suit(Divorce) No. 14 of 2011.

2. The appellant is the husband of the respondent and their marriage was duly solemnized as per Hindu rights and customs on 12.12.2007. After 10 to 15 days of the marriage, the appellant noticed some abnormalities in the behaviour of the respondent. She used to hurl filthy language towards the appellant, his mother, younger and elder brothers and to their wives. To avoid untoward happenings, the appellant decided to live in a separate mess. When the said arrangement was made, a new phenomenon was noticed by the appellant that the respondent used to remain unmindful to the household works. She was careless to him, her mother-in-law and other in-laws. Even it was observed by the appellant that she was not interested in the normal marital life. However, on 20.12.2009, a male child was born in the wedlock. The appellant had expected, at that time, that would bring normalcy in their marital life. But unfortunately that didnot happen.

3. Some day in the month of May 2009, the respondent delivered a letter in her own hand-writing to the appellant. The content thereof could not be penned down by a normal human being. In the similar manner, in the month of June, 2009 the respondent gave another letter in her own hand-writing where she expressed that she was not at all interested in the 'domestic' life. The appellant could not make out head and tail of the content.

4. On observing such pattern, the assistance of the father of the respondent was sought. Even some neighbourers got involved so that the respondent may find a mental balance in discharging her marital duties.

5. Having regard to that Dr. Bhubaneshwar Ray, a reputed psycratist was consulted. One of the prescription slip was also furnished with the petition. For further treatment, the respondent was taken to Dr. Asim Choudhury on 11.10.2009 . At that time, father in law of the appellant and the respondent told Dr. Choudhury about her history of mental 'problem'. It appeared for the first time to the appellant that she was suffering from some mental problems since her college days. A prescription of Dr. Choudhury was also submitted in the Family court . Dr. Choudhury and Dr. D.C. Deb examined the respondent on 27.01.2010 and 04.10.2010. During such consultations the

respondent had reportedly expressed that she was not inclined to continue her family life. In the prescription slips doctors observed that "her smile was not appropriate". The appellant further alleged that the respondent was not taking proper care of their child. The appellant stated in the petition further that matrimonial life has become miserable for the unsoundness of mind of the respondent. According to him, there was no possibility of cure. Hence, the appellant is not reasonably expected to live with the respondent.

6. The respondent appeared and filed her written statements completely denying the allegations made in the said petition. In the written statement, the respondents brought the obligations against the appellant also. She alleged that the appellant neglected the newly born child. He did not extend any helping hand towards her. She had further alleged that the appellant had pressurised her to get the pregnancy terminated and she was not willing that she was subjected to cruelty both physical and mental and even was forced her to write some letters according to the desire of the appellant.

7. Even the statements as alleged to have been made before Dr. Choudhury that she was not interested to live the marital life was squarely denied by the respondent.

Even she denied suppressing or existence of any mental problem at the time of her marriage. She has quite categorically stated that she does not have any history of mental disorder.

8. It appears from the record that the appellant adduced 5(five) witnesses whereas the respondent adduced 3(three) witnesses.

9. It is crystal clear from the pleadings that the ground that was raised for dissolution of marriage by a decree of divorce fundamentally is the mental illness. Therefore, the appreciation of the evidence would be confined to find out whether the respondent was suffering from any mental illness and if there was any mental illness, whether the appellant is or is not expected to live with the respondent .

10. The appellant has examined himself as PW-1 and briefly narrated his pleaded case and made a statement that Dr. Bhubaneshwar Roy, PW-5 opined that the respondent was suffering from some mental problems but it would take sometime for recovery. Thereafter the appellant had asserted that for her "indifferent behaviour" it would not possible for him to continue marital life with his wife, the respondent herein. PW-2, Smt.Mina Rani Saha,a neighbouring witness had stated that she got alienated

from the family life and expressed desire that she would hand over her minor son to a hermitage. PW-3, Smt. Basanti Ghosh a witness from the neighbourhood has observed her to be indifferent. PW-4 Smt. Gita Rani Bhowmik has also stated that she noticed some indifferent behaviour of the respondent and on being asked she told her that she didnot like to continue her marital life rather she wanted to die.

11. Most vital witness is PW-5, Dr. Bhubaneswar Roy the said expert who had occasion to examine and appreciate the mental status of the respondent, he has stated in the trial as under :

"Presently I am posted as Asstt. Prof. in the Dept. of Psychiatry. AGMC & GBP Agartala. On 14/07/10. I examined one Smt. Nupur Debnath 24 years of Bishalgarh in my Private chamber at Battala, AGT. Subsequently. in some other days on 15/07/10, 02/08/10, 20/08/10, 21/09/10. I also examined the said patient. On the 1st day I examined her in presence of her husband and parents with some complaints of weakness, staring look, fearfulness of Ant and in mental status examination, I found that affect was inappropriate. At that time, I could not come to a definite conclusion about the dyagnosis, but I was thinking that the patient was sufferingfrom schizoid personality disorder or psychosis not otherwise specified. Subsequently, on 2nd Aug, I saw the patient with her husband, but I could not get proper history from the husband and it was my observation and regarding mental status that she was looking little bit depressed. On the next on 20/08/10. I examined her against and at that time, patient was talking les but party informed that she improved by 10% . On the next date on 21/09/10 reported that there is mild improvement and patient was having inappropriate smiling, on that day I asked her the next visit to come with the parents to clarify more about the history which was given by

the husband and come to a definite diagnosis, but patient never turned up. As patient was getting treatment from other psychiatrist previously the original symptom may have been changed and giving me trouble to come to a definite diagnosis and I advised to get a 2nd opinion from another psychiatrist. Within a short period of my treatment. I could not come to a definite conclusion of mental illness of the patient. I only treated her symptomatically. This is the original prescription issued by me. "

12. It is apparent that PW-5 has categorically observed that he could not come to a definite diagnosis and as a result he advised the appellant to take a second opinion. PW-5 has stated that he had only treated her symptomatically. The other psychiatrists who examined or whose consultation was taken were not adduced by the appellant . In order to rebut the allegation, the respondent adduced 3(three) witnesses . She had examined herself as DW-1 . She had expressed quite categorically that she wanted to continue her marital life with the appellant. The respondent's mother namely Smt. Amrita Debnath has been examined as DW-2. She has denied that her daughter has been suffering from any mental problem. The respondent's father namely Sri Sudhansu Debnath has been examined as DW-3. He has also stated that her daughter is not suffering from any mental problem.

13. It is apparent that no medical opinion in respect of the mental status of the respondent, apart from

examining PW-5 has been produced in the family court. Thus, the family court having appreciated the evidence placed on record passed the impugned judgment holding that the appellant has failed to prove that the respondent was suffering from mental disorder and that was in-curable in nature or that the appellant is not expected to continue his marital life with the respondent. As such, in the considered opinion of the court the appellant was not entitled to get a decree of divorce and accordingly the petition for dissolving the marriage has been dismissed. However, the appellant has been directed to pay maintenance @ Rs.2,000/- per month to the respondent and Rs.1,000/- per month to their minor son i.e. in total Rs.3,000/- per month w.e.f. 01.10.2012.

14. The entire judgment and order has been challenged in this appeal on the basic ground of non-appreciation of the evidence as led by the appellant in the trial.

15. Ms. S. Deb Gupta, learned counsel appearing for the petitioner has submitted that from the opinion as expressed by PW-5 it is clear that her behaviour was inappropriate even when PW-5 had examined her. Mr. S. Deb Gupta, learned counsel has further submitted that a cumulative effect of reading the materials in the evidence

as placed by the appellant would be that the appellant is not expected to live in such circumstances with the respondent. The appellant is being deprived of marital life which is not only an ordinary deprivation but it is a serious deprivation. She has placed her reliance on a decision of the Rajasthan High Court in ***Smt. Vandana vs Suresh Charan reported in AIR,2005,Rajasthan 193*** in support of her contention. In ***Smt. Vandana vs Suresh Charan*** it is observed as under :

"19 The mental disorder has been defined in the explanation (a) appended to Sub-clause (iii) of Sub-section (1) of Section 13 of the Act of 1955, which says that mental disorder means:-

- (1) mental illness, or**
- (2) arrested or incomplete development of mind, or**
- (3) psychopathic disorder, or**
- (4) any other disorder or disability of mind, and**
- (5) includes schizophrenia."**

20. The Explanation (b) to Sub-clause (iii) of Sub-section (1) of Section 13 defines the expression "psychopathic disorder". Psychopathic disorder means:

"(1) a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment."

21. The learned counsel for the appellant heavily relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Ram Narain Gupta v.

Smt. Rameshwari Gupta, AIR 1988 SC 2260, in support of his contention that every disease of Schizophrenia to a spouse cannot be ground for granting the decree for divorce. The facts of the case of Ram Narain Gupta (supra), are that the marriage between the said Ram Narain Gupta and Rameshwari Gupta was solemnized on 17.06.1979. The suit for dissolution of marriage was filed on 14.07.1983 on the allegation that the wife was a Schizophrenic. Facts of the case as given in the judgment of the Allahabad High Court delivered in the case of Smt. Rameshwari Gupta v. Ram Narayan Gupta, 1987 All L J 483, the husband plaintiff and the defendant lived together and they gave birth to one child and thereafter, dispute arose between the parties. In the suit, the husband specifically pleaded that his wife is suffering from mental disorder of such a severity as to render the respondent unsociable and given to violent propensities that the wife had been treated by the doctors at the Department of Psychiatry and despite competent professional treatment, the mental condition of the respondent continued to deteriorate to the point of making manifest in her suicidal tendencies and aggressive violent behaviour towards others. Therefore, in above facts, there was specific allegation of a particular disease of the wife of the petitioner-husband and because of that disease schizophrenia, the wife became aggressive and violent, whereas in the present case, there is no allegation in the divorce petition that the appellant is suffering from schizophrenia and her mental disorder made her violent. The Ram Narain Gupta's case cannot be read as authority laying down that petition for divorce can be maintained only in the cases where the respondent is violent and aggressive due to schizophrenia or due to mental disorder or due to unsoundness of his/her mind. The above authority even cannot be read as laying down that violent and/or aggressive conduct of respondent is sin qua non for grant of divorce decree under Sub-clause (iii) of Sub-section (1) of Section **13 of the Hindu Marriage Act, 1955. It will be worthwhile to mention facts of Ram Narain Gupta's case here. In that case plaintiff and the defendant lived together for some time. A child was born to them. Thereafter, it appears that the wife went in some depression. It is alleged by the defendant that she was treated cruelly and she lodged F.I.R. against the plaintiff. The plaintiff,**

thereafter made efforts to collect all the evidence with the aim of sending the defendant to the mental asylum and filed the suit for dissolution of marriage. The High Court also observed that above evidence were collected in quick succession. Not only this, the High Court further observed that "Cruelty inflicted by the in-laws culminated in the first information report which the defendant lodged in the morning of 1st July, 1983, for which no convincing evidence has been given by the plaintiff that she said report was false and that was filed by the defendant without any grave provocation." The High Court specifically recorded the finding that the defendant was suffering from mental disorder and further held that the defendant was not suffering from any mental disorder of such a kind and to such an extent that the plaintiff cannot live safely with the defendant. The finding of fact was considered by the Hon'ble Apex Court and the Hon'ble Apex Court considered the evidence of even doctor produced by the plaintiff in that case. The High Court also discarded the medical evidence as absolutely unreliable. Therefore, the facts of the above case are entirely different from the facts of this case. The facts of this case clearly established that plaintiff and the defendant virtually had no occasion to live together in seven years (Four days). It was difficult for the plaintiff to form any definite opinion that the defendant is of unsound mind or suffering from mental sickness. When doubt about developed in the mind of the plaintiff, he did not get any opportunity to assess the kind and extent of the mental disorder of the defendant. He did not get any opportunity to examine the defendant from any doctor to know the name, nature and extent of the disease of the defendant. The plaintiff could form his definite opinion about defendant's mental condition when it was told by her brother and confirmed by medical prescriptions of Bikaner. After passing of long period of six years without defendant, the plaintiff reached to conclusion that he cannot live with the defendant as she cannot discharge any of his matrimonial obligation including consummation of marriage due to mental disorder of the defendant. This is what comes out from the pleadings of the plaintiff and his evidence and that has not been rebutted by the defendant. If non- petitioner is not in position to consummate the marriage at all, due to mental disorder, then in such situation it will be unreasonable to expect from the

plaintiff that he can live with the non-petitioner. Such situation may not have been even imagined by the parents of the non-petitioner (who might know that their son/daughter is not mentally fully developed and may have assumed that marriage may improve or even cure their son/daughter). Therefore, on failing after taking such a chance one cannot have any option but to accept the unfortunate reality.

22. The words "abnormally aggressive or seriously irresponsible conduct" have been used only in Explanation (b) of Sub-clause (iii) and have not been used in the main Clause (iii) of Sub-section (1) of Section 13 or even in Explanation (a) of Sub-clause (iii) of Section 13(1). In the cases of abnormally aggressive or seriously irresponsible conduct, it is immaterial whether the patient is susceptible to medical treatment or not. Obvious reason for this is that the legislature presumed "abnormally aggressive or seriously irresponsible conduct" as a situation in which one cannot live with that sick person even if such sick person is susceptible to medical treatment. The Explanation (b) appended to Sub-clause (iii) has not been added to limit the scope of main provision which is Sub-clause (iii) of Sub-section (1) of Section 13. If it is held that the decree for divorce can only be granted on proving respondent's "abnormally aggressive or seriously or seriously irresponsible conduct due to incurably unsound mind or due to suffering from mental disorder" then it will exclude possibility of decree for divorce on proving that the respondent is of unsound mind or is suffering from mental disorder of such kind and to such an extent where petitioner cannot live with the respondent. Further, such an interpretation will make the Explanation (a) redundant and purposeless because "mental illness", "incomplete development of mind" and "any other disorder or disability of mind" coupled with situation where it will be "petitioner cannot reasonably be expected to live with the respondent" will not be ground for decree of divorce against the respondent. Such an interpretation is inconceivable by any reasoning. Result of it will be that even after proving all the ingredients of Sub-clause (iii) of the Sub-section (1) of Section 13 of the Act of 1955, no one will be entitled to decree for divorce and main provision, Sub-clause (iii) will become subordinate clause of its own Explanation clause.

23. This provision, appears to have been framed as it has own purpose. Unsoundness of the mind and mental sickness is not fault of oneself but why other should suffer for that if that unsoundness of mind or mental sickness has created a situation in which it becomes unreasonable to expect from other person to live with such sick person. What are the situations in which one is not expected to live with other depends upon facts of each case. When court finds, after very carefully considering all the facts and all relevant surrounding circumstances of the case with all care and caution, matter has reached to a stage where it is unreasonable to expect from petitioner to live with non-petitioner and cause for the such unfortunate situation is mental sickness of the non-petitioner then as per Section **13(1)(iii)**, the court is supposed to pass a decree of divorce against the non-petitioner even in the cases where there is no fault of non- petitioner. Extra care and caution of the court is needed to avoid misuse of this provision as there are very chances of its being misused by wrongdoers.

24. In the language used in Sub-clause (iii), the care has been taken by using the word "reasonably" before "expected to live with respondent". The word could have been "difficult" or "impossible" before "expected to live" but have not been used. The petitioner is, therefore, required to prove that as a reasonable person, he cannot live with the non-petitioner because of non-petitioner's mental sickness. If it will be held that decree of divorce can be granted only in the cases where the respondent has aggressive or violent conduct then there was no need for using the words "petitioner cannot reasonable be expected to live with the respondent" in main provision Sub-clause (iii).

25. Again in the case of Ram Narain Gupta (supra), the High Court found and Supreme Court considered the facts of that case and while rejecting the petitioner's case on facts examined what is Schizophrenia, what are its effects and what its categories are. It was because the plaintiff came with a specific case of violent and aggressive conduct of the non-petitioner and it was alleged that it is due to Schizophrenia. Narain Gupta's case is not touching the other aspect of the grounds mentioned in Sub-clause (iii) read with Clause (a) of

the Explanation of Section **13(1)** as there was no need for that in the facts of that case.

26. In the case before this Court, the plaintiff-respondent's case as per pleadings of the plaintiff was not under explanation (b) appended to Sub-clause (iii) of Sub-section (1) of Section **13** of the Act of 1955. The plaintiff did not set up a case that defendant is suffering from psychopathic disorder or her disability or disorder which was resulted in abnormally aggressive or seriously irresponsible conduct of the defendant appellant. The plaintiff's case is that the defendant is of unsound mind or suffering from mental disorder and the plaintiff cannot live with the defendant which is the ground for divorce in all other cases of mental disorder except in case of psychopathic disorder and may be in case of schizophrenia.

27. Here in this case, the allegations of the plaintiff are that the defendant-appellant was suffering from mental disorder since last 13 years and it is the reason because of which the plaintiff-respondent had no matrimonial life despite marriage. The consummation between the parties is the most important factor and may be reason for marriage. It is not expected from any husband to live with wife who cannot discharge matrimonial obligations because of mental disorder. Even if one is not suffering from any mental disorder but fails to provide matrimonial relationship without any just cause, the aggrieved person can seek decree on the ground of mental cruelty. Since the plaintiff-respondent has a cause for seeking divorce on the ground of mental cruelty but the defendant-plaintiff may take a defence that because of mental sickness, she cannot have physical relation with the plaintiff-respondent and non-consummation of marriage is due to sufficient cause. That plea of the defendant is not available to the defendant because of Sub-clause (iii) of Section **13** and justification of non-consummation of marriage on the ground of mental disorder stands excluded by the statutory provision. Therefore, the mental disorder is a reason for granting decree for divorce when the husband and wife cannot have matrimonial relations between them due to the mental disorder. The judgments relied upon by the learned counsel

for the appellant, therefore, have no application to the controversy involved in this appeal."

[Emphasis added]

16. In ***Smt. Vandana vs Suresh Charan*** an extreme proposition has been laid by Rajasthan High Court that even after one is not suffering from any mental disorder but fails to discharge matrimonial obligation without any just cause, the aggrieved person can seek decree on the ground of mental cruelty. It has been further observed that for purpose of setting up the ground for mental cruelty it has to be categorically pleaded that she (the wife cannot have the physical relationship with the plaintiff (or the petitioner) and non-consumption of marriage is due to insufficient cause. The mental disorder is a reason for granting decree of divorce when the husband and wife can not have matrimonial relation between them due to the mental disorder.

17. From the other side Mr. A. Sengupta, learned counsel has contended that the appellant has failed to give any evidence to show that the respondent has been suffering from any mental disorder or that she is indifferent to her household works or she is careless about her matrimonial life. The testimonies of the neighbourhood witnesses are so scattered and incongruous those cannot be relied and even if those are relied then also no prudent

person can come to a conclusion that the respondent was ever instrumental in depriving the appellant from consummation of their marriage or that the appellant has been deprived from the fruit of the marital life. The statements made by the appellant or his witnesses in the trial do not lead any one come to a conclusion that the respondent suffers from any mental disorder or that for the said mental disorder the appellant is not expected to lead his marital life with the respondent. Hence, no interference with the impugned judgment and order is called for.

18. Having regard to the respective submission made by the learned counsel for the parties, this court is of the opinion that there is no evidence that the respondent is suffering from any mental disorder.

19. PW-5 has categorically stated that he could not come to a definite diagnose and his treatment was mostly symptomatic. PW-5 even did not confirm what was the opinion of Dr. Chowdhury who continued with the treatment. Even it is unknown to the court what was the opinion of Dr. Chowdhury as he has been withheld. In absence of any medical opinion as to the mental disorder of any degree, this court is not expected to come to an inference that for the mental illness of the respondent the appellant is not expected to live the marital life with the

respondent. Further, in absence of any such opinion as to the mental illness, the decision in ***Smt. Vandana vs Suresh Charan*** has no application in the context of this case . What is noteworthy is that even the appellant didnot state that for the mental state of the respondent he has been deprived of consummation of marriage. What he has bluntly stated is that for the indifferent attitude of the respondent he is not interested to carry on with the marital obligation . That statement is expression of his own mind but does not provide any material illustrating that in any way the respondent has denied him the marital bliss.

20. Indifference by itself is not an illness it may be the effect of stress. By way of proper counselling, this can be attended to. Section 13(i)(iii) does not permit the court which is otherwise competent to grant a decree of divorce unless the perimeters as laid down therein are satisfied.

21. In this case, there is no evidence, to be candid in support of the serious mental illness as negotiated in section 13(i)(iii) of the Hindu Marriage Act. This could lead us irresistably to the conclusion that impugned judgment and order does required no interference.

22. Accordingly, the appeal stands dismissed.

Prepare the decree accordingly.

Send down the LCRs.

JUDGE

S.Bhattacharjee