

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL NO.137 OF 2007

Mansi Mohan Chandarkar,
nee Rajashree Rajaram
Manve of Mumbai, Hindu,
Indian Inhabitant, aged 30 years,
Occupation : Service,
residing at C/o. Rajaram
Manve, Philips Misquitta Chawl,
S. V. Road, Opp. Ganesh Mandir,
Near Khira Nagar,
Santacruz (W), Mumbai – 54.

....Appellant
(Original Respondent)

V/s

Mohan Vishnu Chandarkar
of Mumbai, Hindu, Indian,
inhabitant; aged 32 years,
Occupation : Service,
residing at 306/48,
Tenement Bldg. Dayaldas
Marg, Vileparle (East),
Mumbai – 57.

... Respondent
(Original appellant)

Mr. D. C. Pathak, Advocate for the appellant.

Mr. Vaibhav M. Parashurami and Mr. Vikrant V. Parashurami,
Advocates for the respondent.

**CORAM: A.S. OKA &
C. V. BHADANG JJ.
RESERVED ON : 21st January, 2016.
PRONOUNCED ON : 13th July, 2016.**

JUDGMENT (Per C. V. BHADANG, J):

(Signed judgment is pronounced by A.S. Oka, J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules as C.V. Bhadang, J. is sitting at Panaji.)

By this appeal the appellant/wife is challenging the judgment and order dated 23/5/2007 passed by the Family Court at Mumbai in Petition No. A-1711/2003. By the impugned judgment, the Family Court has allowed the petition filed by the respondent/husband, thereby dissolving the marriage between the parties on the ground of cruelty under section 13(1) (i a) of the Hindu Marriage Act 1955 (Act for short) with some other reliefs.

2. The brief facts necessary for the disposal of the appeal may be stated thus:

That the parties got married on 5/12/2001 whereupon the appellant went to reside at the matrimonial house which consisted of the respondent, his parents, a married brother by name Anil, a married sister by name Akshata and an unmarried brother by name Bharat, who is

since dead. The appellant since prior to the marriage was working as a teacher and continued to work even after the marriage.

3. According to the respondent, within 15 days of the marriage, the appellant started insisting to live separate and her general behaviour gave rise to a suspicion about her mental health. She was behaving arrogantly and insulting the family members of the respondent and was creating scene. On many occasions, the appellant left the matrimonial home with bag and baggage and at the intervention and insistence of the respondent had returned to the matrimonial home. This conduct of the appellant was brought to the notice of her parents and brother, who although admitted that the appellant suffered from intermittent attacks, attributed the same to "black magic played by her enemies."

4. On 15/2/2002, the appellant picked up quarrel with the respondent on flimsy ground, when he had inquired about her health. She became violent and assaulted the respondent and attempted to leave the matrimonial home in

the middle of the night at 2 a.m. along with her clothes and jewelery. She, however, could not go out, as the main gate of the building was locked and hence she returned. Sometime in August 2002, the appellant got another attack and started abusing the respondent and his family members and also physically assaulted him. It was contended that the respondent was unable to control or bear the appellant's violent behaviour. She was also threatening the respondent that she would commit suicide thereby bringing the respondent and his family members in deep trouble. The respondent claimed that the appellant was performing "black magic and always used to read books on the same". She was also accusing the respondent of having extra marital relations. On 9/8/2002 the appellant picked up quarrel with the respondent's mother, packed her belongings and started leaving the house. The respondent intervened and stopped her and called her parents and the entire situation was explained to them. It was contended that the parents of the appellant, as also her brother Sameer, tried to convince the appellant, however, she was in no mood to listen and became aggressive and violent whereupon the brother of the

appellant slapped her and she was taken to her matrimonial house. After a week she was brought back to the matrimonial house by her brother with the assurance that she would behave herself and that she was willing to give this in writing. Sometime in the month of August/September 2002, the appellant was got examined by Dr. Manoj Bhatawadekar, a psychiatric and by Ms. Minal Sule, a clinical psychologist, which showed the aberration in the personality of the appellant, including distortion and impulsiveness due to disorganization of thought process. However, the appellant did not cooperate in the treatment, as a result of which, there was escalation in the abnormal behaviour.

5. On 2/10/2002, the appellant was tested positive for pregnancy. However, inspite of being happy about the same she abused everybody in the family for flimsy reason. This was informed to the family members of the appellant, who took her away with her belongings. On 19/10/2002, the appellant's father came to the respondent's house with a lady inspector who forced the respondent to take back the

appellant for cohabitation. However, on learning of the behaviour of the appellant the lady inspector also expressed that she could not render any help and it was decided that the parties would meet in Community meeting where they met on 21/10/2002, where it was decided in the presence of the respectable Community members that the respondent should be treated first and thereafter sent back for cohabitation. After a week thereof, the respondent learnt that the appellant had filed a complaint against him and his family members, whereupon the respondent was called to Village Parle Police Station, where he was forced to take the appellant back, when the appellant promised that she would behave normally. However, the appellant continued with her erratic behaviour. On 18/3/2003, the appellant went to her parents house for delivery and delivered a girl child on 25/5/2003. There were some N.C reports filed by the respondent about the threats and the false criminal complaint lodged by the appellant. On 19/7/2003, the respondent sent a communication to the appellant through his advocate suggesting a divorce by mutual consent, which was not replied to. It appears that some time on or about

25/7/2003, the respondent filed petition No.A/1235/2007 against the appellant for dissolution of marriage which was subsequently withdrawn, leave to file a petition afresh.

6. The respondent contended that after the filing of the aforesaid petition the appellant along with 10 to 12 ladies "forceably reached the appellant with the child" at his house on 12/8/2003. The appellant picked up quarrel with the respondent's parents and assaulted them physically which was reported to the police. Similar allegations were made about the incident dated 24/10/2003 wherein it was alleged that the appellant had picked up a quarrel with the respondent's mother and threatened to commit suicide. Thus the appellant had treated the respondent with cruelty of such a nature in which the respondent cannot be reasonably expected to live with the appellant.

7. In such circumstances the respondent filed a petition for dissolution of marriage under section 13 1 (i a) and or section 13 1 (iii) of the Act .

8. The appellant contested the petition. It was denied that she ever insisted for residing separately or that she misbehaved or behaved in a disrespectful manner with the respondent or his family members. On the contrary it was contended that immediately after the marriage the mother of the respondent started taunting the appellant saying that the appellant's father had not paid enough dowry in the marriage. It was contended that the respondent was an alcoholic and was also addicted to gambling and failed to mend his ways, inspite of persuasion by the appellant. All the allegations about the various incidents as alleged by the respondent have been denied. It was contented that some time in March 2003 the appellant shifted to her parent's house as she was pregnant. She delivered a girl child on 25/5/2003, however the respondent did not come to see the appellant and the child and was not willing to take them to the matrimonial home. A letter was addressed by her father requesting the respondent to take her back. A complaint of harassment by the respondent and his family members was lodged to the police station on 21/10/2002. It was contended that with the intervention of the police, the appellant was

taken back on 1/8/2003. She claimed that during August-September 2002, the respondent and his family members obtained medical certificates from one Dr. Bhatawadekar and Dr. Minal Sule. It was contended that Minal Sule is an interior decorator and not a qualified practitioner while Dr. Bhatawadekar only gave medicines for headache and insomnia and there was no diagnosis of any mental illness. It was also contended that the fact that the appellant was employed as a teacher from July 1999 to April 2002 would show that her mental condition was normal.

9. It was contended that on 24/10/2003 the family members of the respondent locked her in the bathroom and lodged a false complaint that she was attempting to commit suicide. When the police arrived the appellant was in a shock being scared of her life and initially was not willing to open the door. When she got confirmation that the police had arrived, she narrated the entire incident of her being locked in the bathroom. All other adverse allegations made have been denied.

10. On the basis of the rival pleadings the Family Court raised in all six issues. The respondent examined himself (PW1) and his sister Akshata Ganpat Bharati (PW2), while the appellant examined herself (RW1) and her brother Kaushik Rajaram Manve (RW2.). The parties also produced certain documents.

11. The Family Court answered the issues no.1 and 3 in the affirmative thereby holding that the respondent had proved that he was treated by the appellant with cruelty and he was entitled for a decree of divorce. On the question of custody of the minor daughter Drushti, the Family Court held against the respondent. It however found that the appellant was entitled to a maintenance of Rs.1000/- per month for herself and her daughter. In such circumstances the petition came to be partly allowed, thereby dissolving the marriage between the parties on the ground of cruelty under Clause (i a) of sub section 1 of section 13 of the Act and granting certain other reliefs including maintenance subject to visitation rights to the respondent, so far as the minor daughter is concerned. Feeling aggrieved the appellant/wife

is before this Court.

12. We have heard Shri Pathak, the learned counsel for the appellant and Shri Parashurami, the learned counsel for the respondent. With the assistance of the learned counsel for the parties we have perused the record and gone through the impugned judgment and evidence led.

13. It is submitted by the learned counsel for the appellant that there is no independent witness examined by the respondent except his sister. It is submitted that the respondent had earlier filed a petition for dissolution of marriage being Marriage Petition No.A 1235/2003 which was withdrawn without seeking liberty to file a petition afresh. Thus the respondent cannot file a second petition on a similar ground. It is contended that the allegations about alleged cruelty prior to 2003 will have to be ignored as on withdrawal of the earlier petition the respondent cannot justifiably place reliance on the same. He submitted that the Family Court erred in coming to the conclusion that the respondent has proved the ground of cruelty. He therefore submits that the

appeal be allowed.

14. On the contrary the learned counsel for the respondent has supported the impugned judgment. It is submitted that the respondent has sufficiently proved the ground of cruelty, on the basis of the evidence led and the family Court after appreciating the evidence has rightly come to the conclusion that the ground of cruelty is proved and as such no interference is called for.

15. We have considered the rival circumstances and the submission made. At the out set it is necessary to mention that although the appellant had sought dissolution of marriage under section 13 (1) (ia) and section 13 (1) (iii) of the Act, the Family Court has allowed the petition only on the ground of cruelty i.e. under section 13 (1) (ia) of the Act. Thus, the learned Judge of the Family Court has not accepted the case of the respondent that the appellant has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the appellant cannot reasonably be

expected to live with the respondent.

16. There is no challenge to the refusal of grant of divorce under section 13 (1)(iii) of the Act, by the respondent. Thus, the only question is whether the respondent has proved the ground of cruelty. It would be significant to note that the very basis of the allegation that the appellant was behaving in an erratic manner and was getting up at the dead of the night, reading "tantric books" and of attempting to leave the house with bag and baggage, picking up quarrels and abusing the respondent and his family members, were based on the ground that the appellant was suffering from some sort of mental disorder and a defect in the thought process and the personality. As noticed earlier that aspect has not been accepted. Thus the allegations of cruelty meted out to the respondent and his family members by the appellant will have to be considered in the backdrop of the conduct of any other normal spouse who is not otherwise proved to be suffering from any mental infirmity or disability. The material question in cases of the present nature, is that whether the disputes and differences,

as also the quarrels and bickerings, between the spouses and their in laws are by way of the natural wear and tear of the marriage or something more which would partake of the nature of cruelty as contemplated under the provisions of the Act. It is now well settled that the matrimonial cruelty, for granting a decree of dissolution of marriage, is a cruelty of such a degree and nature that the other spouse cannot be reasonably expected to live with the erring spouse.

17. Coming back to the evidence led, while the respondent had examined himself and his sister, the evidence of the appellant consists of her own evidence and the evidence of her brother. It can thus be seen that the evidence led by both the parties is of related witnesses and there is no independent evidence as such forthcoming. We are conscious of the fact that, normally such quarrels and ill treatment happens within the four corners of the matrimonial home and the presence and/or availability of independent witnesses cannot always be insisted upon. However, in the present case, it would appear from the case made out in the petition as also the evidence led by the respondent that the

behaviour of the appellant in getting up in the middle of the night and shouting in filthy language and going out of the room, according to the respondent "not only caused a bad impression in the minds of the neighbours but has caused tremendous mental harassment to the respondent and his family members" (para 13 of the evidence of the respondent). Even in para 18 of the evidence the respondent claims that in the incident of 9/8/2002, the appellant had become hysteric and had got out of control and had created a rowdy, scene while leaving the house wherein the people from the entire building had gathered. If that be so, the availability of independent evidence and witnesses is not ruled out in this case. However, the respondent has failed to examine any of such independent witness, which may be comprising of neighbours. It was for the respondent to prove by acceptable evidence that indeed the behaviour of the appellant was such, as amounting to cruelty in which the respondent could not reasonably be expected to live with the appellant and to continue with the matrimonial tie. That in our considered opinion is lacking in this case.

18. Even so far as the allegation about the appellant reading some 'tantric books' or books on black magic is concerned, during the course of the evidence on 19/9/2005, the respondent had sought time to produce such books which the appellant used to read. On the next date i.e. 20/1/2005 the respondent did produce two books on black magic (Exh. 48). However, in the second breathe, the respondent admitted that these books do not belong to the appellant, but she used to read "similar books which are now in her custody". The respondent claims that he got the books (Exh.48) from somebody else. It can thus be seen that no reliance whatsoever can be placed on the evidence of the respondent in this regard that the appellant used to read some books on black magic. On the contrary, it would appear that the respondent had gone to the extent of producing some books from a third person, claiming that similar books were read by the appellant, which cannot be accepted.

19. The respondent in para 22 of his cross examination has stated that he had earlier filed petition No.A-1235/2003 only on the ground of unsoundness of mind of the appellant.

He claims that the said petition was withdrawn as he wanted to add the ground of cruelty also. It is obvious that the respondent filed the earlier petition only on the ground of unsoundness of mind, when the alleged acts of cruelty had preceded the filing of the aforesaid petition. That petition was also not amended to incorporate the ground of cruelty and on the contrary the said petition was unilaterally withdrawn.

20. The learned Judge of the Family Court while considering issue no.1 had divided the period of married life of the parties into three phases as under:

- I. Between 5th December 2001 till September 2002,
- II. Between 2nd October 2002 till 18th March 2003,
- III. Between 18th March 2003 till 1st February 2004.

21. The learned Judge has thereafter went on appreciating the evidence about the various incidents for the aforesaid period. In so far as the first phase is concerned, the learned Judge of the Family Court has noticed that during the respondent's cross examination (the petitioner before the

Family Court), the appellant's cross examiner had admitted both the incidents that is dated 1.2.2002 and the one which took place in the first week of August 2002. However, on careful perusal of the cross examination, it does not appear that these incidents as such, as claimed by the respondent have been admitted. On the contrary, a suggestion is given in para 10 that it was the respondent who assaulted the appellant because of which the appellant attempted to leave the house with bag and baggage. We find that the cross examination will have to be read a whole. The Family Court has thereafter considered the mental and physiological symptoms of the appellant and has referred to the prescriptions (Exh. 49) of Dr. Bhadwadekar and a report (Exh.50) issued by Ms. M. Sule, a clinical psychologist. In so far as the report Exhibit 50 is concerned the Family Court has refused to go into the details, because it was highly technical in nature. In so far as the prescriptions at Exh. 49 are concerned, issued by Dr. Bhadawadekar, the Family Court has found that the symptoms noticed were fearfulness, irritability, low functional tolerance, incensory hearing and disturbance affecting stability. It may be mentioned that

while answering issue no.2 in the negative, (about the appellant suffering from any mental disorder) the learned Judge of the Family Court has observed that the psychiatrist was not examined and no serious attempts were made to prove this allegation. It has been held that there is no sufficient evidence to hold that the appellant was suffering from mental disorder, to such an extent that the respondent could not have lived with her. It can thus be seen that once the Family Court had found that in the absence of the evidence of the psychiatrist, no reliance could be placed on the allegations about the mental disorder, the same material could not have been referred or relied upon, in order to find, that the appellant had treated the respondent with cruelty. The learned Judge of the Family Court while refusing to accept the case of mental disorder, has observed that the appellant should have got herself treated by a psychiatrist and then approached the respondent for resumption of cohabitation. It has also been found that instead of getting herself treated, the appellant and her family members tried to take help of the police machinery to force the respondent to resume cohabitation. Then again, it has been observed

that it was possible due to the disturbed emotional state that she was throwing tantrums and that probably had provoked the respondent (petitioner before the Family Court) and "he too could have at times lost his temper". In our considered view the said reasoning cannot be accepted once the very basis for the erratic behaviour of the appellant is found to be not substantiated. In the opinion of the Family Court the attempt to approach the police instead of getting herself treated was "equally illogical approach to the problem" which according to the Family Court was an act of cruelty. This is regarding the second phase. At the cost of repetition, we may state, that the evidence and the case about mental disorder and unsoundness of mind having been discarded, the subsequent finding that instead of getting herself treated having resort to police machinery and the foisting of the appellant in the matrimonial home cannot be accepted.

22. In so far as the third phase is concerned, again the Family Court has discussed about the attempt by the appellant and her family members to resort to the police machinery. Lastly in so far as the incident dated 24/10/2003

is concerned in which the appellant was found locked in the bath room, the Family Court observed that "this happened probably because of mutual distrust and hatred and in the heat of the moment but this could not be held as an act of cruelty on the part of the respondent". Thus in so far as this incident is concerned the Family Court is not with the respondent. In para 26 of the judgment the Family Court has found that the filing of the complaint under section 498 of I.P.C was " itself an act of cruelty and fortunately for the respondent and his family members, the learned Metropolitan Magistrate acquitted them". The learned Judge of the Family Court has noticed that the Magistrate has not recorded a finding that the complaint was false. However, according to the family Court the filing of the complaint was wrong.

23. We are unable to subscribe to the reasoning as aforesaid. As noticed earlier, in order to succeed in getting a decree for dissolution of marriage the allegations about cruelty have to be clearly made out and substantiated which is not done in this case. For this reason the appeal is allowed. The impugned judgment and decree granting

dissolution of marriage is hereby set aside. The order of permanent alimony granted under Section 25 of the Hindu Marriage Act shall continue for a period of six months in order to enable the appellant to take recourse to appropriate remedy, if so advised.

In the circumstances there shall be no order as to costs.

C. V. BHADANG, J.

A. S. OKA, J.

ap/-