

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 4 OF 2008

Dnyaneshwar s/o. Sheshrao Patange,
Age 30 years, Occu. Private Service,
R/o. 483, Shradha Colony, infront of
Dhoot Hospital, Mhada, Aurangabad.

**....Appellant.
(Ori. Petitioner)**

Versus

Sow. Swati w/o. Dnyaneshwar Patange,
Age 22 years, Occu. Nil,
R/o. C/o. Balwantrao Kishanrao Chavan,
Dist. Yawatmal, R/o. Wanegaon,
Tq. Umarkhed, Dist. Yawatmal.

**....Respondent.
(Ori. Respondent)**

Mr. P.P. Mandlik, Advocate h/f. Mr. P.V. Mandlik, Senior Counsel for
appellant.

**CORAM : T.V. NALAWADE AND
S.M. GAVHANE, JJ.**

DATED : September 14, 2017.

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed against judgment and decree of Hindu Marriage Petition No. A-334/2004 which was pending in the Family Court, Aurangabad. The petition filed by the petitioner/husband under the provisions of section 13 (1) (i-a) and (iii) of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short) for relief of dissolution of marriage is dismissed. Notice of the present proceeding was duly served for final hearing on respondent/wife, but

nobody has turned up for respondent/wife. The learned counsel for appellant is heard.

2) Before considering the rival contentions, the evidence given and the reasoning given by the Trial Court for dismissal of the petition, it is necessary to mention that after filing of the present proceeding, in Regular Civil Suit No. 46/2012 which was filed in the Court of Civil Judge, Junior Division, Kalamnuri for relief of partition and separate possession of the ancestral property by a daughter of respondent/wife, compromise has taken place and in the compromise dated 3.7.2012 present petitioner has agreed to maintain and take care of respondent and daughter and some portion of the ancestral property is also given to the daughter by present petitioner. No separate agreement was there for giving maintenance amount and due to the contents of the compromise document, it can be said that the parties were to resume cohabitation and respondent was to cohabit with the present petitioner. The learned counsel for present appellant submitted that in accordance with the said compromise, the wife had returned to the matrimonial house, but there was short stay, of hardly one month and she again returned back to the house of her parents. These circumstances, the development which took place after filing of the appeal are relevant in view of the provisions of the Act. The

Court is expected to get satisfied that the rival contentions and the evidence do not disclose that there will be inconvenience to one side, there was condonation of the alleged ground or there is collusion. The Court is expected to keep in mind that dissolution of marriage is a matter of great import and last expedient of law. Further, there is always discretion of the Court in granting or refusing such relief claimed under the Act.

3) The learned counsel for appellant submitted that though there was subsequent development as mentioned above, the contentions made by the petitioner in divorce proceeding need to be considered and this Court is expected to decide as to whether the judgment delivered by the Family Court is sustainable in law. He submitted that alternate relief as provided under section 13-A of the Act can also be given in such cases. Due to these submissions, this Court is discussing the rival contentions, the evidence given before the Trial Court and the reasoning given by the Trial Court.

4) The divorce proceeding was filed under two grounds viz. cruelty and incurable unsoundness of mind or mental disorder as described in aforesaid provision. The submissions made and the rival contentions show that the husband wanted to prove that due to the

aforesaid mental state of wife, there was cruelty, both physical and mental to the husband.

5) The marriage took place on 9.5.2004 and there was cohabitation of few months. The main contentions of the husband are as under :-

(i) On 14.5.2004 the wife was not feeling well and so, she was taken to Nanded Mental Health Care Center by her father and she was indoor patient in that hospital from 14.5.2004 to 28.5.2004. Due to this circumstance, the husband first time learnt that the respondent/wife has been suffering from mental disorder since long and this fact was suppressed from him.

(ii) Due to the circumstance that the wife was suffering from mental disorder and she was required to be admitted in hospital for treatment, the husband received shock and it was mental torture, cruelty to him.

(iii) Even after the discharge from aforesaid hospital of Nanded, the wife was not sent to the matrimonial house for one and half months by the father by informing that she was still ill and she was not in a position to join the company of husband.

(iv) In August 2004, the wife returned to the

matrimonial house for cohabitation, but within one week of the cohabitation, the husband realized that the wife was not knowing cooking and she was not knowing even usual domestic work. Due to these circumstances the husband could not enjoy matrimonial life and he also suffered mental cruelty.

(v) Due to the subsequent conduct mentioned above, the father of wife had again taken her for further treatment.

(vi) In the month of October 2004 the husband/appellant himself took the wife to Shanti Nursing Home of Aurangabad due to her mental illness and she was indoor patient in that hospital from 21.10.2004 to 9.11.2004. During that treatment, doctor formed opinion that the respondent/wife was suffering from schizophrenia.

6) It is the case of husband that the cause of action for filing the petition took place on 14.5.2004 when the wife was required to be taken to Nanded for giving treatment on mental illness. He contended that there was no collusion between the parties and he is entitled to get the decree of divorce on aforesaid two grounds.

7) The wife filed reply and denied that she was indoor patient in hospital from Nanded for receiving treatment for mental illness. However, she admitted that she had received treatment of Dr. Dagade. She admitted that during her cohabitation she was taken to Nanded atleast for two times and she had received medical treatment in Nanded. She also admitted that in Aurangabad in Shanti Nursing Home she received treatment, but she denied that she is suffering from incurable unsoundness of mind. She then made allegation that husband has demanded dowry from her and on that count, there was illtreatment to her. She contended that husband has made false allegations to get relief of divorce. During pendency of the petition, the wife gave birth to a girl child and the paternity is not denied by the husband.

8) The rival contentions show that there was cohabitation of 6-7 months and during the cohabitation, the treatment of psychiatrists was given atleast on three occasions to the wife. Issues were framed on the ground of cruelty and mental disorder viz. schizophrenia. As cruelty has relation to mental disorder, it was necessary for husband to prove the mental disorder as mentioned in clause (iii) of provision of section 13 (1) of the Act. The relevant provision runs as under :-

"13. Divorce.- (1) Any marriage solemnized, whether

before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree on the ground that the other party-

(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurable of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation. - In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b)"

9) Dr. Dagade is examined by the husband. His evidence shows that respondent/wife was under his treatment from 14.5.2004 to 27.5.2004. The wife was taken to doctor by her father and the

history was given by the father. The relevant record is proved as Exh. 47 to 52. The evidence was recorded on 6.12.2005 and the evidence shows that till that date the respondent/wife was under his treatment. The final opinion given by the doctor is that the wife is suffering from bipolar mood disorder-manic episode, psychiatric illness. He gave evidence that the disease is treatable, but it may or may not relapsed. The doctor has given abnormal symptoms/state. He gave evidence on the steps to be take to minimize relapse. He did not give definite opinion and he deposed that the disease may or may not be life long. He gave some symptoms of mental disorder that due to mental condition, there is possibility of suicidal tendency and some times the patient can become violent and harm others. He has deposed that due to such abnormal state of mind, there may or may not be disturbance in sexual life of the spouse. However, he has said in the evidence that in the present matter he did not notice such symptoms. It is suggested to him during cross examination that psychological tests need to be taken in such cases to give definite opinion. He submitted that as a routine such tests are taken, but even when there are no such tests he can form opinion. The record is consistent with aforesaid oral evidence.

10) Dr. Vinay Barhale of Aurangabad has given evidence for husband which is of similar nature. The wife was admitted in his

hospital from 21.10.2004 till 9.11.2004. The record like discharge card prepared by him is proved as Exh. 102. His evidence shows that history was given by the father, a relative from parents side and it shows that the wife was suffering from schizophrenia from about four years, the period which started prior to the marriage. His evidence came to be recorded on 16.2.2007. He has given evidence that the patient was non cooperative, there were complaints of disturbance in memory, weakness of memory, unnecessarily laughing and crying and there were complaints of hearing voices in ear, hallucination. His opinion regarding the possibility of danger or inconvenience to other spouse is not definite and he has deposed that partner of such patient may or may not suffer harassment. However, he gave positive evidence that the illness suffered is treatable, but not curable. In cross examination, it is suggested to him that the disease is curable. But, he did not admit that suggestion. However, he admitted that 1/3rd patient of such mental state remain completely normal, 1/3rd get impaired in functioning and remaining 1/3rd do not remain normal. No separate certificate was issued by the doctor and in discharge card, it is mentioned that the schizophrenia is undifferentiated. Thus, there was no certificate to the effect that it is incurable unsoundness of mind. There were two different opinions of two psychiatrists as above and the Trial Court has considered the evidence and has held that it cannot be

said that it is incurable unsoundness of mind. It is already observed that no certificate was issued by the second doctor to the effect that it is incurable unsoundness of mind. In clause (iii) of aforesaid section, there are two portions. The first part involves incurable unsoundness of mind and the second part contains mental disorder of the kind mentioned in the remaining provision. Though the husband could have brought the case in second part in view of the aforesaid evidence given by the doctor, the subsequent development has taken away that right from the husband. Due to the compromise decree, it can be said that the husband has admitted that he can lead life with the wife and he also admits that there was resumption of cohabitation during the pendency of the present matter.

11) Both the sides have given other oral evidence, but there is word against word. From the pleading which is already quoted, it can be said that the husband has not mentioned specific instances of abnormal behaviour of the wife though he has vaguely contended that she was suffering from mental illness. This circumstance also needs to be kept in mind while ascertaining as to whether it cannot be reasonably accepted from the husband to cohabit with the wife due to her mental condition. Thus, due to compromise decree, nothing is left with the husband now. This Court holds that more discussion of the matter is not necessary in the present matter.

12) The learned counsel for husband placed reliance on the observations made by the Apex Court in the cases reported as **AIR 2008 (SC) 3093 [Satish Sitole Vs. Ganga]** and **2012 (1) ALL M.R. 473 [Pankaj Mahajan Vs. Dimple @ Kajal]**. There cannot be dispute over the ratios of the two cases cited supra. The facts and circumstances of each and every case are always different. In the present matter, the relevant facts are already quoted and the reasons for which the decree cannot be given are also quoted. This Court holds that it is not possible to interfere in the decision given by the Trial Court, particularly due to subsequent development like compromise decree containing undertaking given by the husband. In the result, the appeal stands dismissed.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]

ssc/