



Ojhar, Taluka-Niphad, District-Nashik. They have two children i.e. daughter Sneha who is at present 12 years old and son Laukik who is 8 years old. The said children are undisputedly residing with the Respondent wife. The Petition for divorce was filed under Section 13(1)(ia) and (ib) of the Hindu Marriage act, 1955.

3           It was the case of the Respondent-wife that after the marriage till 16/5/2012, she had cohabited with the Respondent in the said proceedings i.e. the Appellant herein. It was her case that the Appellant used to cause her mental harassment. He used to abuse her in filthy language and attempted to even press her neck. It was also alleged by her that he used to drive her out of the house asking her to give divorce. Therefore, the said conduct of the Respondent/the Appellant constrained her to file the said divorce petition. It was her case that the Appellant was addicted to liquor and under the influence of liquor, he used to assault her, as also beat the children.

4           It was also her case that he used to demand money from her father and brother and inspite of the matters being sought to be settled by the father of the Respondent, the same could not be done. It was her case that on 16/5/2012, the Appellant had assaulted her and driven her out of the house so that she would ask her father to provide some premises to the

opponent for his lawn business.

5           It was also her case that her brother was assaulted as a consequence of which she lodged a complaint with the Bhadrakali Police Station. She has also alleged various acts of omission and commission on the part of the Appellant, including visiting the children's school under the influence of alcohol. She also sought the permanent alimony of Rs. 15 Lakhs.

6           The Appellant herein, who was the Opponent in the said proceedings has filed his reply. The Appellant denied the allegation of harassment and ill-treatment made by the Respondent herein. It was his case that he was instrumental in the Respondent being given computer training for which she attended MSCIT course at AIT Software Designing hardware. It was his case that both of them started computer classes. Thereafter, he closed the said business and started business of sound system. After closure of the said business he started Women World Fashion Designing Cloth Shop.

7           It was his case that when he went to the parent's house of the Respondent, the door was not opened for him and when he attempted to call her on the mobile phone, there was no response. It was his case that the Respondent has deserted him with the children and nobody is in the house to

take care of the aged parents. He has referred to the proceedings filed by him for custody of the children, as also proceedings filed by the Respondent for maintenance, which proceedings were withdrawn on account of the settlement between the parties. It was his case that from 6/4/2013 to 22/9/2013 they resided together but the Respondent has not behaved properly with him.

8           It is undisputed position that the Respondent is in government service being in the office of the Taluka Inspector of Land Records (TILR) and she is drawing Rs. 20,000/- to 25,000/- per month.

9           It is on the basis of the pleadings that the Trial Court i.e. the learned Judge of the Family Court framed issues revolving around whether the Respondent has proved that the Appellant has treated her with cruelty and whether the Appellant has deserted her continuously for more than two years before institution of the Petition without sufficient reasons and whether the Respondent is entitled to a decree of divorce.

10          In support of her case, the Respondent examined herself which examination is marked as Exh. 16. The Appellant herein has examined himself, which examination is marked as Exh. 41. The parties also relied upon the documents, reference to which has been made in paragraph-14 of the

impugned Judgment.

11           The Trial Court on the basis of the material on record came to the conclusion that the ground of cruelty has been proved by the Respondent, however, negated the ground of desertion. The Trial Court on the basis of the material on record has recorded a finding of fact as regards the ill-treatment meted out to the Respondent wife. The Trial Court had adverted to the fact that though the Respondent wife used to approach the parents of the Appellant, they used to tell her that he is their only son and that she should adjust with him as nobody could control him.

12           The Trial Court has also adverted to the fact that on 6/9/2011 the Appellant had assaulted the Respondent and also had driven out both, the Respondent and the children from the house. The Trial Court has also observed that when the father of the Appellant tried to intervene, the Appellant had assaulted his father also. The Trial Court has referred to the various admissions, which the Respondent has given in his cross-examination. It has come in the cross-examination that whenever there used to be fight between the Appellant and the Respondent, the Appellant's mother used to take side of the Respondent wife. The said admission according to the Trial Court supports the contention of the Respondent that the Appellant was not

behaving properly but used to assault her and thereby the charge of cruelty was proved.

13           It has also come on record that though there was rapprochement between the Appellant and Respondent, on as many as 3 to 4 occasions the Appellant used to go back to his old habit of assaulting the Respondent and even assaulting the children and driving them out. The factum of one such rapprochement having taken place is evidenced by the Samjutpatra (Consent Letter) filed in Divorce Petition No. 20/2012.

13           It has also come on record that the Appellant used to make demands on the parents of the Respondent wife for giving him some land wherein he could carry on the business of lawn cultivation. The impugned Judgment and Order is replete with circumstances wherein the conduct of the Appellant is reflected.

14           Heard the learned Counsel appearing for the Appellant. The learned Counsel appearing on behalf of the Appellant would contend that for trivial reasons, the Respondent-wife has left the matrimonial home and has gone to live separately. It was the submission of the learned Counsel that no case for grant of divorce on the ground of cruelty was made out.

15           Per contra, the learned Counsel appearing on behalf of the Respondent-wife Shri Avhad would submit that the behaviour of the Appellant-husband was such that no self-respecting lady would reside with him. It was the submission of the learned Counsel that the behaviour of the Appellant was such that even after rapprochement, on account of the behaviour of the Appellant, it was impossible for the Respondent-wife to reside with him.

16           In the course of hearing of the above Family Court Appeal, we had sought to make an attempt to see as to whether there could be any possibility of coming together of the Appellant-husband and the Respondent-wife, especially having regard to the fact that the children are growing up i.e. daughter Sneha being 12 years old and son Laukik 8 years old. However, the learned Counsel appearing on behalf of the Respondent on instructions of the Respondent, who is personally present in Court today, conveyed the reluctance of the Respondent wife to go back and reside with the Appellant. In view of the said reluctance shown by the Respondent-wife, no further efforts could be made for rapprochement between the parties.

17           As indicated above, the learned Trial Court i.e. the learned Judge

of the Family Court, on the basis of the material on record has recorded a finding of fact as regards the cruelty taking into consideration various instances and circumstances which amounts to cruelty under Section 13(1)(ia) of the Hindu Marriage Act. In our view, the said finding of the learned Judge of the Family Court is well founded having regard to the material on record. We therefore, do not find the instant case for interference in the Appellate jurisdiction. The above Family Court Appeal is accordingly dismissed.

18            Though we have dismissed the above Family Court Appeal, we direct that the amount of Rs. 5 Lakhs which is to be paid by the Appellant-husband to the Respondent-wife as permanent alimony, to be invested in two fixed deposits in the sum of Rs. 2.50 lakhs each in a Nationalised Bank in the name of Sneha and in the name of Laukik by the Respondent initially for a period of 3 years, so that the interest accruing out of the said fixed deposit can be utilised for the educational expenses of the children. This is on the basis that the Respondent wife who is working as a government servant can take care of herself from her income. The Respondent-wife has willingly given her consent for the same. The amount of Rs. 2.50 lakhs deposited in this Court is allowed to be withdrawn by the Respondent-wife who would utilise the said amount for opening a fixed deposit in the name of Sneha in terms of the direction as above. The balance amount of Rs. 2.50 Lakhs would be likewise

converted into a fixed deposit as and when the said amount is made available to the Respondent. We expect the Appellant to pay the said balance amount of Rs. 2.50 Lakhs within a reasonable time and not later than 8 weeks from date.

19 In view of the dismissal of the Family Court Appeal, the above Civil Application does not survive, the same to accordingly stand disposed of.

[SMT.SADHANA S. JADHAV,J]

[R.M.SAVANT, J]