

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.10 OF 2015

Vishnu s/o Babanrao Yadav,
Age-42 years, Occu:Service,
R/o-Shivnari Sankul, Vijay Nagar,
Deuli Road, Satara Parisar,
Aurangabad

...APPELLANT

VERSUS

Nalini w/o Vishnu Yadav,
Age-32 years, Occu:Service,
R/o-c/o-Pandit Radhakishan Jadhav,
Hanuman Galli,
Near Thatte Water Tank,
Begampura, Aurangabad.

...RESPONDENT

...
Mr.S.P. Salgar Advocate for Appellant.
Ms. N.R. Chobe Advocate with Mr. N.P.
Suryawanshi for Respondent (**Absent**).
...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 28TH FEBRUARY, 2018.

DATE OF PRONOUNCING JUDGMENT: 15TH MARCH, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. By this Family Court Appeal, the Appellant - husband challenges the Judgment and order dated 18th July, 2014 passed by the Judge, Family Court, Aurangabad in Petition No.A-75 of 2011 thereby dismissing the Petition filed by the Appellant for a decree of divorce on the ground of cruelty.

2. The case of the Appellant as disclosed in the petition filed by him for a decree of divorce, in brief, can be stated as under:

A) The marriage between Appellant-husband and Respondent-wife was solemnized on 12th March, 2000 as per the customs prevailing in their communities and their marital tie is still in existence. After marriage, the Respondent came to cohabit in the matrimonial house where she behaved

well for 15 days only and thereafter for one or other reason she started quarreling and ill-treating the Appellant. The Respondent wife is only daughter of her parents and so her behaviour is egoist and she is not ready to listen to anybody. She is serving as Computer Operator in Shiv Chhatrapati College and is very proud of her job. Respondent wife never gave her salary to the Appellant-husband. Whenever she was asked for salary, she used to quarrel, abuse and threaten of committing suicide and filing false complaints with police. She was in the habit of writing suicide notes. Whenever the Appellant returned from his office, Respondent did not open the door, some times she used to lock herself in the bedroom and never opened the door, due to her such behaviour the Appellant used to remain starved and also used to sleep outside the house. The Respondent did not even allow the Appellant to touch her body. She openly used to tell him that she dislikes him and her marriage was performed

against her desire. She also used to quarrel with parents and relatives of the Appellant.

B) Through the wed-lock no issue is born to the Appellant and Respondent. The Appellant took the Respondent to various hospitals for giving medical treatment to her, but the Doctor opined that the Respondent is not capable to give birth to a child. This fact was suppressed from the Appellant, and the Respondent and her father decided to go with the process of test tube baby secretly, but the Doctor told that unless the Appellant is brought the process of test tube baby will not be carried out. The Appellant has not given consent for carrying out process of test tube baby and therefore Respondent got angry and went to her parents house.

C) The Appellant tried to bring Respondent back several times, but she did not come. So on 27th July, 2009 the Appellant filed Petition for

divorce before the Family Court, Aurangabad bearing Petition No.A-269 of 2009. In the said Petition, compromise took place and the said Petition was accordingly disposed of. As per the compromise, the Appellant and Respondent started cohabiting together. Thereafter also Respondent filed proceeding under the Protection of Women from Domestic Violence Act and also proceeding under Section 125 of the Code of Criminal Procedure.

D) In February, 2011 there was marriage of brother of Respondent but no invitation was given to the Appellant. On enquiry, Respondent told that she has no relation with Appellant and so there was no question of inviting him for function. This shows that the Respondent does not treat Appellant as her husband. When the Appellant asked Respondent about her brother's marriage, she got angry, and threw wheat flour on the ground, which was in the house, and also tried to burn articles

in the house by pouring kerosene on the same. In this way the Respondent caused severe cruelty to the Appellant and since last three years she failed to give him sexual satisfaction. So on all these grounds, Appellant has claimed divorce from Respondent.

3. The Respondent wife filed written statement in the Petition and denied all the allegations levelled by the Appellant-husband against her. Respondent pleaded that her father purchased one plot in her name at Hanumannagar, Aurangabad. The Appellant started insisting the Respondent to transfer the said plot in his name and when she refused for the same, he ill-treated her and stopped talking with her brother and father. Appellant started getting food from the mess from himself, and avoided to bring grocery articles in the house. For Diwali festival of the year 2008, the Appellant went to his parents house at his native place and after returning from

there, he started insisting Respondent to give divorce as he wanted to perform second marriage. When Respondent refused for the same, Appellant started to give ill-treatment to her. He never took her for the marriage ceremony of his relatives. As the behaviour of the Appellant remained unchanged, Respondent filed complaint with Women Grievance Redressal Cell. As the Respondent could not conceive child, she took medical treatment but Appellant never co-operated with her in the said medical treatment. He intentionally avoided to keep sexual relations with her when the Doctor advised for the same. Thereafter Appellant started residing with his friend and from there he intentionally used to come at odd hours of night and used to bang door and if Respondent used to open the door, Appellant used to assault her and used to tell her to leave the flat. In fact the Appellant has caused severe cruelty to the Respondent. It is pleaded by the Respondent that the Appellant is now residing with

one lady named Vidya at Gurudatta Nagar, even one son is born to him from said Vidya. Appellant wants to perform marriage with said Vidya and therefore he is ill-treating Respondent and insisting for divorce.

4. After considering the afore-said pleadings of the parties, and considering the oral and documentary evidence brought on record, the Family Court dismissed the Petition for divorce.

5. Learned counsel appearing for the Appellant invites our attention to the evidence of the Appellant as well as the evidence of father of the Appellant, namely Vishnu Babanrao Yadav, and submits that Appellant has proved that after the marriage Respondent was not behaving properly and therefore on the ground of 'cruelty' he is entitled for decree of divorce. Referring to the grounds taken in the Appeal, learned counsel submitted that the Family Court has failed to

appreciate the oral and documentary evidence in its proper perspective. Therefore, he prayed that the Appeal may be allowed.

6. Though appearance has been caused by two Advocates for the Respondent-wife, when the Appeal was called out for hearing, none appeared for Respondent.

7. We have perused the original record and proceedings. On the basis of rival contentions and reliefs claimed, the issues were framed by the Family Court. The Appellant-husband was expected to prove the case of desertion and cruelty.

8. We have perused the evidence of the Appellant. The examination-in-chief is as per the pleadings in the Petition. The evidence of the husband shows that on previous occasion also there was dispute and he had filed Divorce Petition bearing No.A-269 of 2009, but after intervention

of well wishers, the compromise was arrived at, and the dispute was settled and wife had resumed for cohabitation. After resumption of the cohabitation, there was again dispute between the couple and Respondent wife filed the false proceeding under the provisions of the Protection of Women from Domestic Violence Act and she also filed proceeding under Section 125 of the Code of Criminal Procedure Code. Appellant further deposed that he was not invited for the marriage ceremony of brother of the Respondent and on that count also there was quarrel between the couple.

9. We have perused the cross-examination of the Appellant. The Appellant has specifically admitted that in both the proceedings filed by Respondent, under the provisions of the Protection of Women from Domestic Violence Act and under Section 125 of the Code of Criminal Procedure, orders are passed in favour of Respondent and Appellant was directed to pay maintenance to the

Respondent and allow her to reside in his house. Thus it is clear that there is no substance in the contention of the Appellant that false cases were filed by the Respondent against him.

10. We have perused the evidence of Babanrao Ashruba Yadav, father of the Appellant. In his examination-in-chief he has reiterated the pleadings in the Petition. During the course of cross-examination, witness Babanrao has admitted that once or twice in a year, he had visited the house of Vishnu at Gurudatta Nagar. Thus, father of the Appellant has admitted that Appellant was residing at Gurudatta Nagar and thus he supports the allegation of the Respondent that Appellant is residing at Gurudatta Nagar with one lady, namely Vidya. Babanrao further admitted that he never visited the resident of Appellant and Respondent when they were residing at Shivneri Sankul. He further stated that after their marriage Appellant and Respondent only once visited the village

Chikhali, the native place of Babanrao. Thus, it is clear that father of the Appellant has no personal knowledge exactly on what issues there was dispute between the couple and he was not on visiting terms with the couple.

11. Respondent has examined herself at Exhibit-49. In her examination-in-chief she deposed that her father had purchased a plot in her name at Hanuman Nagar, Aurangabad. She further deposed that Appellant was insisting her to transfer the said plot in his name and when she refused for the same, Appellant started to ill-treat her and also quarreled with her father. She further deposed about ill-treatment given to her by the Appellant on various occasions. She further deposed that Appellant is residing in Gurudatta Nagar, Aurangabad with one lady, namely Vidya, and said Vidya had conceived a son from the Appellant.

12. During the course of her cross-

examination, Respondent admitted that she is presently working as computer operator in Shiv Chhatrapati College, Aurangabad. She has denied that for her appendix operation entire amount was spent by the Appellant. She has admitted that Appellant had purchased a flat in Shivneri Sankul at Satara Parisar, Aurangabad.

13. The Respondent contended that Appellant had illicit relations with one lady, namely Vidya, he is residing with said Vidya at Gurudatta Nagar, and he has one son from the said relationship. To substantiate her aforesaid contentions, Respondent has examined the peon working in Municipal Corporation, Aurangabad. He had produced on record attested copy of Birth Certificate of one male child, wherein name of father of the child is - Vishnu Babanrao Yadav, i.e. Appellant, and name of mother is Vidya Vishnu Yadav.

14. Respondent has also examined one Karbhari

Namdeo Nalawade, Police Naik at Exhibit-69. He deposed that Appellant has lodged a complaint alleging that father and brothers of the Respondent had abused and beaten him at Shivneri Sankul, Satara Parisar, Aurangabad. He further deposed that he had inquired into the said complaint and after inquiry it was revealed that no such incident took place at Shivneri Sankul. Thus, from the evidence of this police person, it is clear that Appellant was in the habit of filing false complaints making allegations against father and brothers of the Respondent.

15. We have already narrated the pleadings of the parties and the evidence tendered by them. The allegations levelled by the Appellant-husband against the Respondent-wife are absolutely vague and general in nature. The Appellant has not given specific instances regarding the allegations levelled by him against his wife. Appellant has pleaded that the wife used to behave badly with

the husband and his parents, but the said statement is not substantiated by the Appellant by giving specific instances. The Appellant has alleged that Respondent was in the habit of writing suicide notes, however the copies of said suicide notes are not placed on record. The Appellant has further alleged that Respondent is not able to conceive a child. However, in support of the said allegation, the Appellant has not placed on record any medical evidence. Though Appellant had denied his illicit relations with one Vidya and that he was residing with said vidya at Gurudatta Nagar, father of the Appellant had clearly admitted in his cross-examination that Appellant was residing at Gurudatta Nagar. Though in support of allegations of cruelty the Appellant has examined his father, during the course of his cross-examination this witness Babanrao admitted that he was not frequently visiting the residence of the couple and he was not knowing about the dispute between the couple. He further admitted

that couple was not frequently visiting his residence at Chikhali. Thus, on the point of 'cruelty' the evidence of witness Babanrao is not at all useful.

16. Though earlier divorce Petition was filed by the Appellant making allegations of cruelty, the same was disposed of in terms of compromise arrived at between the couple and in pursuance of the said compromise, the couple had started residing together. Again the Appellant has filed present divorce Petition bearing No.A-75 of 2011 making same allegations which were made in the earlier Petition, which was disposed of in terms of compromise arrived at between the parties. Therefore such bald allegations cannot be believed. In this respect, the Family Court has rightly observed that the Appellant cannot take any benefit of the earlier complaints filed by him and the contents of the previous Petition filed by the Appellant.

17. Though the Appellant has produced on record copies of the complaints filed by him in the police station making allegations against the Respondent, on perusal of the contents of the said complaints, it appears that such complaints were filed by the Appellant only to create record against the Respondent.

18. From the perusal of entire evidence placed on record, we are of the considered view that the allegations made by the Appellant against Respondent regarding cruelty are too vague and general. A decree of divorce on the ground of cruelty cannot be granted on the basis of general allegations levelled by the husband against the wife, without clearly mentioning the manner in which the wife has ill-treated the husband. General allegations that the wife used to avoid the husband and his family members and that she used to often visit her parental house and was not

preparing food for the husband, was not opening the door of the house after his return to home, cannot constitute cruelty.

19. The Family Court has rightly considered the evidence on record to hold that the allegations levelled by the husband against the wife do not constitute cruelty which would entitle the husband to a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act. The Family Court has rightly come to the conclusion that the conduct of the wife was not such that she had shown total disregard to the husband. On appreciation of the entire evidence on record, we find that the husband has not established that the wife had treated him with cruelty. The Family Court has rightly come to the conclusion that the husband has alleged cruelty twice, firstly in his previous Petition No.A-269 of 2009 and secondly in the present Petition, but he has miserably failed to prove the same. The Family Court has further

held that, the defence which is proved by Respondent wife shows that husband himself has not only kept illicit relations with one lady named Vidya but also he has begotten one son from her. The Family Court has rightly come to the conclusion that the husband was not entitled to a decree of divorce on the ground of cruelty.

20. For the reasons afore-stated the Family Court Appeal stands dismissed, with no order as to the costs.

[S.M. GAVHANE, J.]

asb/MAR18

[S.S. SHINDE, J.]