

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

**FAMILY COURT APPEAL NO.134 OF 2008
IN
M.J. PETITION NO.691 OF 2005**

Madhu Sangmeshwar Dhyade ... Appellant
v/s
Sangmeshwar Sharanappa Dhyade ... Respondent

Mr Sanskar Marathe for Appellant.
None for Respondent.

**CORAM : K.K. TATED AND
B.P. COLABAWALLA, JJ.**

**RESERVED ON : 07 JUNE, 2018
PRONOUNCED ON : 13 JULY, 2018.**

JUDGMENT [PER B. P. COLABAWALLA J.] :-

1. At the outset, we must mention that when this matter was called out in the morning session, none appeared on behalf of the appellant. It was therefore dismissed for default. Thereafter, in the afternoon session, the matter was mentioned by the learned counsel for the Appellant, who stated that he was ready to go on with the matter. In these circumstances, we have restored the matter back and heard the learned counsel for the Appellant on the merits of the matter.

2. This Appeal is filed by the Appellant – wife, taking exception to the judgment and decree dated 29th May 2008 passed by the Family Court No.1, Pune at Pune. This judgment was delivered in a Petition filed by the Respondent – husband for dissolution of marriage and for a decree of divorce on the ground of cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955. By the impugned judgment, the Divorce Petition filed by the Respondent – husband was allowed and the marital ties between the Appellant – wife and the Respondent – husband were dissolved by a decree of divorce as contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955.

3. The brief facts giving rise to the present controversy are that the Respondent – husband and the Appellant – wife were married as per Hindu rites and ceremonies at Udgir on 28th April 1998. It was an arranged marriage. The entire expenses of the marriage were borne by the parents of the Appellant – wife at Udgir. Out of the said wedlock, the couple was blessed with a son named Jay who was born on 15th December, 2004.

4. It is the case of the Respondent – husband that soon after

the marriage, the Respondent – husband noticed that the behavior of the Appellant – wife was not proper. According to the Respondent – husband, even though he used to be out of the house for the entire day, he realized that his mother was under constant pressure as she was being harassed and tortured by his wife. According to the Respondent – husband, the Appellant – wife used to allege that his mother used to commit theft of food-grains and other articles from the house and would give them to her relatives. When the Respondent – husband questioned his wife about such allegations, she used to insult him and subsequently forced the Respondent – husband to get a separate residence for their livelihood. It is in these circumstances that the Respondent – husband separated from his mother and brother and started residing separately.

5. It is the further case of the Respondent – husband that his wife (the Appellant) deliberately used to ignore the Respondent – husband and used to insult him in the presence of his parents. According to the Respondent – husband, the Appellant – wife was also in the habit of giving threats to commit suicide and put him behind bars. It is thereafter alleged that the Respondent – husband was forced in 1998 to visit the parental home of the Appellant during Diwali as she had threatened to commit suicide.

6. It is thereafter the case of the Respondent – husband that in September 1999, due to some quarrel, the Appellant – wife tried to jump from the fourth floor of the building. The Respondent – husband however rescued her and brought her back home and therefore the attempt to commit suicide was avoided.

7. It is the case of the Respondent – husband that in June 2000, the Appellant – wife dashed herself against the wall with a view to commit suicide. Immediately, the Respondent – husband took her to Trimurti Hospital at Dhayari where she was treated and brought her back to home.

8. The next incident that has been averred by the Respondent – husband is that in the month of August 2000, the Appellant – wife again ran away from the house with a view to jump in the canal near the house. At that time also, the Respondent – husband chased her near the canal and brought her back home. According to the Respondent – husband, all these acts and incidents caused tremendous amount of mental agony and pain to him.

9. It is further the case of the Respondent – husband that in

the month of October 2000, the Appellant – wife picked up a quarrel with him and thereafter left the matrimonial home and stayed with her parents for a period of two months. The Respondent – husband even went to Udgir (where the Appellant – wife's house is situated) and met her uncle. After much persuasion, he brought back his wife from the maternal home. It has also been averred that the Appellant – wife was reluctant to have a child and finally after certain treatment taken by the Appellant – wife, they were blessed with a male child (Jay) on 15th December 2004.

10. It is thereafter contended by the Respondent – husband that the Appellant – wife again tried to commit suicide on 1st May 2004. At that time, there was some quarrel between the Respondent - husband and the Appellant – wife. Due to these quarrels, the Respondent – husband came outside the house along with the son Jay and requested his neighbour to convince his wife. At that time, the Appellant – wife had locked the door of the house from inside. The Respondent – husband and the neighbour (Mrs Lalita Madhavrao Lanke) knocked on the door of the house and shouted whereupon the Appellant – wife opened the door and started shouting as she was ablaze. She was suffering from serious burn injuries. The Respondent – husband therefore with the help of his neighbour (Mrs Lanke) shifted

the Appellant – wife to Adate Hospital where she was given treatment for a period of 35 days.

11. It is the further case of the Respondent – husband that on 6th June 2005, the mother of the Appellant – wife brought their son Jay from the house to the Hospital. Since the mother of the Appellant – wife had not return back with the child Jay, the Respondent – husband went back to Adate Hospital along with his mother when they were informed that the Appellant – wife and her parents had taken a discharge from the Hospital against medical advice and they had left for Udgir. The Respondent – husband immediately tried to contact the Appellant on her mobile phone which was switched off. Finally, at 10.30 p.m., the Respondent – husband was informed by the uncle of the Appellant that the Appellant has come to Udgir along with the child and they were staying there. Thereafter, the Respondent – husband made several attempts to bring back the Appellant – wife at matrimonial home, but without any success. It is in these circumstances and due to all these incidents that had taken place, that the Respondent – husband finally filed a Petition for divorce on 2nd September, 2005 on the ground of cruelty as contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955.

12. Once this Petition was served upon the Appellant – wife, she appeared in the matter and controverted all the allegations in her written statement (Exh.13). The Appellant – wife denied almost all the allegations leveled against her in the Petition. She denied that she was cruel to the Respondent during the entire period of co-habitation . She further denied that she used to pick up quarrels with the Respondent – husband and his mother on flimsy grounds or that the Respondent – husband was required to shift his residence only because she had insisted for the same. On the contrary, it was her case that it was at the instance of the Respondent – husband that the residence was shifted as it was more convenient for him to commute to his place of work. In a nutshell, it was denied that she has caused any mental agony or pain to the Respondent – husband due to her behaviour.

13. As far as the burning incident that took place on 1st May 2005 is concerned, it was the case of the Appellant – wife that at about 8.00 p.m. on that day, the Respondent – husband had gone with their child Jay on the terrace of the house. The mother of the Respondent – husband had gone to the temple nearby. The Appellant – wife was alone at home and was preparing food in the kitchen. At that time, she attempted to take some material from the nearby shelf and accidentally

her saree caught fire near the stomach. She then tried to extinguish the fire by pouring water in the bathroom. She was suffering burn injuries on her face and other parts of the body for which she was shifted to Adate Hospital for treatment. She was in the Hospital for 35 days. Thereafter, she was discharged on 6th June 2005 and went to her parents' house at Udgir. The Appellant – wife has denied that she left the Hospital behind the back of the Respondent – husband and the decision to go to Udgir was taken in consultation with the Respondent – husband. It is also her case that due to the burning incident, she had white spots and various burn marks on parts of her body which is why the Respondent – husband was trying to divorce her. As such, it was contended that the Respondent – husband had filed a false Petition claiming a decree of divorce by narrating a false version of the incident before the Court which, according to the Appellant – wife, had never taken place.

14. It has been further averred by the Appellant – wife that she and her family members always supported the Respondent – husband. Since the Respondent – husband wanted to start a fabrication shop, the Appellant's father gave a sum of Rs.1,00,000/- to the Respondent – husband to start the same. Thereafter, the Respondent – husband demanded another sum of Rs.1,00,000/- from the father of the

Appellant. However, her father gave only Rs.50,000/- and by reason of which the Respondent – husband got annoyed and decided to sever the matrimonial ties with the Appellant. It was averred that the Appellant – wife had already filed a Petition seeking restitution of conjugal rights in Udgir Court bearing FCA No.58 of 2005. She accordingly stated that the Petition filed by the Respondent – husband was false and should be dismissed. We must mention here that the learned counsel appearing on behalf of the Appellant fairly stated before us that this Petition (being FCA No.58 of 2005) filed in the Udgir Court by the Appellant was not prosecuted by her and the same has been dismissed for default.

15. Be that as it may, on the aforesaid pleadings, the Family Court framed the following issues and gave its findings thereon as per the evidence led by both parties. They are as under :-

<u>ISSUES</u>	<u>FINDINGS</u>
“1) Does the petitioner prove that the Respondent wife treated him with cruelty as stated in para nos.7 to 11 of the Petition ?	Proved
2) Does the Respondent prove that after the incident dated 1.5.2005 the Petitioner sent her to parental home at Udgir and since then he has deserted her ?	Not proved.

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| 3) <i>Whether the Respondent prove that the Petitioner treated her with cruelty as contended in para 12 of the written statement ?</i> | <i>Not proved.</i> |
| 4) <i>Is the Petitioner entitled to a decree of divorce as sought ?</i> | <i>Yes.</i> |
| 5) <i>What relief, order and costs ?</i> | <i>As per final order.”</i> |

16. After considering the pleadings and the evidence led by the parties, by a detailed judgment, the Family Court allowed the Petition filed by the Respondent – husband on the ground of cruelty as contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955. The ground on which the Petition was allowed was with regard to the burning incident that took place on 1st May, 2005. All the other grounds of alleged cruelty were negated by the Family Court. It is aggrieved by this judgment that the Appellant – wife is before us in the present Family Court Appeal.

17. On the basis of pleadings, the following points arise for our consideration:-

- (1) Whether the Respondent – husband has made out a case for divorce under section 13(1) (ia) of the Hindu Marriage Act, 1955? YES.

- (2) Whether the Appellant – wife has made out a case for interference in the judgement and decree dated 29.05.2008 passed by Family Court No.1, Pune at Pune? NO.

Both the points are decided together as per the discussion that will follow.

18. The learned counsel appearing on behalf of the Appellant – wife has taken us through the impugned judgment in great detail as well as the pleadings and the evidence led by the respective parties. The evidence of the Respondent – husband can be found from pages 53 to 72 of the paper-book. As far as the incident of 1st May, 2005 is concerned, the husband has led evidence in this regard which can be found at paragraphs 14 to 16 of the affidavit of the examination-in-chief (pages 56 and 57 of the paper-book). It is stated on oath by the Respondent – husband that on 1st May 2005, the Appellant asked him for going to her parents' house. However, due to the care of the child, and as the summer was very hot at Udgir he suggested not to go. On this suggestion being made, the Appellant – wife started quarreling with him and therefore he took his son (Jay) outside and requested his neighbour (Mrs Lanke) and who was a friend of the Appellant – wife to convince her. However, by then, the Appellant – wife closed the door of the house from inside. Thereafter, immediately Mrs Lanke and

Respondent – husband requested the Appellant – wife to open the door which she did not but in a few minutes started shouting and thereafter opened the door when it was seen that she was ablaze and had several burn injuries. With the help of the neighbours, the Respondent – husband took the Appellant – wife to Adate Hospital for treatment where she was admitted till 6th June, 2005. It has been stated on oath by the Respondent – husband that on 6th June 2005 he visited the Appellant and left for his job. Thereafter, the mother of the Appellant took their child Jay to the Appellant – wife at the Hospital. Since the mother of the Appellant – wife had not returned with the child after about 2 / 3 hours, the mother of the Respondent – husband along with his neighbour went to the Hospital. At that time, it was found that the Appellant – wife and her parents had left the Hospital without either informing the Respondent – husband or his mother. This fact was informed to the Respondent – husband by his mother. The Respondent – husband anticipated that all of them might have gone to Udgir, and therefore tried to contact the Appellant – wife on her mobile phone which was switched off. He thereafter contacted the uncle of the Appellant and asked the whereabouts of the Appellant. At 10.30 p.m. the Respondent – husband was informed that the appellant with the child and her parents were at Udgir. Accordingly, on 8th June 2005, the Respondent – husband went to Udgir for a meeting with the

Appellant and her parents. However, the Appellant and her parents did not turn up for the said meeting when the Respondent – husband realized that the Appellant – wife was not interested at all to be with the Respondent and hence the Respondent – husband requested her uncle for a divorce. However, the brother of the Appellant had threatened the Respondent – husband stating that he can do whatever he likes.

19. With reference to this incident, in the cross-examination, the Respondent – husband has denied that on 1st May 2005, in the evening between 7.30 p.m. to 8.00 p.m., the Appellant – wife was cooking in the kitchen. He has stated that he was present in the house on that day. In the afternoon, he had gone with his son to the terrace of the house. He has denied that there was no quarrel between himself and his wife over any issue. He stated that when he returned back from the terrace, the Appellant took up a quarrel with him at which time he went to the house of his neighbour (Mrs Lanke) along with his son Jay to request her to advice his wife. At that time, the Appellant – wife closed the door of the house from inside. The neighbour (Mrs Lanke) being the friend of the Appellant – wife immediately came there and the Respondent – husband as well as Mrs Lanke asked the Appellant to open the door which she failed to do. After some time,

when she opened the door, she was set on fire. Immediately the Respondent – husband called her uncle and told him about this incident. The maternal uncle advised to take her to the Hospital and requested him not to file any police complaint with reference to this incident. Thereafter, the Respondent – husband and Mrs Lanke took the Appellant to Trimurti Hospital. Since the doctor was not available there, they thereafter went to Adate Hospital where the Appellant was admitted. It is also specifically stated that she took a discharge on 6th June 2005 against the advice of the doctor.

20. On going through the examination-in-chief as well as cross-examination for the Respondent – husband on this issue, we do not find that his evidence has been shattered in any form. To substantiate the truth of this incident, the Respondent – husband also led the evidence of Mrs Lalita Madhavrao Lanke who was the neighbour. In her examination-in-chief, she had categorically stated that on 1st May 2005 since morning there was a dispute between the Appellant -wife and the Respondent – husband. The Respondent – husband came to her house twice and requested her to advice his wife. In the evening at about 7.00 p.m. the Respondent – husband came to her house along with his child. He told the said Mrs Lanke that the Appellant – wife had closed the door from inside and therefore asked

her to come to his house. She then rushed to the house and many persons from the building also came there. They knocked the door which was closed from inside. The Appellant – wife thereafter opened the door at which time she was ablaze and the clothes on her person were burning. The fire was put out and after which Mrs Lanke provided a gown to her. Thereafter, Mrs Lanke and the Respondent – husband took the Appellant – wife to the Hospital (Adate Hospital) where she was admitted. She has categorically deposed that she had seen the incident herself. In the cross-examination she has categorically stated that the incident took place at about 7.30 p.m. to 8.00 p.m. and the Appellant – wife opened the door herself. She has further stated that she has deposed as the incident was seen by her. It is also further stated in cross-examination that she had good relations with the appellant – wife. Nothing in the cross-examination of Mrs Lanke Madhavrao Lanke seems to have shattered her testimony or make it unbelievable.

21. On the other hand, with reference to this incident, the Appellant – wife has deposed in paragraphs 13 to 15 of her examination-in-chief. In these paragraphs, the same story has been reiterated as mentioned in the written statement viz. that she did not put herself on fire but her clothes accidentally caught fire while she was

cooking. She has stated that she went to her parents' house because she was still weak from the burn injuries and it was difficult to expect an early recovery and it is in these circumstances that she decided to go to Udgir (her parents' house) and this was done at the instance of the Respondent – husband.

22. In the cross-examination of the Appellant – wife, the incident of burning is admitted but her version is quite the opposite than what has been deposed by the Respondent – husband as well as Mrs Lanke (the neighbour). It is an admitted fact that when the incident of burning took place; she was admitted to Adate Hospital and that after discharge from the Hospital, she went to her parental house at Udgir. She, however, has stated that she went to her parental house because the Respondent – husband was not there. This clearly shows that her husband was not present and that on the day of her discharge, her mother and her child were present in the Hospital. She has further admitted that from the time of her discharge, for a period of two years, she was residing in her parental house upto 9th May, 2007. She has also stated in her cross-examination that except for her oral words, she has no other evidence. In contrast, it is the categorical case of the Respondent – husband that the Appellant – wife took a discharge from the Hospital without informing him and thereafter

proceeded to her parental house without his knowledge, and that too with their child (Jay). Looking to all this, the story put up by the Appellant – wife, at least to our mind, is not believable.

23. What is also important to note is that in the cross-examination at paragraph 21, (page 93-94 of the paper-book), the Appellant – wife has also admitted that she has lodged a complaint against the Respondent – husband as she was allegedly dragged out of the Respondent – husband's house. In this regard, she has admitted that she has lodged a complaint under section 498A of the Indian Penal Code. This complaint was filed against the Respondent – husband, his brother Parameshwar, his mother, and the second wife of his brother in law - Nikita. What has happened further in this complaint is not mentioned anywhere in her evidence.

24. Apart from examining herself, the Appellant – wife has also examined Dr Nivrutti G. Nadate, being the doctor who treated the Appellant. In his examination-in-chief, he has clearly stated that the Appellant was admitted to the hospital by her neighbour and her husband and on 6th June 2005, she was discharged as per the request of her relatives.

25. What we find is that all this evidence has been duly considered by the Trial Court in the impugned judgment. The findings of the Trial Court on this issue (the burning incident) are from paragraph 22 onwards. The Trial Court in paragraph 28 thereafter holds that on a careful and close scrutiny of the entire evidence, it had no hesitation to accept the case of the Repsondent – husband that it was the Appellant – wife who had treated him with cruelty. It was therefore held that the circumstances created were such that the Repsondent – husband could not reasonably be accepted to co-habit with the Appellant – wife. In these circumstances the Trial Court allowed the Petition filed by the Reposndent – husband and dissolved the marriage by a dedcree of divorce as contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955.

26. As mentioned earlier, we too have carefully gone through the pleadings of the parties and the evidence led in the above matter. We are in full agreement with the analysis of the evidence done by the Trial Court as well as the findings arrived at thereon. We are of the opinion that the view taken by the Trial Court is the correct one when it came to a finding that the Respondent – husband was treated with cruelty by the Appellant – wife and hence was entitled to a decree of divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955. In

these circumstances, we do not think that the impugned judgement and decree of the Trial Court warrants any interference.

27. For all the foregoing reasons, we find no merit in this Appeal. It is therefore dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)