

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.111 OF 2012

Shashi Satyanand Eppaturi.	]	
Aged about 46 years, Occupation – Service.	]	
Residing at B-602, Sagar Regency, Vakola	]	
Bridge, Santacruz (East), Mumbai – 400 055.	]	... Appellant

Versus

Jyoti Shashi Eppaturi.	]	
Aged about 34 years, Occupation – Service.	]	
Residing at B-602, Sagar Regency, Vakola	]	
Bridge, Santacruz (East), Mumbai – 400 055.	]	... Respondent

Mr. K. H. Giri a/w Geeta Tripathi for Appellant.
Mr. G. N. Salunkhe i/b V. S. Kokitkar for Respondent.

**CORAM :- K. K. TATED &
SARANG V. KOTWAL, JJ.**

RESERVED ON :- 14 FEBRUARY, 2018

PRONOUNCED ON :- 01 MARCH, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. By the present Appeal, the Appellant has challenged the Judgment and Decree dated 17/05/2012 passed by the Judge, Family Court No.4, Mumbai, whereby the Appellant's petition for Dissolution of Marriage on the ground of cruelty u/s 13(1) (ia) of Hindu Marriage

Act, 1955, was dismissed. The Respondent is his wife. There is no issue born from their wedlock.

2. It is the case of Appellant in his petition before the Family Court, that, he got married with the Respondent on 13/02/2005 at Sion, Mumbai, according to Hindu Vedic rites. It was an arranged marriage. The marriage was registered with the Registrar of Marriages at Bandra (E), on 17/12/2005. Both of them started residing in their matrimonial house at Santacruz, Mumbai. It is the case of the Appellant that, they were residing with his aged parents. The Appellant has stated in his Petition that the Respondent had negative attitude towards his parents, right from the beginning and that she used to abuse, insult and threaten them. According to the Appellant, the Respondent wanted to drive his parents out of their matrimonial house. He has further stated that the Respondent was working as a teacher in a High School at Khetwadi, Grant Road. Her working hours were from 08.45 a.m. to 03.30 p.m. It is the Appellant's case that the Respondent used to wake up late and when the Appellant and his parents tried to wake her up early, she used to abuse and insult them. It is further the Appellant's case that Respondent used to return home after 06.00 p.m. and would go to sleep directly for a couple of hours and only after 08.30 p.m. she used to cook. It is further his case that the food cooked by her was neither tasty nor sufficient and when he used to return home after many hours of hard work, the Respondent hardly used to spend quality time with him. She never used to offer him a glass of water on his

returning home. She always insisted that his parents should leave their house. The Appellant has further stated that she used to leave in the morning of Friday and would return only on Monday and over the weekend, she used to reside with her mother at Sion. After putting forth his general grievance, the husband has further narrated a few instances which he claimed, amount to cruelty. According to the Appellant on 05/11/2005, the Respondent picked up quarrel in the night and did not accompany his parents when they wanted to visit the ailing sister of the Appellant's father. When the Appellant's parents left the house on that day, the Respondent created a big scene and banged knife on the doors of kitchen and bathroom and threatened to commit suicide. Then on 06/11/2016, she went to her mother's place and stayed there for about 10 days. It is the Appellant's case that he somehow pacified her.

3. The second instance as narrated by him pertains to an attempted mediation done by the Appellant's family friend Dr.Narayanaswamy on 13/11/2005. The Respondent had not liked the said attempt and had picked up fight with the Appellant and his parents on that ground.

4. He has narrated the third incident dated 24/02/2006 when the Respondent did not accompany the Appellant and his parents to attend the Appellant's brother's wedding reception. When the Appellant returned home, he found that Respondent had scattered sarees and other belongings of his mother on the floor.

5. The fourth incident is dated 30/03/2006. It was an auspicious day of Gudhi Padwa when the Respondent broke the Appellant's mother's bangles.

6. The fifth incident is dated 29/04/2006 when the Respondent allegedly removed the Appellant's father's clothes from the cupboard and asked him to leave their house. According to the Appellant, she became violent and fought with all of them and scratched the Appellant. The neighbours were called to pacify her.

7. The next incident is dated 30/04/2006, when she again assaulted the Appellant with fists and twisted his right hand fingers. That night, the Appellant lodged his NC complaint with the police and took treatment at the municipal hospital. According to the Appellant, in this background, he had to file the petition for divorce on the ground of cruelty.

8. The Respondent filed her appearance and tendered her Written Statement. In the Written Statement, she denied all the allegations against her and narrated a few instances of her own when the Appellant had treated her with cruelty. According to her, she had never treated the Appellant or his parents with disrespect. In fact on 03/06/2006, the Appellant did not allow the Respondent to enter the matrimonial house by keeping the door locked. She had to enter his house after breaking open the lock. According to her, she used to leave their house early in the morning after preparing tiffin for herself and the Appellant, after cooking food for all the family members. It is

her case that the Appellant's parents never liked good relations between the couple and caused a rift between them. It is her case that she was burdened with considerable workload in her school and used to return home at around 05.30 to 06.00 p.m. On her way back, she used to buy vegetables. After coming home, she used to prepare tea for herself and Appellant's parents and then used to cook food for everybody. She has also denied the specific instances alleged by the Appellant.

9. The Appellant examined himself and his father in support of his case. On the other hand, the Respondent examined herself, one J. N. Pawan, who was the cousin of the Appellant and who was instrumental in bringing about the alliance. The Respondent examined one Shankar Pagote, who was husband of the Respondent's sister. The Respondent also examined one Asha Vardhan who was residing in the same building and was on visiting terms with the Appellant and the Respondent. All these witnesses have supported the Respondent's case. In particular, the aforesaid neighbour Asha Vardhan categorically stated that the Respondent was always doing some work when Asha visited their house. The Respondent was either cooking food or doing some cleaning work and the Appellant's parents always used to taunt her and that the Respondent never treated them with disrespect. Asha also narrated the incident dated 03/06/2006 when the Appellant prevented the Respondent from entering their house and did not bother about her safety in the late night and very reluctantly accompanied her to her mother's house.

10. The Appellant and the Respondent gave evidence through their affidavit which was on similar lines as their pleadings. They were cross examined by the other side. The cross examination of the parties did not yield any significant material. Most of the cross examination was in the form of suggestions. One of the suggestion put to the Respondent was that there was no physical relationship between them after March 2006 and the Respondent had denied that suggestion.

11. After recording the evidence and hearing the parties, the learned Judge of the Family Court recorded findings that the Appellant had failed to prove that the Respondent had treated him with cruelty. The learned Judge also held that there was a bar u/s 23 of the Hindu Marriage Act against passing of the decree in favour of the Appellant. The learned Judge observed that the evidence of the Appellant and his father was shaky and did not inspire confidence and in any case, the evidence led on behalf of the Appellant did not establish that the allegations were sufficient to consider the ground of cruelty. The learned Judge also criticized the Appellant for expecting the Respondent to bring a glass of water on his returning home. The learned Judge observed that the specific instances were not supported by relevant evidence and in any case did not amount to cruelty. On the other hand, the evidence led by the Respondent was accepted and ultimately it was held that the Appellant had failed to prove his case.

12. We have heard Mr. K. H. Giri, learned Counsel for the Appellant and Mr. G. N. Salunkhe, learned Counsel for Respondent.

With their assistance, we have perused the R & Ps and have read the evidence. After hearing their arguments, the following points arise for our consideration.

SR. NO.	POINTS	FINDINGS
1	Whether Appellant has made out a case for interference with the impugned Judgment and Decree ?	No
2	Whether the evidence led by the Appellant is sufficient to prove that the Appellant was treated with cruelty by the Respondent ?	No
3	Whether the Appellant is entitled for a decree of divorce ?	No
4	What Order ?	As per the Final Order

REASONS

13. Mr. Giri, the learned Counsel of the Appellant, submitted that the Respondent was constantly telling the Appellant to ask his parents to leave their house, that by itself was cruelty. He further submitted that the Respondent was abusing and insulting the Appellant and his parents. She was not spending quality time and was not acting like a devoted wife to the Appellant and daughter-in-law to his parents. The Appellant was not doing any household work and was constantly visiting her matrimonial house. He further submitted that the specific instances are proved by the Appellant. They also amount to cruelty. He further submitted that the Respondent has

lodged false complaint against the Appellant and his parents which also amounts to cruelty. Mr. Giri relied on the Judgment of the Hon'ble Supreme Court in the case of ***Narendra Vs. K. Meena***¹ wherein the Hon'ble Supreme Court has held that the wife's insistence that the husband should get separated from his family and should live only with her, will amount to cruelty.

14. Mr. Giri further relied on the Judgment delivered by a Single Judge of this Court in the case of ***Chitra Sachin Mapara Vs. Sachin Kumar Mapara***², wherein it was held that wife abusing the husband and parents on several occasions, disturbs the peace of house and these day to day quarrels on petty matters, entitled the husband for the decree of divorce on the ground of cruelty.

15. On the other hand, Mr. Salunkhe, learned Counsel for the Respondent, submitted that the allegations taken as they were, do not amount to cruelty and even otherwise, the Appellant has failed to prove these allegations. He further submitted that the Appellant had tried to create evidence by lodging NC complaint and immediately within a short span of period filed this petition for divorce. This shows that he wanted to obtain divorce on false grounds by creating evidence. He relied on the judgment in the case of ***Gurubux Singh Vs. Harminder Kaur passed by the Hon'ble Supreme Court***³ wherein it was held that a few isolated instances over a certain period do not

¹ AIR 2016 SUPREME COURT 4599

² 2016 DGLS (Bom.) 1229

³ (2010) 14 Supreme Court Cases 301

amount to cruelty and it is essential for the Appellant, who claims relief to prove that a particular part of conduct or behaviour resulted in cruelty to him. The aggrieved party has to make a specific case that the conduct of which exception is taken, amounts to cruelty. He also relied on the Judgment of Hon'ble Supreme Court in the case of *Neelam Kumar Vs. Dayarani*⁴ wherein it was held that no decree of divorce can be granted unless the person seeking divorce proves cruelty on the basis of pleadings and evidence and the Respondent not producing any evidence in support of his / her case to the contrary is of no consequence.

16. From the analysis of the evidence on record, it is apparent that the Appellant has relied only on his own evidence and of his father. Admittedly, through out the day, the Appellant was not at his house as he was working in a bank. Similarly, the Respondent was also working in a school. Therefore, first of all, there was no occasions for major friction during the day time between the Respondent and the Appellant's parents and in any case the Appellant could not have direct knowledge or could not have witnessed the incidents during the day time on the working days. According to the Appellant, the Respondent was never at home over the weekend. Therefore, even as per his own case it is difficult to believe that the Respondent was constantly abusing and threatening the Appellant's parents and was asking them to leave the house. It is further the Appellant's case that when he used to return home late, that time the

4 (2010) 13 Supreme Court Cases 298

Respondent did not look after his needs. That again will not amount to cruelty. It cannot not be lost sight of that the Respondent herself was a working woman. In addition to attending her job, she was admittedly cooking in the morning as well as in the evening. The evidence shows that on her way she used to purchase vegetables. It is obvious that she herself used to get tired and still she was cooking for the family and yet was doing other household work.

17. The specific instances given by the Appellant are not corroborated by any independent evidence. Even the father of the Appellant has not cogently corroborated those specific instances narrated by the Appellant. As rightly pointed out by the learned Counsel for the Respondent, the Appellant himself had given a suggestion that there was no physical relation after March 2006, which would mean that till March 2006, they were having normal relations and majority of the instances mentioned by the Appellant before March 2006 stood condoned in any case. Those instances, by themselves, will not amount to cruelty and those instances were not of such a nature that it was impossible for the Appellant to live with the Respondent as husband and wife. It is also important to note that the Respondent has examined 3 more witnesses besides herself out of which one was cousin of the Appellant himself, whose evidence would carry more weightage and he has supported the Respondent and not the Appellant. Even neighbour Asha has clearly stated that whenever she used to visit their matrimonial house, the Respondent was always working and was respectful towards the Appellant's parents and, in

fact, the Appellant's parents used to taunt her constantly. Thus, as against the uncorroborated version of the Appellant, the evidence shows that the Respondent's defence is corroborated by the cogent, reliable and independent evidence.

18. The evidence also indicates that the Appellant has lodged NC complaint against the Respondent. In our opinion, this NC was lodged only for creating evidence against the Respondent as the petition for divorce was lodged within a couple of days. It is the case of the Appellant that the Respondent scratched him and assaulted him with fists and twisted his finger and for the same he had to take treatment from a municipal hospital. It is quite unbelievable that just for scratching and for twisting of finger the Appellant had to take treatment in hospital. In our opinion, this was done by the Appellant to prepare the ground for filing petition for divorce.

19. Learned Counsel Mr. Giri for the Appellant submitted that the Respondent had lodged a false complaint and the Appellant and his parents had to obtain anticipatory bail. First of all, there are no such pleadings and therefore, we cannot take such factor into consideration. In any case, such complaint was never registered as an FIR. Moreover, this complaint was made after filing of the petition.

20. The Judgment relied on by Mr. Giri undoubtedly lays down a proposition that the insistence of the wife that the husband should leave his parents and reside with her would also amount to cruelty.

However, in the present case, there is no evidence to reach the conclusion that the Respondent was insisting that her husband should drive his parents away from their matrimonial house. Those allegations in the petition are not proved through reliable evidence. The other Judgment relied on by Mr. Giri the case of ***Chitra Mapara*** (*supra*) is not applicable to the present case because unlike in that case, in the present case the Appellant has failed to prove that the Respondent used to abuse the Appellant and his parents.

21. On the other hand, the ruling relied on by the learned Counsel for the Respondent in the case of ***Neelam Kumar*** (*supra*) shows that the Appellant had to prove his case on the basis of pleadings and evidence irrespective of the Respondent's quality of evidence.

22. Thus, taking overall view of the matter, we do not find any merit in the Appeal. Consequently, the Appeal is dismissed with no order as to costs.

(SARANG V. KOTWAL, J.)

(K. K. TATED, J.)