

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 503 OF 2011

Sukhadev S/o Shantilal Tumbhare,
Age: 49 years, Occ. Service,
R/o Kumbhefal, Tq. Akole,
District Ahmednagar.

... **Appellant**

Versus

Sou. Manda W/o Sukhadev Tumbhare,
Age: 44 years, Occu. : Household,
C/o. Shankar Ramchandra Birute,
Old. Kathada, House no. 831,
Takli Road, Nashik-01.

... **Respondent**

...

Advocate for Appellant : Mr. S.T. Shelke

Advocate for Respondent : Mr. Chaitanya Deshpande h/f. Mr. C.R. Deshpande

...

CORAM : M.G. SEWLIKAR, J.

DATE OF RESERVING THE JUDGMENT : 27.01.2021

DATE OF PRONOUNCING THE JUDGMENT : 18.02.2021

JUDGMENT:

This appeal arises out of the judgment and decree dated 23.06.2011 passed by the learned District Judge -2, Sangamner in Regular Civil Appeal No. 123/2011 whereby the judgment and decree passed by the learned Civil Judge, Senior Division, Sangamner in Hindu Marriage Petition No. 63/1999 dated 23.01.2001 is set aside.

2. Facts giving rise to this appeal are as under :-

The appellant married the respondent about 14 years before filing of the Hindu Marriage Petition No. 63/1999. They are blessed with one son Pandurang, aged 8 years and a daughter Deepali, aged six years. The appellant filed the aforesaid petition for dissolution of marriage alleging that the respondent is a quarrelsome woman. She used to behave abnormally. She had filed proceeding under Section 498-A of the Indian Penal Code against the appellant and his parents. The appellant and the respondent entered into amicable settlement on account of which appellant was acquitted of the said criminal case. Thereafter, the appellant and the respondent resumed cohabitation. However, there was no change in the behaviour of the respondent. The appellant got a job of teacher in Agasti Education Society, Akole in the year 1990. Therefore, the appellant along with the respondent and his parents started living at Kumbhephal. Son-Pandurang was born in the year 1991 out of the wedlock. However, there was no change in the behaviour of the respondent. In a fit of rage, the respondent used to assault the appellant. She used to abuse the mother of the appellant.

3. It is further alleged that in the year 1993, the respondent delivered a baby girl. The behaviour pattern of the respondent turned from bad to worse. She started behaving abnormally. She used to take off her

clothes and tore the clothes of the appellant. This behaviour of the respondent was causing annoyance to the appellant. Therefore, the appellant brought the behaviour of the respondent to the notice of her brother and father but they turned a Nelson's eye to her abnormal behaviour. In the month of January 1997, the respondent doused herself with kerosene and set herself on fire. Soon thereafter, she extinguished the fire by pouring water on herself. The appellant immediately intimated this incident to the police station and admitted the respondent in Civil Hospital, Akole. The statement of the respondent was recorded by the police in which she stated that she set herself on fire. About 1 ½ months after her admission in the hospital, she went to her maternal place directly from the hospital. In the month of October 1997, on the imploration of the father and the brother of the respondent to maintain her, a meeting was held which was attended by the respondent, her father, brother and the respectable persons of the village in which the respondent gave an undertaking in writing that she would behave properly. Therefore, the appellant started cohabitation with the respondent. Again after 2 to 4 months, the respondent started behaving abnormally. The respondent started picking up quarrels with the neighbours. She used to tear her clothes and dance in front of the students. The Headmaster of the school informed the appellant about the behaviour of the respondent. The appellant

got the respondent admitted in the hospital of Dr. Dhadiwal. She was admitted there for three weeks but there was no improvement in her. The respondent used to pretend to be insane and used to beat the villagers and take off her clothes. The respondent was produced by the police before the Judicial Magistrate First Class because of her abnormal behaviour. The learned Judicial Magistrate First Class released her as she gave rational answers. Because of the abnormal behaviour of the respondent, it has become difficult for the appellant to live with the respondent. He, therefore, filed the aforesaid petition for dissolution of marriage.

4. Respondent filed her written statement at Exhibit-9. She denied all the allegations of the appellant in all respects except that their marriage was performed about fourteen years ago and that son-Pandurang and daughter-Deepali were born out of the marriage.

5. She has alleged in the written statement that she was maintained well for a period of about one and half years after the marriage. Thereafter, the appellant and his mother started ill-treating the respondent saying that she should bring Rupees Five Thousand from her parents for the business of the appellant. The sister of the appellant was also a party to the ill-treatment. The respondent therefore filed FIR under section 498-A of the I.P.C. against

the appellant and his family members. The appellant and the respondent arrived at amicable settlement as the appellant had assured the respondent to maintain her well. The respondent delivered a son by the name of Pandurang and a daughter by the name of Deepali at her maternal place. Daughter Deepali's leg was short owing to which the appellant started disliking the daughter-Deepali. He turned the respondent out of the house and did not make any attempt to bring her back. The respondent had gone to the appellant along with her maternal aunt for resumption of cohabitation but the appellant refused to take her in the house. The appellant took her in the house only on payment of Rupees Ten Thousand by the father of the respondent. Thereafter, also the respondent was subjected to ill-treatment by the appellant. Once the appellant delivered a blow of iron rod on her head. On 28.01.1997, the appellant poured kerosene on respondent and set her on fire. The respondent somehow saved herself. The appellant coerced her to give the statement that she had set herself on fire. He had threatened her that if she did not give the statement as suggested he would neglect her children. The appellant got the undertaking called 'Hamipatra' under force from the respondent and forcibly took her signature. Father of the respondent had admitted her in the hospital of Dr. Dhadiwal. The respondent in the month of March-1999 had gone to the appellant but the mother of the appellant did not

take her in the house. On coming home from the school, the appellant assaulted the respondent by means of spade and fractured her leg. At the time of Ganesh festival of 1998 the mother of the appellant dropped her at the Nashik Bus Stand. Therefore, the respondent had to come back to her maternal place. The appellant did not come to take her back. On these allegations the respondent prayed for the dismissal of the petition.

6. The learned C.J.S.D., Sangamner allowed the petition and dissolved the marriage between the appellant and the respondent. He held that the appellant treated the respondent with cruelty and granted alimony of Rupees One Thousand per month. The learned Civil Judge (S.D.) held that the behaviour of the respondent was causing annoyance to the appellant. He held that the respondent had made a statement before the police that she had on her own set herself on fire. She did not implicate her husband. He further held that the respondent had entered the school sat on the table and was begging, shouting loudly and closed the door of the room from outside. According to the learned Civil Judge (S.D.) the conduct of the respondent amounted to cruelty, therefore, the learned Civil Judge (S.D.) granted decree of divorce.

7. The learned First Appellate Court reversed the decree of divorce and dismissed the petition. The learned First Appellate Court held that nothing has been brought on record to show that the respondent had given the statement before the police that she had set herself on fire. It further held that the respondent was behaving abnormally. It has held that setting herself on fire was not an intentional act but it was due to the periodic mental disorder of the respondent. He has further held that the conduct of the respondent in begging etc. was on account of the periodic mental disorder of the respondent. The learned First Appellate Court, therefore, reversed the decree, allowed the appeal and dismissed the Hindu Marriage Petition No.63/1999. This order is impugned in this appeal.

8. Learned counsel Shri Shelke submitted that setting oneself on fire to commit suicide, behaving abnormally in the school, around the temple and frightening the students are the acts of cruelty. He submitted that even if such acts are committed during the spell of mental disorder it amounts to cruelty. For this purpose he placed reliance on the following cases:

- 1) *Sukhendu Das V/s. Rita Mukherjee; (2017) 9 Supreme Court Cases 632.*
- 2) *Narendra V/s. K. Meena; (2016) 9 Supreme Court Cases 455.*
- 3) *Shailendra Madhukar Bhaleraon V/s. Suruchi Shailendra Bhalerao; 2019 (2) Mh.L.J.*

9. Learned counsel for the respondent Shri Chaitanya Deshpande submitted that the husband did not examine said Dr. Dhadiwal. He submitted that therefore, it cannot be proved that the respondent was suffering from mental disorder. He further submitted that the evidence which the appellant has cited in the form of PW-2 and PW-3 was just to create evidence against the respondent. Learned counsel for the respondent submitted that the husband has created such type of evidence. The appellant did not make any attempt to resume cohabitation after the wife was driven out of the house. He submitted that no evidence is brought on record to show that any such statement was given by the wife to the police that she herself had set her on fire. He further submitted that there is no evidence to show that so called behaviour of the wife would cause reasonable apprehension in the mind of the husband that it would be harmful and injurious to live with the wife. He submitted that statement made in Exhibit-50 would not amount to admission that she had herself set her on fire because she has stated that her signature was obtained on the stamp paper by force.

10. From the judgments of both the Courts i.e. the First Appellate Court and the trial Court i.e. the Civil Judge (S.D.) it is evident that both the Courts have held that the respondent had set herself on fire. At exhibit-50 'Hamipatra' was executed by the respondent in which she has stated that

because of mental disorder she set herself on fire. Evidence of the witnesses i.e. Subhash Khotkar who was in service in Sheshnarayan Vidyalaya in Kumbhephal i.e. the place where the appellant was residing at the time of filing of the petition shows that the respondent entered the school on 25.08.1998 sat on the table where he was working. She was having a bag with her and she was begging. She threw files. She then threw broom, went outside and closed the door of that room and started shouting. A teacher of his school opened the door. This witness had intimated the appellant about the behaviour of the respondent.

11. Sakharam Khotkar (PW-3) was a Sarpanch of Gram Panchayat, Kumbhephal. He has stated that he had written a letter to the appellant mentioning therein that the respondent was behaving indecently. She used to come to the school and started singing having broom in her hand, due to that the students were frightened. She also used to go to milk dairy and pushed the milk cans and used to beg. Pandurang (PW-4) is the son of the appellant and the respondent. He has stated that the respondent had put his sister-Deepali in the heater when there was no water in the bucket. She used to go to the temple of Sheshnarayan used to take rounds and used to say Vandemataram. She used to beat his father and used to abuse people. Thus, both the Courts have held that the respondent was behaving indecently.

According to the First Appellate Court, the respondent was behaving because of the periodic mental disorder with which she was suffering. It is also admitted that the respondent was admitted in the hospital of Dr. Dhadiwal. It is not in dispute that Dr. Dhadiwal is a Psychiatrist. Now the substantial question of law that falls for consideration is whether the annoying behaviour of the respondent and threatening to commit suicide under the spell of periodic mental disorder amounts to cruelty. Undoubtedly, such type of behaviour is certainly annoying and amounts to cruelty. The question is whether such type of behaviour on account of mental disorder can be called as cruelty. This issue is no longer *res integra*. In the case of **Pankaj Mahajan V/s. Dimple alias Kajal; (2011) 12 Supreme Court Cases 1**, the wife was suffering from Schizophrenia. In para 37 the Hon'ble Supreme Court has observed as under:

"37. All these factual details culled out from the pleadings and evidence of both the parties clearly show the conduct of the respondent wife towards the appellant husband. With these acceptable facts and details, it cannot be concluded that the appellant husband has not made out a case of cruelty at the hands of the respondent wife. We are satisfied that the appellant husband had placed ample evidence on record that the respondent wife is suffering from "mental disorder" and due to her acts and conduct, she caused grave mental cruelty to him and it is not possible for the parties to live with each other, therefore, a decree of divorce deserves to be granted in favour of the

appellant husband. In addition to the same, it was also brought to our notice that because of the abovementioned reasons, both the appellant husband and the respondent wife are living separately for the last more than nine years. There is no possibility to unite the chain of marital life between the appellant husband and the respondent wife."

12. In the case of **Narendra** cited supra, in para 11 it has been held as under:

"11. We feel that there was no fault on the part of the appellant nor was there any reason for the respondent wife to make an attempt to commit suicide. No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court. In our opinion, only this one event was sufficient for the appellant husband to get a decree of divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of this Court in Pankaj Mahajan v. Dimple wherein it has been held that giving repeated threats to commit suicide amounts to cruelty."

13. It is true that Dr. Dhadiwal was not examined. If Dr. Dhadiwal had been examined it would have thrown light on the mental condition of the respondent-wife. However, that does not affect the merits of the case. No person possessing a sound state of mind would act in such an abnormal manner. This behaviour itself is indicative of the fact the respondent wife is suffering from some mental disorder, may not be of incurable form.

14. It is true that no statement is produced on record to show that wife had given the statement to the police that she herself set her on fire. It is not in dispute that the wife was burnt. It is also not in dispute that the wife was admitted in the hospital. It is pertinent to note that at no point of time, the respondent stated that it was the appellant who had set her on fire. No reason is brought on record to show as to why the appellant would set her on fire. On the contrary, the behaviour of the respondent-wife in throwing the files, begging, taking rounds around the temple, frightening the students would show that she was suffering from some mental disorder. In the light of all these circumstances, statement made in Exhibit-50 will have to be considered. Having regard to the abnormal behaviour of the wife the probability tilts in favour of the appellant that the respondent-wife herself set her on fire. These acts amounted to cruelty. The appellant despite that also had taken the respondent-wife for cohabitation. But her abnormal behaviour

continued. The evidence of PW-2 and PW-3 clearly indicate that the behaviour of the respondent was not of a normal person but of a person suffering from some mental disorder.

15. Even if it is accepted for the sake of arguments that she was not suffering from any mental disorder the position that emerges is even worse. If the wife behaves in such a fashion in a sound state of mind, it is certainly an act of cruelty. It not only causes annoyance to the other spouse but it is ignominious to the other spouse and this act was not restricted to one incident. PW-2 and PW-3 have stated incidents of two different dates and the son-Pandurang also narrated the acts of cruelty of the respondent.

16. Thus the evidence on record clearly shows that the acts of the respondent in setting herself on fire amounted to cruelty. Therefore, the learned trial Court had correctly granted decree of dissolution of marriage. The learned Appellate Court committed error in reversing the decree of divorce. In this view of the matter, the appeal is allowed. The judgment and decree passed by the learned First Appellate Court (District Judge-2, Sangamner, District Ahmednagar) in Regular Civil Appeal No.123/2011 dated 23.06.2011 is set aside and the decree of dissolution of marriage passed by

the learned C.J.S.D., Sangamner in Hindu Marriage Petition No.63/1999 dated 23.01.2001 is restored.

[M.G. SEWLIKAR, J.]