

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL No. 215 OF 2018

DISTRICT: SOLAPUR

Sou. Manisha Nitin Sonkamble)
Age 24 years, Occupation Service,)
R/o. Building No.4, Room No.2,)
Police Colony Line,)
New Budhwar Peth,)
Mantri Chandak Complex,)
Solapur)..Appellant

Versus

Shri Nitin Namdeo Sonkamble)
Age 30 years, Occupation Labour,)
R/o. Matoshri Ramabai Ambedkar)
Nagar, Budhwar Peth, Solapur)...Respondent

Mr. Vaibhav V. Ugle a/w. Mr. Yogesh Birojdar a/w. Mr. Vikas Somavanshi, Advocate for the Appellant.

Mr. Priyal Sard for Respondent.

**CORAM : A. A. SAYED &
S. G. DIGE, JJ**

RESERVED ON: 5TH OCTOBER, 2021

PRONOUNCED ON: 12TH OCTOBER, 2021

JUDGMENT [PER S.G. DIGE J.]

1. The Appellant impugns the Judgment and Decree passed by the Family Court, Solapur,

dismissing the Appellant wife's petition for divorce.

2. The brief facts of the case are as under:

The Appellant and the Respondent resolved to tie the matrimonial knot by solemnizing their marriage on 23rd December, 2011 as per Buddha Religion and Customs at Solapur. It was inter-caste marriage. The Appellant -wife is Hindu Lingayat and the Respondent-husband is Hindu Mahar. The Appellant claims that the Respondent by disgraceful means and blackmailing the Appellant, constrained her to marry with him. Therefore, she has not joined the matrimonial home even for a single day since marriage. They are living separately from the beginning. The marriage was never consummated. It is further contended that the Respondent blackmailed her stating that he had taken obscene photos of the Appellant and would show them to all. On that count, he grabbed money from the Appellant from time to time. The Appellant has been serving in police department. It is contended that the Respondent harassed and assaulted the Appellant at public place. Being fed up of the Respondent's behaviour, Appellant requested him

for divorce. But, at that time, the Respondent demanded Rs.5,00,000/- to give his consent for divorce. The Appellant could not fulfill the said demand. Hence, the Respondent abused her in filthy language, beaten and insulted her in public. Therefore, the Appellant took loan of Rs.2,00,000/- and paid Rs.1,80,000/- to the Respondent. Even though the amount was paid, the Respondent harassed her physically and mentally and blackmailed her for money. The Respondent also threatened Appellant that he will kill her. It is further contended that due to such behaviour of the Respondent, life of the Appellant has become miserable. She has no hopes that the Respondent will cohabit with her in good manner in the near future. It is further contended that the Appellant was willing to cohabit with Respondent by giving up all the past things. But her hopes of happy marriage life were not fulfilled and accomplished because of whimsical and addicted nature of the Respondent. Hence, the Appellant filed a petition for divorce under Section 13(1) (i-a) & (i-B) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion. The petition was dismissed by the Family Court hence this Appeal.

3. Admittedly, the Respondent appeared in person before the Trial Court. The Appellant and the Respondent were referred for Counselling. But, it was not worked out. Thereafter, the Respondent did not proceed to defend or oppose the proceedings before the Trial court. The Respondent did not file Written Statement. Hence, the matter proceeded ex-parte.

4. Learned Counsel for the Appellant contended that the Appellant's evidence before the Trial Court has gone unchallenged. The Respondent appeared before the Trial Court but he did not defend the proceedings. All the facts stated by the Appellant on oath were not considered by the learned Trial Judge. The physical and mental cruelty to the Appellant by the Respondent is proved by the Appellant's oral evidence but, it was not considered. The Respondent failed to deny the allegations made against him, which can be treated as admission on the part of the Respondent. However, this fact was not considered by the Trial Court.

5. Learned Counsel for the Respondent submitted that as marriage of the Appellant and the

Respondent is a inter-caste marriage, it was opposed by the family members of the Appellant. Brother of the Appellant is an influential person and he was not allowing the Appellant to cohabit with the Respondent. All allegations of the Appellant against Respondent are baseless. The Appellant was staying with Respondent till the year 2014 but due to family members' opposition, she did not reside with the Respondent. He further contended that the order passed by the Trial Judge is just and proper.

6. We have examined the rival contentions of the parties. The oral evidence of the Appellant before the Trial Court has gone unchallenged. The allegations of cruelty made against the Respondent by the Appellant and non-consummation of marriage have not been denied by the Respondent. The Respondent appeared before the Trial Court and though he was aware about the allegations that were made against him, he has chosen not to adduce evidence and cross-examine the Appellant. The oral evidence of the appellant of ill-treatment make out a case of cruelty and would have to be accepted. It is significant to note that Exhibit 6 is a

“Compromise Deed” between the Appellant and the Respondent and it was signed by the parties. This was prepared before the marriage counsellor. In this Compromise Deed, both the Appellant and the Respondent agreed to take divorce by mutual consent. In this document it is mentioned that the Appellant and the Respondent are not residing together since the day of marriage due to their difference of opinion. This strengthens the Appellant’s case that she was not residing with respondent since the day of marriage.

7. In the light of the above and considering the evidence on record, we are of the view that the Learned Trial Judge has erred in rejecting the Petition of the Appellant on the ground that the Appellant has not proved cruelty. We are of the view that the cruelty cannot be defined only by way of physical assault but it can be mental cruelty also. The marriage between the Appellant and the husband is inter-caste marriage. After the marriage, which was held on 23rd December, 2011, she attended the Sub-Registrar’s Office for registration of marriage on 30th December, 2011, which shows that she was willing to live with the Respondent, however, thereafter,

she started living separately because of the treatment meted out to her by the Respondent. They lived separately almost 10 years. The Appellant may not have filed any police complaint against the Respondent, but that does not by itself mean that there was no cruelty or harassment caused to her by the Respondent, notwithstanding the fact that she is serving in police department. The Learned Judge ought to have considered the evidence on record from all angles and not casually stating that no police complaint was filed or no evidence of cruelty is led by the Appellant when there is sufficient oral evidence on record which has remained unchallenged, which supports the case of the Appellant for divorce. The Respondent appeared before the Trial Court, he was aware about allegations levelled against him but he remained absent. We have gone through the case law relied by the Learned Counsel for Respondent. The ratio of the judgment of Apex Court in the case of **A. Jayachandra Vs. Aneel Kaur, 2005(1) SCC 626** is applicable to the Appellant's case and not to Respondent. The Hon'ble Apex Court has held that the expression cruelty has not been defined in the Act. Cruelty can be physical and mental. Cruelty

which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live.

8. The parties have been living separately for about 10 years. There are no issues from the marriage. Both the parties are young and can live their life as per their wishes.

9. In the result, the Appeal deserves to be allowed. Accordingly, we allow the Appeal. The Impugned Judgment of the Family Court is set aside. The Decree of Divorce is passed u/s.13(1) (i-a) of the Hindu Marriage Act, 1955. The marriage between the Appellant and the Respondent stands dissolved. Parties to bear their own costs.

(S. G. DIGE, J.)

(A. A. SAYED, J.)