

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO.22 OF 2015

Dr Milan S/o Vasant Rao Dhakate
Aged about 53 years Occ. Associate
Professor in Gen. Medicine in
J.N Medical College, Wardha,
Permanent R/o Plot No.77,
Surendra Nagar, Nagpur

... Appellant

-vs-

Dr Suchitra w/o Milan Dhakate
Aged about 47 years,
R/o C/o Shri Pandurang Nipane,
Saket Nagar Shraddha Colony,
Jabalpur (M.P.)

... Respondent

Ms Padma Chandekar, Advocate for appellant.
Shri H. R Gadhia, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : December 14, 2021

Oral Judgment : (Per : A. S. Chandurkar, J).

The original petitioner in Petition No.A-641/2008 who is aggrieved by the judgment of the Family Court dated 03/12/2015 dismissing the said petition for dissolution of his marriage with the respondent on the ground of cruelty has filed this appeal under Section 19 of the Family Courts Act, 1984 (for short, the said Act).

2. Brief facts relevant are that the appellant and the respondent were

married on 15/02/2001. Both the parties are medical practitioners. On 26/02/2002 a daughter was born to them. Since 05/08/2004 however the parties started residing separately. The appellant-husband filed proceedings for restitution of conjugal rights immediately on 06/08/2004. It appears that the said proceedings were withdrawn and thereafter on 11/09/2008 petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short, the said Act) came to be filed. In the said petition it was alleged that the respondent-wife was not taking good care of the husband's parents. She had complete disregard for his family members and was of a suspicious nature. In the year 2003 when the daughter was ill her blood test was done and it was found that her sickle cell report was positive. Thereafter the parents also undertook the said test and the report of wife was positive. It was alleged that wife was aware of she having such illness prior to the marriage but the same was never disclosed to the husband who got knowledge of the same only in the year 2003. After such detection it is alleged that the behaviour of the wife was changed. In the aforesaid premise it was alleged that the husband suffered ill-treatment and mental cruelty at the hands of the wife. A decree of divorce was according prayed for.

3. The wife filed her written statement and denied all allegations made by the husband. It was pleaded that she was not aware of the sickle cell problem and that she had always treated the husband's parents in a

proper manner. She expressed her willingness to reside with the husband but it was the husband who was not willing to do so. He had levelled various allegations against her.

4. The parties examined themselves and after considering the evidence on record, the learned Judge of the Family Court by judgment dated 03/12/2014 recorded a finding that the husband had failed to prove that he had treated the wife with cruelty. It may be mentioned that initially the Family Court had decided the proceedings by holding that since the parties were members of scheduled tribe community, the provisions of the said Act were not applicable. F.A.No.585/2013 preferred by the appellant was allowed on 07/04/2014 and after holding that the proceedings were maintainable the same were remanded for fresh adjudication.

5. Ms P. Chandekar, learned counsel for the husband submitted that the learned Judge of the Family Court failed to appreciate the evidence on record in a proper perspective. The husband by examining himself had brought on record the erratic behaviour of the wife and especially the change in her approach after it was detected that the wife was suffering from sickle cell disease. The wife was aware that she was suffering from the said disease even before marriage but failed to disclose the same to the husband. Due to suppression of this material fact, the appellant had to undergo great

anguish. The behaviour of wife with husband's parents was not proper resulting in causing mental cruelty to the husband. A vague allegation was made by the wife that demand of Rs.2 lakhs was made by the husband. However, it was also admitted that no such demand was made from her. It was thus submitted that on consideration of the entire evidence on record it was clear that the husband had proved the ground of cruelty as pleaded on the basis of which a decree of divorce ought to have been passed.

6. Shri H. Gadhia, learned counsel for the wife supported the judgment of the Family Court. According to him on a proper consideration of the entire evidence on record it was clear that the husband had failed to prove any cruelty by the wife. Various admissions of the husband in his cross-examination clearly indicated that the case as pleaded was false and not proved. According to him it is only when the daughter was ill in the year 2003 that the wife got knowledge about her being infected with sickle cell. However the husband had admitted in his cross-examination that even thereafter the relations between them were good and there was no change of behaviour on the part of the wife. In absence of any cogent evidence to conclude that the wife had treated the husband cruelly, there was no basis for allowing the marriage petition. At the highest it could be said that the disputes if any were on account of usual wear and tear of marital life. He therefore submitted that there was no reason to interfere with the judgment

of the Family Court.

7. In the light of aforesaid contentions, following point arises for determination :

“ Whether the husband has proved that he is entitled for a decree of divorce on the ground of cruelty ? ”

8. We have heard the learned counsel for the parties at length and we have also perused the records of the case. After giving due consideration to the entire material on record we are satisfied that the judgment of the Family Court does not call for any interference.

9. Perusal of the petition for divorce filed by the husband reveals that relief was sought by him particularly on the allegation that his wife was not taking good care of his parents and was behaving arrogantly with them. Thereafter on the birth of their daughter it was disclosed in April 2003 that the daughter was suffering from sickle cell illness. The husband alleged that the said disease was genetic in nature and was inherited by the child through her mother. The wife despite being a doctor did not disclose this illness to her husband. The wife was also not taking good care of their daughter and was more interested in her service.

In the written statement filed by the wife all these allegations

have been denied. It was specifically pleaded that she was not aware that she had contracted sickle cell disease and it was only after various tests were carried out on account of her daughter's illness, that she got knowledge about the same.

10. The parties examined themselves and then cross-examined each other. Perusal of the evidence of the husband along with his cross-examination reveals that he has admitted that his wife was taking care of his parents and that there were no complaints by his parents in that regard. On 05/08/2004 the wife had left the matrimonial home. According to the husband immediately on the next date he had filed a petition for restitution of conjugal rights. In his cross-examination he admitted that from 2004 till filing of the present petition for grant of divorce, nothing much had happened between them. He also admitted that in the earlier proceedings for restitution of conjugal rights his wife had shown readiness and willingness for cohabiting with him but he did not take her back. He further admitted that he had not paid any amount either to his wife or daughter for maintaining them and this was done only after orders were passed by the Court. As regards the alleged illness of the wife, he admitted that his wife had not shown any reluctance for undertaking any blood test and that there was no quarrel between them on account of the said illness of his wife. He admitted that even after detection of the aforesaid illness there were physical

relations between them. He further admitted that even after filing of the divorce petition, his wife was ready to cohabit with him but he was not willing.

11. The learned Judge of the Family Court has after considering the entire evidence on record found that in view of various admissions of the husband in his deposition there was no basis to grant a decree for divorce on the ground of cruelty. The cruelty as required to be proved under Section 13(1)(i-a) had not been proved. On a re-appreciation of the entire evidence on record we find that the learned Judge of the Family Court committed no error in recording a finding that the husband had failed to make out any case for grant of divorce. The petition for restitution of conjugal rights filed on 05/08/2004 was not pursued and after withdrawing the same, the present proceedings were filed. In the light of the clear admission of the husband that between 2004 to 2008 nothing transpired between the parties to enable the husband to file proceedings for divorce it becomes clear that no sufficient ground was ever available with the husband to seek such divorce. The grounds that were pleaded are also not proved since the husband had not examined any other witness to substantiate those allegations. Infact perusal of his entire deposition completely washes out the various allegations made by him for seeking divorce. It is in this backdrop that the learned Judge of the Family Court in paragraph 37 has concluded on the basis of various

admissions given by the husband that the allegations made by him were either false to his knowledge or were condoned by him being an outcome of daily wear and tear of matrimonial life. Since we find that the Family Court has considered the entire evidence on record while dismissing the petition for divorce and on re-appreciation of the same we find that the said conclusion as recorded is the only conclusion that could have been recorded, there is no scope to interfere in the present appeal.

The point as framed is answered by holding that the husband has failed to prove that he is entitled for a decree of divorce on the ground of cruelty.

12. Hence for aforesaid reasons we do not find any merit in the appeal. It is accordingly dismissed leaving the parties to bear their own costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

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