

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

FAMILY COURT APPEAL NO. 349 OF 2014

Shri Pradeep S/o Ganpatrao Bhanarkar,
Aged about 40 yrs, Occ. Nil,
R/o Plot No.22, Shriram Wadi,
Behind Ingle Building,
Near Sai Mandir, Ayodhya Nagar,
Nagpur-440 024.

.... **APPELLANT**

// **VERSUS** //

Sau. Jayashri W/o Pradeep Bhanarkar,
Aged about 41 yrs, Occ. Private,
R/o C/o Laxmanrao Dange, 19,
Chandra Nagar, Bhagwan Nagar, Nagpur

.... **RESPONDENT**

Smt. Pallavi Khaprikar, Advocate for appellant.
Smt. Smita P. Deshpande, Advocate for respondent.

CORAM : **A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.**
DATE : **12 JANUARY, 2021.**

ORAL JUDGMENT: [PER: N.B. SURYAWANSHI, J.]

1. This appeal filed by the husband under Section 19 of the Family Court Act, 1984 takes exception to the judgment and decree passed by Family Court, Nagpur on 29th April, 2014 thereby dismissing petition No. A-641/2011, filed by the husband for divorce.

2. Husband-Pradeep filed petition under Section 13-1(i-a) and (i-b) of the Hindu Marriage Act seeking divorce from wife-Jayashri on the ground of cruelty. As per his pleadings, his marriage with Jayashri was solemnized on 18th May 2010 at Nagpur as per Hindu rites. At the time of marriage Jayashri was L.I.C. agent and it was mutually decided that she would leave the business as L.I.C. agent and lead the life as a housewife. After marriage Jayashri used to frequently visit her mother's house and used to stay there for doing L.I.C. business. When Pradeep used to object about her stay at mother's place Jayashri used to quarrel with him. Jayashri also used to take money from husband for doing the L.I.C. business on the pretext that money given to her by the clients for paying premium was spent by her and if the money is not deposited towards premium clients will blame her and her business will be ruined. Jayashri had gone to her mother's house on 11/06/2010 on the occasion of Amaosya and stayed there for about 15-20 days. Thereafter also she used to frequently leave her matrimonial house and used to stay at her parents house on different pretexts like religious ceremony, ill health of parents etc. She developed a habit of staying with her parents for 10-15 days. Jayashri was given some

gold ornaments at the time of marriage but she melted those ornaments and made new ornaments without knowledge and permission of Praddp and his family. Jayashri used to demand keys of the hotel of Pradeep as she wanted to take control of the monitory transactions in her hands. Jayashri used to demand Rs.200/- per day from him for herself. On being questioned she used to quarrel with the Pradeep. Though Pradeep's marriage with Jayashri was a second marriage and this fact of the first marriage and divorce was intimated to Jayashri and her family prior their marriage itself, afterwards Jayashri started abusing and insulting Pradeep on that count. Jayashri's behaviour with Pradeep was not proper. She used to quarrel with him daily and continuously. She was psychologically pressurizing him on account of his first marriage. Due to the same Pradeep's health was deteriorating day by day. He was required to be hospitalized for two days. He was advised certain tests, but his medical reports were normal. Still Pradeep's health did not recover and hence his parents decided to consult and give him medical treatment of psychiatrist Mr. Vivek Kirpekar. On 15th December, 2010 Jayashri left matrimonial home telling that she is going to attend religious function of Shri Gajanan

Maharaj at her maternal aunt's house, though Pradeep was ill at that time. She locked the almirah and took keys with her. While leaving she also quarreled with the in-laws. She blamed that Pradeep was a mental person. On 25th December, 2011 Jayashri's brother visited restaurant of Pradeep and threatened that Pradeep and his parents will be implicated in different matrimonial proceedings and they will be sent to jail. Pradeep therefore lodged complaint to the Police. It was registered as Non Cognizable case on 26th December, 2006 at Hudkeshwar Police Station. Jayashri filed complaint in Women Cell and in front of members of Women Cell she threatened Pradeep and his parents. That Jayashri is residing separately from Pradeep since 15th December, 2010 without any reasonable cause. After going to her parent's house she told everybody that Pradeep was suffering from mental illness and thereby defamed Pradeep and his family. In the legal notice issued by Jayashri through her advocate it is stated that Pradeep is suffering from mental illness and that he was earning Rs.5,000/- to 7,000/- per day. She also made false allegations that Pradeep was in habit of drinking liquor and that Jayashri was driven out of the matrimonial home for want of male child. Pradeep claimed that due to ill health he is unable to attend

the family business of restaurant and therefore unable to earn his livelihood. He claimed that the cause of his ill health was the harassment by Jayashri and her family members and the same amounts to mental cruelty. On these pleadings he claimed decree of divorce on the ground of cruelty.

3. Jayashri in her reply to the petition for divorce denied all the allegations of Pradeep. In short, she contended that Pradeep at the time of settlement of marriage did not disclose about his first marriage and divorce. Only after marriage Jayashri came to know about his first marriage and divorce. Since the day of marriage Pradeep's parents did not allow Pradeep and Jayashri to come close. The marriage between her and Pradeep was not consummated. They were not given separate bedroom. During her stay at Pradeep's house Pradeep, Jayashri and Pradeep's mother used to sleep in drawing room. Immediately after marriage gold ornaments of Jayashri weighing nine Tolas were taken away by Pradeep's mother. Though at the time of marriage Jayashri was working as L.I.C. agent after marriage she was compelled by Pradeep and his family members to stop working and ultimately her agency was terminated by the L.I.C. The reason of illness of Pradeep was never

disclosed to her. Pradeep's parents used to take Pradeep to hospital after sending Jayashri to her parents house for one reason or the other. Whenever Pradeep's parents used to go outstation, they used to compel Jayashri to go to her parent's house and Pradeep used to stay alone in the house. Jayashri was prevented from talking to tenants and neighbours by Pradeep and his parents. Jayashri further pleaded that Pradeep runs a restaurant namely 'Maa Gayatri Restaurant' on the Ring Road from which he earns Rs.13,000/- to 14,000/- per month. Pradeep has a specious house in Ayodhya Nagar wherein two to three tenants reside and they give him Rs.2,500/- each per month rent. Pradeep's father is a pensioner and gets monthly pension of Rs.12,000/- to 13,000/-. In spite of having sound financial position Pradeep never spent a single pai for Jayashri. He always avoided Jayashri for the reasons best known to him. The behaviour of Pradeep and his parents compelled Jayashri to leave the matrimonial house.

4. Pradeep filed his affidavit in lieu of evidence reiterating the pleadings made in the petition. In cross examination he admitted that he has not mentioned the dates of visits of Jayashri to her parental house in his petition. He denied the suggestion that he

was deposing false that he was suffering mental unrest due to torture of Jayashri. He denied suggestion that marriage was not consummated. He admitted that for the treatment of his mental illness his parents used to accompany him to the Doctor. He denied the suggestion that he never took Jayashri to the said Doctor with him. He further stated that though Jayashri is ready to cohabit with him he is not ready to cohabit with her.

5. Jayashri filed affidavit in lieu of evidence in terms of the pleadings of written statement. In cross examination she admitted that after marriage she came to know about the mental illness of her husband. She admitted the Income Tax Return filed by her in the years 2010-11, 2011-12, 2012-13 at Exhibits 52/1 to 52/3 which were filed in her maiden name. She however denied that she was a regular income tax payer at that point of time. She further stated that when she saw medical prescription of her husband, she came to know that Doctor opined that the Pradeep was suffering from psychological problem due to his financial crisis as well as earlier divorce. She admitted to have filed case under Domestic Violence Act during the pendency of divorce proceeding.

6. Learned Family Court after appreciating the evidence came to the conclusion that Pradeep has failed to prove that Jayashri treated him with such a cruelty which entitles him for a decree of divorce. It was also held that the allegations of Pradeep are nothing but wear and tear of married life. Hence the Family Court refused decree of divorce.

7. Heard learned advocate for the appellant and the learned advocate for the respondent.

8. Learned advocate for the appellant-husband submitted that the husband has proved his case by leading evidence and has also produced documents on record. However, the Family Court has failed to appreciate the same and has erred in rejecting the husband's petition for divorce. Mental cruelty on the part of wife/Jayashri caused to the husband/Pradeep is sufficiently established on record therefore the Family Court Appeal deserves to be allowed and decree of divorce needs to be granted in favour of husband.

9. Per contra the learned advocate for the respondent-Jayashri submitted that Pradeep has failed to prove cruelty on the

part of Jayashree and the Family Court was justified in denying relief to Pradeep. She submitted that the reasoning given by the Family Court is correct and no case is made out by the husband to interfere in the findings recorded by the Family Court. She therefore, prayed that the Family Court Appeal filed by the husband may be dismissed with costs.

10. With the assistance of the learned advocate for the parties, we have perused the record. After hearing rival submissions following point arises for our consideration.

“Whether the Family Court was justified in denying relief of divorce to husband Pradeep ?”

11. Admittedly the marriage between Pradeep and Jayashri was solemnized on 18th May, 2010 and since 15th December 2010 they both are staying separately. Thus only for period of approximately seven months they were staying together. It appears from the evidence on record that Pradeep was suffering from mental illness prior to the marriage with Jayashri. He was undergoing treatment of Psychiatrist for which his parents used to accompany him. Jayashri was never allowed to accompany him while visiting Psychiatrist. The evidence led by Pradeep is in the form of vague

and general allegations. Pradeep has failed to substantiate the allegations of cruelty caused to him by Jayashri, which would entitle him for a decree of divorce. In fact, the allegations in the divorce petition itself are vague and even if taken at their face value they do not constitute cruelty under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. Pradeep has admitted in his evidence that he has not mentioned dates of frequent visits of Jayashri to her maternal home. He further stated that though Jayashri is ready to cohabit with him, he is not ready for the same. There is no evidence on record to prove that due to the cruelty caused to him by Jayashri he suffered mental illness.

12. After considering the evidence on record we are of the considered view that the Family Court was justified in rejecting the decree of divorce to Pradeep by recording a finding that allegations of Pradeep are nothing but normal wear and tear of married life. Finding of the Family Court is based on material available on record and hence the same is acceptable. According to us a plausible view of the matter on a rational basis and by applying the principle of preponderance of probability has been taken by the Family Court and we do not find any other material on record to disturb the

finding recorded by the Family Court. As a result of aforesaid discussion we find that the impugned judgment of the Family Court deserves to be confirmed. The point is answered accordingly. In the result, the Family Court Appeal is dismissed leaving the parties to bear their own costs.

13. Professional fees of Mrs. Smita P. Deshpande, learned Advocate appointed through Legal Aid Committee is quantified at Rs.3,000/-, which shall be paid to her within a period of one month from today.

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