

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

FAMILY COURT APPEAL NO.11 OF 2016

Rajendra s/o Sahebrao Sanap,
Aged about 40 years,
Occupation-Service,
R/o. Dahane Nagar,
Near Yoshada Nagar,
Amravati.

..

Appellant

.. Versus ..

Sou. Leena Rajendra Sanap,
Aged about 35 years,
Occupation-Household,
R/o. C/o. Vishwanath Ghule,
Shiv Parvati Villa, Near Shanti
Niketan School, New Tapadiya
Nagar, Akola, Dist. Akola.

..

Respondent

.....

Shri A.D. Girdekar, Advocate for Appellant,
None for Respondent though served.

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CORAM : A.S. CHANDURKAR AND
N.B. SURYAWANSHI, JJ.

DATED : 21.01.2021.

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

1. This appeal filed by the appellant-husband under Section 19 of the Family Courts Act, 1984 challenges the judgment of the

Family Court, Amravati dismissing the Petition No. A-319/2009 filed by the appellant-husband seeking divorce.

2. Facts, in brief, leading to this appeal are as follows :

Appellant-husband filed Petition No. A-319/2009 under Section 13 (1) (i-a) (iii) of the Hindu Marriage Act, 1955 *inter alia* contending that his marriage with wife Leena was solemnized on 29.04.1997 at Amravati as per Hindu Rights and Customs. Out of the wedlock, sons Rahul, aged 12 years and Dewashish, aged 4½ years were born. The marriage expenses were borne by the husband. Since wife came for cohabitation at the husband's house, her behaviour was whimsical, she used to quarrel, give abuses, she was not doing the household work and used to give cruel treatment to the family members of the husband, which was causing constant mental harassment to the husband and his family members. The wife had deprived the husband from mental and physical happiness. The husband informed about the behaviour of the wife to her parents and at that time he came to know from them that since prior to the marriage she was suffering from psychological ailment and sometimes her mental balance used to be disturbed. However, this fact was suppressed from him and his family members by the wife's parents. The parents of the wife tried to pacify and convince the

husband. Elder persons from both the families decided to give medical treatment to the wife. The husband accepted the said decision considering the future of their married life and of the children. The wife was sent to her maternal home and was given treatment of Dr. Pramod Thakare, Psychiatrist, Akola. However, there was no change in the behaviour of the wife, on the contrary, her mental ailment worsened. The wife used to talk irrelevant things, bring outside garbage in the house, she used to refuse to serve food to the husband and children and used to quarrel with them. The husband therefore took her for treatment to Psychiatrist Dr. Shrikant Deshmukh. However, in spite of the treatment, the whimsicalness of the wife increased. She used to throw away the medicines prescribed by the Doctor. He further averred that cohabitation with the wife became dangerous and difficult for him as she was physically and mentally unable to cohabit with him. Because of all these circumstances, the husband called younger brother of the wife at Amravati and along with him reached the wife at her paternal home in the month of August-2009 prior to the 'Rakhi Pournima' and since then the wife was staying at her parents house. On the basis of these pleadings, the husband prayed for decree of divorce.

3. The wife appeared and resisted the claim of the husband by filing written statement. Except the marriage and birth of two

sons, she denied all the allegations of the husband. According to her, the husband wanted to perform second marriage. He always used to abuse, beat her and used to pass bad comments against her. The husband used to come home in drunken condition from his duty and due to instigation of his mother used to mercilessly beat her. Twice he tried to strangle her. Due to the beating she suffered cut injury to her ear and she was required to take Doctor's treatment. Since then she developed a hearing problem. On 5.8.2009, at the time of 'Rakhi Pournima', husband had mercilessly beaten her and pressed her neck, at that time, father-in-law rescued her from the husband. The husband on false pretext without informing her used to take her to the Psychiatrist and used to force her to take medicines. She was not suffering from any ailment and she was mentally and physically fit. She was mother of two sons and she was taking proper care of them, however, as the husband wanted to perform another marriage, with a view to get rid of her, he was trying to brand her as a mental case. She further contended that the younger son Dewashish was staying with her and she was taking proper care of him. The elder son Rahul was staying with the husband and the husband was depriving Rahul from mother's love. She further averred that both the sons need love and affection of both the parents, considering their future, she was ready to go to the husband. When she was

forced to go with her brother to the parents house, at that time the husband told her that within 15 days he would go and bring her back. She therefore prayed that the appeal filed by the husband may be dismissed.

4. The husband filed his affidavit in lieu of evidence in verbatim reproducing the contents of his petition. He produced the case papers, prescriptions of Dr. Shrikant Deshmukh and Dr. Pramod Thakare and one bill of medicines on record at Exh.31 to 34. In cross-examination, the husband admitted that his marriage with the wife was settled after they saw each other. His brother was married with the sister of the wife and their marriage was also arranged marriage. He denied that because of his slap, the wife suffered injury to her ear. He admitted that most of the people take treatment of Psychiatrist if they have any psychological problem. He admitted that the younger son was with the respondent and elder son was with him. He further admitted that on 5.8.2009 he asked the wife's brother to take her to the parents house.

5. Father of the husband namely Sahebrao was examined by the appellant as PW-2. He also reiterated the contentions of the husband in his affidavit of evidence. In cross-examination, he

admitted that his younger son was married with the real sister of the respondent and their marriage was performed after eight to ten months of the marriage of the husband and the wife. He also admitted that the wife was staying at her maternal home from 5.8.2009. He admitted that they never gave complaint about the behaviour of the wife in the Police Station. He denied the suggestion that the wife was not suffering from any mental ailment.

6. Pramod, younger brother of appellant, was examined as PW-3 by the husband. He stated in his evidence that the husband was his elder brother. He was staying at Pulgaon since last 12 to 13 years. He married with Nitu, younger sister of the wife. Their marriage was a love marriage which was registered. He stated that since his marriage he was not staying at Amravati, but he used to visit Amravati.

7. The wife filed her evidence-affidavit reiterating her contentions in the written statement. In cross-examination, she admitted that she never approached Police Station complaining about ill-treatment given by the husband and his family members. She admitted that she took treatment of Psychiatrist Dr. Pramod Thakare and Dr. Shrikant Deshmukh. She denied that she used to

bring outside garbage in the home, she was not cooking food and she used to quarrel with the family members of the husband and that she was suffering from mental ailment. She denied that since she did not take medicines regularly, her mental condition worsened and, therefore, she was taken to Dr. Deshmukh.

8. The learned Family Court, after considering the evidence on record, dismissed the petition filed by the husband, the said decision is impugned in the present appeal.

9. Heard the learned Advocate for the appellant. He submitted that the appellant had proved that the respondent was suffering from serious mental ailment in the form of schizophrenia by leading cogent evidence and the learned Family Court erred in dismissing the petition filed by the husband. By pointing out the admissions given by the respondent during cross-examination, he submitted that the respondent has admitted that she was taking treatment of the psychiatrist for schizophrenia, considering the same, the learned Family Court ought to have granted decree of divorce in favour of the appellant. The respondent, though served, has not filed appearance.

10. After hearing the submissions of the learned Advocate for the appellant, following points arise for determination :

- (i) Whether the appellant is entitled for decree of divorce.?
- (ii) Whether the impugned judgment of the Family Court needs to be interfered with.?

11. Heard the learned Advocate for the appellant at length. We have perused the original record including the notes of evidence. For appreciating the submissions of the appellant, it is necessary to consider the relevant provision.

13. Divorce :- Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party -

- (i)
- (i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or
- (i-b)
- (ii)
- (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation :- In this clause -

- (a) the expression “mental disorder” means mental

illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or.

12. It was for the appellant to prove that the respondent had been incurably of unsound mind, or had been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the appellant could not reasonably be expected to live with the respondent. The appellant was under obligation to prove that the respondent was suffering from schizophrenia and that the behaviour of the respondent was aggressive or seriously irresponsible and the respondent had been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the appellant could not reasonably be expected to live with the respondent.

13. To prove his case the appellant has produced on record the medical documents in the form of case papers, prescription of medicines and one bill of medicine at Exh.31 to 34, however, those

according to us, are not sufficient to prove the allegations of the appellant that the respondent was suffering from schizophrenia. The case paper of Dr. Shrikant Deshmukh (Exh.31) nowhere indicates that the respondent was suffering from schizophrenia. By pointing out the words “Schizo” in the column of ‘Pharmaco-Therapy’, the learned Advocate for the appellant submitted that this is the clinical diagnosis of the Doctor that the respondent was suffering from schizophrenia, we are unable to agree with him. The appellant, for the reasons best known to him, has failed to examine Doctors i.e. Dr. Shrikant Deshmukh as well as Dr. Pramod Thakare to support his case that the respondent was suffering from schizophrenia. The documents at Exh.32 to 34 also do not indicate that the respondent was suffering from schizophrenia. When the appellant was alleging that the respondent was suffering from schizophrenia, higher degree of proof was required to prove the said allegation. The explanation to Section 13 indicates the degree of disorder that is required to be proved.

14. On careful scrutiny of evidence on record, we are of the considered opinion that the appellant has miserably failed to prove that the respondent was suffering from schizophrenia or any kind of mental disorder or psychological state of mind, which was not capable of being cured and that it was dangerous for him to stay with

her.

15. The learned Family Court, after observing the demeanor of the respondent during trial, has concluded that the appellant has failed to point out during the cross-examination of the respondent that she was either talking irrelevant things or that her behaviour was ridiculous. The learned Family Court has rightly come to the conclusion that the appellant has failed to prove the cruelty meted out to him by the respondent. The learned Family Court was justified in coming to the conclusion that the appellant has failed to prove on record that due to the behaviour of the respondent, a situation was created that it was impossible for the appellant to live with the respondent. According to us, the learned Family Court has properly appreciated the evidence and has recorded correct findings and has rightly dismissed the petition of the appellant by a reasoned order.

16. In the light of the above reasons, we answer the points framed holding that the appellant is not entitled for decree of divorce and the finding recorded by the learned Family Court is based on material available on record and hence the same is acceptable. No interference is called for in the impugned judgment of the learned

Family Court.

17. For the aforesaid reasons, we are of the considered view that the appeal is without merit and it is liable to be dismissed and the same is accordingly dismissed. The judgment of the Family Court stands confirmed. The parties to bear their own costs.

(N.B. Suryawanshi, J.)

(A.S. Chandurkar, J.)

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