

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

FAMILY COURT APPEAL NO. 31 OF 2018

Pashant s/o Bhaskar Dekate,
aged about 44 years, Occ. Service,
R/o Vaibhav Nagar, Dighori, Nagpur.

...APPELLANT

Versus

Yamini w/o Prashant Dekate,
aged about 38 years, Occ. Service,
R/o C/o Ramkrushna Gedam,
Plot No. 1, Amba palace, Near Sanjivani Hospital,
Telephone Nagar, Dighori Chouk, Nagpur.

...RESPONDENT

Shri B.W. Patil, Advocate for the appellant.
Shri S.A. Sahu, Advocate for the respondent.

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**CORAM : A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, JJ.**

**ARGUMENTS WERE HEARD ON : FEBRUARY 25, 2021.
JUDGMENT IS PRONOUNCED ON : MARCH 04, 2021.**

JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

This is the husband's appeal under Section 19 of the Family Courts Act, 1984 (hereafter "Act of 1984", for short) challenging the judgment and decree dated 14/06/2017 passed by the Judge, Family Court – 4, Nagpur in Petition No.

A-226/2009, thereby dismissed the husband's petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereafter "Act of 1955", for short) on the ground of cruelty.

The facts leading to the filing of the present appeal may be stated as under :

2. The marriage of the appellant/ husband with the respondent/ wife was solemnized on 11/04/2006 at Nagpur. The couple is blessed with one son, viz., Samyak, born on 29/08/2007, who is presently in the custody of the respondent/ wife. After their marriage, the couple started residing in a rented house at Nagpur. The parents of the appellant/ husband were residing in their village. Both the parties are in the profession of teaching.

3. It is the grievance of the appellant/ husband that the respondent/ wife is of arrogant, whimsical and abnormal behavior. He was not informed that she was suffering from the

disease Rheumatoid arthritis and hypothyroidism by her parents. The appellant/ husband has referred to three incidents which according to him caused mental cruelty to him. The first was happened during communal program at Deekshabhoomi, Nagpur. He has stated that when he was offering volunteer service of serving water to the visitors, the respondent/ wife insulted him in the presence of several people. The second incident occurred in Chandrapur at his sister's house, wherein the respondent/ wife insulted him in the presence of his sister and her in-laws. And the third one, on the next day, when they reached Nagpur and at late night, the respondent/ wife threw a showcase of their house and broke it completely due to her abnormal behavior.

4. It is further the case of the appellant/ husband that on 01/01/2007, the respondent/ wife went to her parents' house without informing him and stayed there for one and half month.

5. The appellant/ husband has further stated that during quarrel between them, many a times she demanded for divorce. It is further alleged that the respondent/ wife also intimidated him for committing suicide and involving him in a false criminal case of dowry. Fed-up with her behavior, he filed the petition for divorce on the ground of mental cruelty.

6. In response to the notice issued to the respondent/ wife, she appeared and filed her counter denying all the adverse allegations with regard to cruelty and her abnormal behaviour.

7. In her specific pleading, her main focus is on the drinking habits of the appellant/ husband. She has stated that although he was serving as a Lecturer at the Raosaheb Thaware Junior College, Babulkheda, he was not sharing the household expenses. With regard to her diseases, she has stated that the appellant/ husband was informed about the same prior to their marriage, and he never had any complaint as he used to visit daily to her parents' house after their engagement.

8. With regard to the incident during communal program at Deekshabhoomi, the respondent/ wife states as under :

“After sometime when the respondent had requested the petitioner to come with her for further programme, at that time, the petitioner had got annoyed and had given all the glasses and jug of water to the respondent and ordered her to serve the same and had abused her in filthy language in presence of people and the family members of the respondent.”

9. With regard to the incident at Chandrapur at his sister's house, she states that there also, he drank heavily and when the respondent/ wife wanted to stop him, he insulted her in a filthy language in the presence of her sister-in-law and her relatives.

10. She further states that they reached Nagpur on the next day and during the night, he drank heavily and was not able to stand and suddenly fell down on the nearby showcase, due to which the showcase was completely broken. The

respondent/ wife also stated some incidents during which he drank heavily.

11. She further specifically pleads that on 13/02/2007, there was a meeting at her parents' house amongst their relatives, and during the said meeting, the appellant/ husband had admitted his mistakes, and gave assurance of good behavior, and therefore, she came back with him, however, his assurances lasted only for few days. She states that the expenses for her delivery were born by her parents, and though he had received reimbursement from his office, he never repaid the same to her parents. That he never took care of her during pregnancy and after delivery.

12. She admits that during January - 2007, she had been to her parents' house. She explained that she was advised complete rest as she had fallen down from a motorcycle while she was pregnant, which was being driven by the appellant/ husband in an inebriated condition.

13. The respondent/ wife has also filed a petition under Section 9 of the Act of 1955 bearing No. A-325/2009 for the restitution of conjugal rights, and a petition bearing No. E - 174/2011 for maintenance under Section 125 of the Code of Criminal Procedure. All these three petitions were tried together and disposed of by a common judgment.

14. The trial Court framed necessary issues and recorded evidence as adduced by the parties. Prior to that, the trial Court made several attempts for reconciliation between the parties through marriage counselors attached to the Court, but all attempts turned futile. The appellant/ husband examined himself as PW1, his landlord as PW2 (Nanda Arakh) and one of his friends as PW3 (Siddharth Wani). The respondent/ wife examined herself as DW1 and her father as DW2 (Ramkrishna Gedam).

15. The Family Court, on the basis of evidence as led by the parties, documents on record and the arguments on behalf of both the sides, recorded the finding that the appellant/ husband has failed to prove the ground of cruelty under

Section 13(1)(i-a), and the ground of mental disorder as contemplated for decree of divorce under Section 13(1)(iii) of the Act of 1955. The Family Court also recorded the finding that the respondent/ wife has failed to prove that without any reasonable cause, the appellant/ husband has withdrawn himself from her the society. With regard to maintenance, the Family Court partly allowed the petition, and directed the appellant/ husband to pay Rs.7,000/- (rupees seven thousand) per month for the son Samyak towards maintenance. The claim of maintenance of the respondent/ wife was rejected. The appellant/ husband impugned this judgment before this Court.

16. We have heard Shri Patil, learned counsel for the appellant, and Shri Sahu, learned counsel for the respondent. We have also perused the record with the assistance of both the learned counsel. The following point arise for consideration of this Court :

“Whether the appellant/ husband could prove mental cruelty as contemplated in law for the decree of divorce ?”

17. At the outset, before touching the evidence as led by the parties, it would be expedient to have a glance at the settled law on mental cruelty for the decree of divorce.

18. In **Mayadevi (Smt) Vs. Jagdish Prasad**, reported in (2007) 3 SCC 136, the Hon'ble Apex Court relied on the decision of **Shobha Rani Vs. Madhukar Reddi**, reported in (1988) 1 SCC 105, and held that to constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse and such conduct must be something more serious than 'ordinary wear and tear of married life'.

19. In **Praveen Mehta Vs. Inderjit Mehta**, reported in AIR 2002 SC 2582, it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioral pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish,

disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

20. Recently in **Joydeep Majumdar Vs. Bharti Jaiswal Majumdar (Civil Appeal Nos. 3786-3787/2020** decided on **26/02/2021**), the Hon'ble Apex Court in para 10 has observed as under :

“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to

justify dissolution of marriage, at the instance of the wronged party.”

21. Keeping the aforesaid broad parameters in mind, now we proceed to examine the case of the appellant/ husband. First and foremost, with regard to the diseases Rheumatoid arthritis and hypothyroidism, the respondent/ wife was suffering, admittedly, it is not the case of the appellant/ husband that the same are venereal diseases in a communicable form so as to entitle him for a decree of divorce, in accordance with the law. Secondly, the appellant/ husband has nowhere stated that because of such diseases, it is difficult for him to cohabit with the respondent/ wife. Per contra, the respondent/ wife has proved, through her evidence and her father's evidence (DW2 Ramkrishna), that the appellant/ husband was already informed about those diseases, and the same were in a mild form and curable. The appellant/ husband has not taken any objection when he used to visit her house daily after engagement. Furthermore, the appellant/ husband has admitted that after their engagement, he was visiting her house.

22. With regard to the other incidents of cruelty as alleged by the appellant/ husband in his pleadings and evidence, the respondent/ wife in clear and unequivocal terms explained in her pleadings and evidence as to what exactly had happened during these incidents, i.e., at Deekshabhoomi, at Chandrapur and the incident of breakage of showcase, and her version appears to be more reliable and probable. Interestingly, there is no cross-examination of the respondent/ wife for her specific pleadings with regard to these incidents. So, her case with regard to these incidences went unshattered.

23. With regard to her threats of committing suicide and involving the appellant/ husband in a false criminal case, the appellant/ husband could not prove the same as he could not bring on record any criminal case lodged by the respondent/ wife against the appellant/ husband or his relatives during the span of 15 years of their matrimonial life. This belies the case of the appellant/ husband. The appellant/ husband also could not prove the abnormal, whimsical, arrogant or rude behaviour of the respondent/ wife. These

allegations appears to be general and omnibus in nature. The witnesses, i.e., PW2 Nanda and PW3 Siddharth, examined by the appellant/ husband, also would not be of any help to him as they have admitted that they didn't go to swear in the affidavit before the public notary and the appellant/ husband obtained their signatures at their places. The witness PW3 Siddharth, the friend of the appellant/ husband, was examined on the incident at Deekshabhoomi. Even if it is assumed that the respondent/ wife had insulted the appellant/ husband in the presence of other persons, that itself cannot be held to so grave and weighty so as to sever the sacred institution of marriage between the parties.

24. The learned counsel for the appellant/ husband Shri Patil read out the written statement of the respondent/ wife to the divorce petition, and emphatically submitted that a perusal of the same would clearly show that the respondent/ wife has made absolutely false, scandalous, baseless and unfounded allegations against the appellant/ husband which itself is sufficient for a decree of divorce in favour of the

appellant/ husband. The learned counsel, in support of his submissions, relied on the following authorities :

1. Ramesh Laxman Sonawane v/s Meenaxi Ramesh Sonawane & Ors., reported in 2012(1) Mh.L.J. 43.
2. Vijay Kumar Ramchandra Bhate Vs. Neela Vijay Kumar Bhate, reported in 2003 CJ(SC) 1351.
3. Smt. Nirmala Manohar Jagesha Vs. Manohar Shivram Jagesha, reported in AIR 1991 Bombay 259.

25. On a careful perusal of her written statement and her evidence, we do not find that any reckless or baseless allegations she had made so as to entitle the appellant/ husband for a decree of divorce in the line of judgments in the cases of **Ramesh Sonawane** and **Vijay Bhate** (*supra*). On the contrary, she has mentioned several specific instances which occurred due to his drinking habits which caused her mental and physical cruelty, which went unshattered. Considering the quality of evidence led by the respondent/ wife, the instances as she spelt out in her pleadings and evidence, appear to be more probable and reliable.

26. The learned counsel for the appellant/ husband strenuously argued about several material admissions of the respondent/ wife in her cross-examination. On a perusal of her cross-examination, it astonishingly reveals that the learned counsel for the appellant/ husband, for every allegations of cruelty as alleged by her, asked for the documentary proof, to which she denied. We could not understand as to how these admissions would assist the appellant/ husband. There can hardly be any documentary evidence for the nature of incidents of harassment as alleged in her pleadings and evidence.

27. A perusal of her entire cross-examination, the learned counsel for the appellant/ husband could not point out any material admission on her part or unfounded and unsubstantiated allegations on her part so as to prove the case of mental cruelty in favour of the appellant/ husband. On the contrary, a tenor of her pleadings and evidence would show that she had to suffer a lot at the hands of appellant/ husband due to his drinking habits.

28. We found substance in the submission of the learned counsel for the respondent/ wife that the conduct of the appellant/ husband, for not filing any petition for the restitution of conjugal rights nor for the custody of the child, would unerringly show that the appellant/ husband has lost interest in his family, and anyhow wanted divorce on the basis of his own wrong.

29. A cumulative reading of the evidence on record, in our considered opinion, the appellant/ husband is more at fault than the respondent/ wife. The wife's case with regard to cruelty is more probable than the husband's case. The appellant/ husband could not prove the case for the decree of divorce, neither on the ground of mental cruelty nor on the ground of mental disorder as contemplated under law.

30. Considering the specific facts and circumstances of this case, the aforesaid authorities relied on by the learned counsel for appellant/ husband would not be of any assistance to him.

31. In the judgments of **Ramesh Sonawane** and **Vijaykumar Bhate** (*supra*), the decree of divorce was granted to the appellant/ husband mainly on the ground of unfounded and unsubstantiated allegations of the respondent/ wife about illicit relationship of the appellant/ husband with one lady. The same is not the case here.

32. In the case of **Nirmala Manohar** (*supra*), the Single Bench of this Court allowed the husband's petition for divorce mainly on the ground of serious and scandalous allegations of impotency and lack of manliness of the husband made by the wife in her written statement.

33. The Hon'ble Apex Court in the case of **Vinita Saxena Vs. Pankaj Pandit**, reported in (2006) 3 SCC 778 has held that each case depends on its own facts and must be judged on these facts and the concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to the social status of the persons involved and their economic conditions and other

matters. In the case in hand, the parties are in the teaching profession. There is no serious challenge to the liquor habits of the appellant/ husband as alleged by the respondent/ wife. The incidents of cruelty as alleged by the appellant/ husband neither could be proved by him nor are they sufficient to constitute cruelty so as to compel him to condone such conduct and continue to live with his spouse. Considering the evidence on record, we are of the firm view that the material which has been brought on record by the appellant/ husband is not sufficient to establish mental cruelty at the hands of the respondent/ wife.

34. In the circumstances, a well reasoned judgment of the trial Court can not be disturbed. The appellant/ husband has failed to make out a case of mental cruelty for the decree of divorce. The appeal is bereft of any merits and deserves to be dismissed and the same is accordingly dismissed with costs.

JUDGE

JUDGE
