

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

FAMILY COURT APPEAL NO. 46 OF 2017

Mrs. Sarita w/o Bharat Gosawi,
aged about 37 years, Occ. Nil,
R/o 112, Kashi Nagar, Shatabdi Chowk,
Nagpur.

...APPELLANT

Versus

Bharat s/o Mangal Gosawi,
aged about 43 years, Occ. Service,
R/o 183, Mhalgi Nagar, Shivaji Park,
Nagpur.

...RESPONDENT

Shri V.J. Dharkar, Advocate for the appellant.
Shri A.B. Bambal, Advocate for the respondent.

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CORAM : A.S. CHANDURKAR AND

PUSHPA V. GANEDIWALA, JJ.

ARGUMENTS WERE HEARD ON : FEBRUARY 18, 2021.

JUDGMENT IS PRONOUNCED ON : MARCH 05, 2021.

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

The respondent/ husband filed a petition for divorce before the Family Court, Nagpur under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 (hereafter “Act of 1955”, for short) bearing No. A-732/2012 on the ground of cruelty.

2. The appellant/ wife also filed a petition for maintenance under Section 125 of the Code of Criminal Procedure (hereafter “the Code”, for short) bearing No. E-395/2013 for herself and her two minor daughters, thereby claiming maintenance of Rs.21,000/- (rupees twenty-one thousand) per month.

3. The aforesaid both the petitions were tried together, and the Family Court – 2, Nagpur, vide common judgment and decree dated 08/09/2017, allowed the petition of the respondent/ husband for a divorce, and partly allowed the petition of the appellant/ wife, thereby granting maintenance amount of Rs.7,000/- (rupees seven thousand) per month to the appellant/ wife, and Rs.4,500/- (rupees four thousand five hundred) per month to each of the two minor daughters.

4. The appellant/ wife approached this Court in an appeal under Section 19(1) of the Family Courts Act, 1984 (hereafter “Act of 1984”, for short) challenging the decree of divorce and for enhancement of the amount of maintenance.

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

5. The marriage between the parties was solemnized on 05/05/1999 at Nagpur as per the customs prevailing in their community. Out of this wedlock, the couple is blessed with two daughters, who are presently in the custody of the appellant/ wife.

6. It is the case of the respondent/ husband that for one year, there was no instance of marital disharmony in their relationship. Thereafter, the appellant/ wife started taking suspicion on his character. Her behaviour was not proper. She used to humiliate the respondent/ husband, his parents and relatives. The respondent/ husband referred to one incident when the appellant/ wife left the matrimonial house along with her ornaments, and she resumed cohabitation only after counselling by the Women Cell, Dhantoli Police Station. She used to always suspect that the respondent/ husband has an illicit relationship with one lady in his office. She used to visit his office and create scenes and used to abuse him in filthy language. She used to humiliate him in filthy language in the presence of their adolescent daughters.

7. It is further the case of the respondent/ husband that he purchased one plot, and constructed a house thereon

by obtaining a loan, and that the installments for the repayment of the said loan are being deducted from his salary. In order to pacify the appellant/ wife, he even transferred the said house in her name by way of gift deed. Even then, he states, the appellant/ wife could not amend her behaviour. The appellant/ wife started intimidating him that she would sell the house, that she would commit suicide and involve him in a false case. It is further alleged that due to her vindictive behaviour, at last the respondent/ husband was constrained to leave the house. He also states one incident of purchase of lamination machine in order to develop additional avenue of income, as he was carrying burden of loan, however, as the appellant/ wife was non-cooperative, he had to sell it out within a short span of time.

8. The appellant/ wife, in her counter, denied all the adverse allegations with regard to cruelty. Conversely, she has referred to some instances of cruelty at the hands of the respondent/ husband. She states that the respondent/ husband was of greedy nature. Being unsatisfied with the marriage and the dowry, he used to give her ill-treatment. He used to say that the marriage was not with his consent. On one occasion, he gave her beating and threw her out of the house with the children in the midnight. Many a times, the respondent/ husband lodged reports against her, and also gave threats of divorce.

9. The trial Court framed necessary issues, and recorded evidence as adduced by the parties. Prior to that, the trial Court made abortive attempts for reconciliation between the parties through the process of Alternative Dispute Resolution (ADR). The respondent/ husband examined himself as PW1 and father of the appellant/ wife as PW2 Arjun. The appellant/ wife examined herself as DW1. Both the parties have also brought on record the relevant documents.

10. The Family Court, on the basis of evidence as led by the parties, documents on record and the submissions advanced on behalf of the parties, recorded the finding that the appellant/ husband has proved the ground of cruelty under Section 13(1)(i-a) of the Act of 1955, and therefore, he is entitled to decree for divorce in his favour. The appellant/ wife impugned this judgment in the present appeal.

11. We have heard Shri Dharkar, learned counsel for the appellant, and Shri Bambal, learned counsel for the respondent. We have also perused the record with the assistance of both the learned counsel. The following points arise for consideration of this Court :

- 1. Did the respondent/ husband prove mental cruelty as contemplated in law for the decree of divorce ?*
- 2. Is the appellant/ wife entitled for enhancement of the amount of maintenance for herself and her the daughters ?*

12. Shri Dharkar, learned counsel appearing for the appellant/ wife, read out the pleadings of the parties and the cross-examinations of the witnesses, and submitted that the trial Court has committed an error in not considering the evidence of the parties in its correct perspective. The trial Court has failed to consider the incidents of cruelty at the hands of the respondent/ husband to the appellant/ wife. With reference to the evidence of the father of the appellant/ wife, examined by the appellant/ husband in support of his case, the learned counsel submitted that this witness was not knowing about the relations between the parties, as evidently, since more than eight years, he was separate from the family and not in the town, and also did not meet the appellant/ wife. The learned counsel urged to quash and set aside the judgment and the decree of the divorce in favour of the respondent/ wife.

13. Conversely, Shri Bambal, learned counsel for the respondent/ husband, while supporting the impugned judgment and decree, read out the cross-examination of the appellant/ wife, and pointed out the material admissions with regard to the case of the respondent/ husband. The learned counsel also brought to the notice of this Court the absence of denial in the written statement of the respondent/ wife about the case 'mental cruelty' of the respondent/ husband. The learned counsel also relied on the following two authorities on the point that unfounded and unsubstantiated allegations on his/her character by the spouse against the other spouse

amounts to mental cruelty :

i) **Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate**, reported in (2003) DMC 685 (SC).

ii) **Ramesh Laxman Sonawane Vs. Meenaxi Ramesh Sonawane & Ors.**, reported in 2012(1) Mh.L.J. 43.

The learned counsel lastly urged to dismiss the appeal.

14. We have considered the arguments advanced on behalf of both the sides. At the outset, before adverting to discuss 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.

15. 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 should be 'grave and weighty' so as to come to the conclusion that petitioner's 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'.

16. In **Praveen Mehta Vs. Inderjit Mehta**, reported in **AIR 2002 SC 2582**, the Hon'ble Apex Court has held that mental cruelty is a state of mind and feeling with one of the spouses due to 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.

17. 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.”

18. Keeping in mind the aforesaid guiding parameters, now we proceed to examine the evidence on record. Apart from the allegations and counter allegations by the parties against each other with regard to their mutual misbehavior, the crucial point on which the respondent/ husband sought decree of divorce, and which according to him is the reason for his mental sufferings and anguishes, is the suspicious and skeptical nature of the appellant/ wife, as she used to have a doubt on his character. She was doubting his relations with one lady employee from his office. It is his case that the appellant/ wife used to visit his office and used to create scenes. She used to abuse him in filthy language on his character and used to humiliate him in front of their adolescent daughters.

19. The respondent/ husband, in his pleadings and evidence, further stated that he had purchased one plot of land and constructed a house thereon on loan and at present, the same is in possession of the appellant/ wife. He is paying installments for the repayment of the loan for house from his salary account. To pacify her, he even transferred his house in her name. He has stated that fed-up with her acrimonious

behaviour, he had to lodge reports at police station, and there were counselling before the Women Cell, and in consequence thereof, she resumed cohabitation. Lastly, he said, he had no option but to leave the house and to reside in a rented house.

20. A perusal of the written statements of the appellant/ wife would reflect that she has not denied, even by way of simple denial, about the contents in para 3 of the divorce petition of the respondent/ husband which are with regard to the suspicious nature of the appellant/ wife, doubting his character, abusing in a filthy language and visiting his office and creating scenes etc. For ready reference, para 3 of the pleading of the respondent/ husband is reproduced below :

“3. That, respondent never liked any of the family members of petitioner and she never behaved properly with them. Respondent always insulted petitioner’s parents and close relatives. Respondent always had a suspicion that petitioner is inclined towards his parents and relatives. On this issue, she used to pick up quarrel with petitioner, fade up by harassment by respondent, petitioner snapped his relations with his family. Respondent’s suspicious nature regarding petitioner’s character was the biggest problem in his family life. Respondent used to suspect petitioner’s illicit relation with one lady from his office. Respondent used to visit petitioner’s office and create a scene before all office members abusing petitioner in filthy language. Petitioner tried to convince respondent on many occassions but respondent was having tremendous suspicious nature due to

which she has no faith of petitioner. Petitioner even transferred his house in name of respondent to give her faith. Petitioner has repaid loan amount from his salary.”

21. The coordinate Bench of this Court in the case of **Ramesh Laxman Sonawane** (*supra*), has considered the effect of absence of specific denial in the written statement of the wife about allegations of illicit relations of the husband with one lady. The relevant para in the said judgment reads thus :

“38. XXXX We have already observed that the wife had not denied the averments in the petition whereby the husband had stated that on account of the allegations levelled against the husband as regards staying with Yamuna, the husband had suffered cruelty. We have also noticed that the wife did not specifically deny the allegation. She has stated positively about the husband's conduct qua Yamuna. In addition to what is stated in para 10 of her written statement, the wife has stated about the relations between the husband and said Yamanua in the course of her evidence. Haribhau DW-2 has towed wife's line. In a situation like this, if it was the stand of the wife that the husband had illicit relations with Yamuna, it was her duty to prove the said fact by leading cogent evidence. XXXX”

22. In the instant case, admittedly, there are no positive allegations with regard to the character of the respondent/ husband in the written statement of the appellant/ wife. However, maintaining silence in her written statement and not countering the case of cruelty of the respondent/ husband on

this ground, coupled with the fact that there were specific suggestions in the cross-examination of the respondent/ husband by taking the name of the alleged lady, in the opinion of this Court, is nothing but the unfounded allegation on the character of the husband as held in the above cited case.

23. Moreover, a careful perusal of the cross-examination of the respondent/ husband on behalf of the appellant/ wife, it appears that his cross-examination was recorded on 05/02/2015, and thereafter, the witness was recalled and was again cross-examined at length on 05/02/2016. In his cross-examination recorded on 05/02/2015, he denied the suggestion with regard to his demand of dowry of Rs.1,00,000/- (rupees one lakh) for purchasing a plot. He has admitted about filing of complaint at the Mahila Cell, Ajni, and settlement before it. All other questions in his cross-examination have been focused on the financial aspects of the parties in the context of grant of maintenance.

24. In his further cross-examination recorded on 05/02/2016, again, the substantial part of cross-examination is centered around the financial aspects of the parties in the context of grant of maintenance. In para 15 of the cross-examination, some questions with regard to one lady from his office, by name Tejaswini Ambade, were asked. To these questions, he answered that he knows Tejaswini Ambade, as

she was working in the office where he was working. However, he denied that he had friendship with Tejaswini Ambade.

25. A collective reading of his cross-examination, it appears, it is more focused on the maintenance part and less on the allegations of mental cruelty as alleged by the respondent/ husband. So the material allegations, with regard to mental cruelty as pleaded by the respondent/ husband, have neither be denied in the written statement of the appellant/ wife nor have they been sufficiently countered during his cross examination. As per law, the facts, which are not denied, are deemed to have been admitted. As per Order 8 Rule 5 of the Code of Civil Procedure, 1908, the facts which are not denied specifically are deemed to have been admitted, and simple denial is no denial. In the instant case, there is no denial at all.

26. The effect of non cross-examination of a witness was discussed by the Hon'ble Apex Court in the case of **Muddasani Venkata Narsaiah (Dead) Through Legal Representatives Vs. Muddasani Sarojana**, reported in **(2016) 12 SCC 288**, wherein Their Lordships have held that the cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. It is further observed that the effect of non-cross-examination is that the statement of witness has not been disputed. In the said judgment, the Hon'ble Apex Court relied on the judgment in the case of **Maroti Bansi Teli Vs. Radhabai**,

reported in **AIR 1945 Nag 60**, wherein it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established.

27. As against this, if we peruse the cross-examination of the appellant/ wife on behalf of the respondent/ husband, in the first para, as far as her allegations with regard to dowry, she has admitted that in the meeting for fixation of marriage, there were no talks about giving or taking of anything. She has further admitted that it was decided that both the parties shall share the marriage expenses equally. However, she denied that the respondent/ husband had paid Rs.40,000/- (rupees fourty thousand) to her mother for marriage expenses. This part of her cross-examination would go to show that her allegations with respect to the greedy nature of the respondent/ husband and he was ill-treating her on the issue of dowry proved to be false and frivolous.

28. Secondly, the appellant/ wife has admitted that the respondent/ husband purchased a plot of land and constructed a house thereon and in the said house, she is residing presently. She has also admitted that the said house is transferred in her name by the respondent/ husband. However, she expressed ignorance as to whether the respondent/ husband is paying home loan out of his salary. The evasive answers, as per her convenience during her cross-examination, would reflect her conduct.

29. Para 20 and 21 of her cross-examination is with regard to her suspicious nature about the relations of the respondent/ husband with one Tejaswini Ambade. For better appreciation of evidence, these paragraphs are reproduced below :

“20] The character of the petitioner is good. I do not know Tejeswani Ambade. I do not have any suspicion that the petitioner has illegal relation with Tejeswani Ambade. I came to know from other persons that the petitioner is interested in Tejeswani Ambade.

21] I have mentioned name of Tejeswani Ambade in my written statement to the divorce petition and in my maintenance petition. It is not true to say that I have defamed the petitioner by making allegations that he has illicit connection with Tejeswani Ambade. Tejeswani Ambade is working in the office of the petitioner.”

30. A perusal of this part of her cross-examination, it would at once reflect that initially, she flatly denied and said she does not know Tejaswini Ambade and she does not have any suspicion that the respondent is having any illicit relations with Tejaswini Ambade. However, on the next breath, she said she came to know from other persons that the respondent/ husband is interested in Tejaswini Ambade, and further admits that she has mentioned the name of Tejaswini Ambade in her written statement to her divorce petition and in her maintenance petition (though the same is not there). She has

also admitted that Tejaswini Ambade is working in the office of the respondent/ husband. This proves the case of the respondent/ husband that she was taking doubt on his character.

31. As rightly pointed out by the learned counsel for the respondent/ husband the case of **Vijaykumar Bhate** (*supra*) wherein, the Hon'ble Apex Court took the view that the false and malicious allegations against the character of a spouse is a ground for dissolving the marriage on account of causing mental cruelty.

32. Furthermore, the appellant/ wife could not prove her allegations with regard to demand of dowry and ill-treatment. On the contrary, it is borne out from the record that the respondent/ husband himself had to leave from his own house fed-up with her mis-behaviour.

33. Shri Dharkar, learned counsel for the appellant/ wife, repeatedly emphasized on the point that for the mistakes on the part of the advocate, who was handling the case of the appellant/ wife before the trial Court, the appellant/ wife should not have to be suffered. We do not find any point in this submission. One can understand if the advocate could not conduct a brilliant cross-examination of the witness. In the case in hand, the written statement and the affidavit have been sworn in by the appellant/ wife herself. Her conduct during her

cross-examination is also obvious and noticeable. She blew hot and cold and could not withstand the searching cross-examination.

34. It is an admitted fact on record that in spite of filing of divorce petition by the respondent/ husband, the parties stayed together in the same house for two years. The appellant/ wife has filed on record some documents with regard to the 'will' of the husband, however, she could not prove the relevance of those documents in the present petition.

35. In the circumstances, the net result of the aforesaid discussion is that the appellant/ wife treated the husband with cruelty by doubting his character that he is having illicit relations with Tejaswini Ambade from his office. The complete absence of her denial in her written statement about the said allegations, the tenor of the cross-examination of the respondent/ husband on her behalf, coupled with her admissions and evasive answers in her cross-examination with respect to the said allegations, clearly make out of the case as pleaded by the respondent/ husband.

36. Moreover, it is proved that the respondent/ husband, in spite of her such behaviour, only to appease her, transferred the house, which he had constructed from his hard earned money in her name by way of gift deed. Or else, there was no reason for the respondent/ husband to transfer the

same in her name in the middle of their matrimonial life. It is further proved that fed-up with her such behavior, he had to approach the police station for counselling. In normal course, for normal wear and tear in matrimonial life, no husband would approach the police station against wife. Evidently, the object was not to involve her in a criminal case but to give her understanding. It appears, the circumstances were beyond his control and therefore, he was constrained to approach the police station. It is an admitted fact on record that even after filing of the divorce petition, he stayed with her for two years, but at last he had to shift from his own house and stay in a rented house.

37. In the circumstances, we record our satisfaction, as contemplated by Section 23 of the Act of 1955 on the basis of evidence brought on record, that the respondent/ husband could prove the ground of cruelty for the decree of divorce, and that he has not taken advantage of his own wrong. Furthermore, the appellant/ wife could not show to this Court any other legal ground as to why the relief should not be granted to the respondent/ husband.

38. Resultantly, the inevitable conclusion is that the behaviour of the appellant/ wife is such that the respondent/ husband cannot be reasonably expected to live with her, and it is proved that the instances of cruelty as has been brought on record by the respondent/ husband are not the mere 'ordinary

wear and tear of a married life'. We answer point No. 1 accordingly.

39. With respect to the entitlement of the appellant/ wife for the enhancement of the amount of maintenance, admittedly, during the pendency of the proceedings before the Family Court, the appellant/ wife was receiving the interim maintenance to the tune of Rs.12,000/- (rupees twelve thousand) per month for herself and her two daughters. In the impugned judgment, on the basis of evidence on record, the Family Court granted the maintenance of Rs.16,000/- (rupees sixteen thousand) per month, i.e., Rs.7,000/- (rupees seven thousand) for the appellant/ wife and Rs.4,500/- (rupees four thousand five hundred) for each of the two daughters, against the claim of Rs.21,000/- (rupees twenty-one thousand) per month. Admittedly, the gross salary of the respondent/ husband for the month of February-2016-17 was Rs.51,081/- (rupees fifty-one thousand eighty-one), and net salary after deduction of Rs.37,732/- (rupees thirty-seven thousand seven hundred thirty-two) is Rs.13,349/- (rupees thirteen thousand three hundred forty-nine). It is an admitted fact on record that the respondent/ husband is paying installments towards the home loan, and also he has drawn insurance policies in the name of himself and his elder daughter. It has also come on record that he has also undergone surgery for the ailment of his eyes.

40. Considering the evidence on record and the reasons given by the Family Court in para 47 to 49, in our considered view, the order of maintenance of Rs.7,000/- (rupees seven thousand) to the appellant/ wife and Rs.4,500/- (rupees four thousand five hundred) per month to each of the daughters is just and reasonable. We answer point No.2 accordingly.

41. Given the aforesaid discussion, a well-reasoned judgment of the trial Court cannot be disturbed. The trial Court has appreciated the evidence in its correct perspective. No interference is called for. The appeal is bereft of any merits and deserves to be dismissed and the same is accordingly dismissed. In the circumstances, the parties to bear their own costs.

42. Needless to say that under the change in circumstances, the appellant/ wife is always entitled for enhancement of the amount of maintenance under Section 127 of the Code.

JUDGE

JUDGE
