



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**FAMILY COURT APPEAL NO. 176 OF 2014**

WITH

FAMILY COURT APPEAL NO.177 OF 2014

WITH

INTERIM APPLICATION NO.1871 OF 2022

Mr. Sameer Arjun Waghmare  
Aged 35 years, Hindu, Indian Inhabitant,  
Occupation: Service, residing at  
Flat No.002, Om Shree Sai Darshan Co-op.  
Housing Society,  
Sodawala Lane, Borivali (West),  
Mumbai 400092

... Appellant

**Versus**

Mrs. Sunita Sameer Waghmare,  
Aged 32 years, Hindu, Indian Inhabitant,  
Occupation: self employed, residing at  
31, Nausha Compound, Welfare Society,  
Pimpri Pada Malad (East),  
Mumbai 400097

... Respondent

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Mr. Laxmikant M. Shukla alongwith Ms. Heena Lambate, Advocates  
for the Appellant in both Appeals.

Mr. Shreesh Oak i/by S.C. Legal for Respondent Nos.1 and 2.

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**CORAM : NITIN W. SAMBRE &  
SHARMILA U. DESHMUKH, JJ.**

**DATE : September 06, 2023.**

**JUDGMENT : (Sharmila U. Deshmukh, J.):**

1. Both the Family Court Appeals arises out of the common judgment and decree dated 7<sup>th</sup> April, 2014 passed by Family Court, Mumbai in Petition No.A-2722 of 2009 and Petition No.C-11 of 2011. By the impugned common judgment and decree, the Family Court dismissed the Petition No.A-2722 of 2009 filed by the Appellant husband seeking dissolution of marriage and allowed the petition No.C-11 of 2011, filed by the Respondent wife seeking maintenance. The Appeals have been preferred by the Appellant husband. Both the Appeals were heard together and is being decided by this common judgment. The Appellant husband is referred to as Petitioner and the Respondent wife is referred to as Respondent.

2. The marriage between the parties has been solemnized on 24<sup>th</sup> January, 2007 according to Hindu Vedic Rites and there is no issue born of the wedlock. Petition No.A-2722 of 2009 was instituted by the petitioner-husband Sameer Waghmare seeking dissolution of marriage under the provisions of Section 13 (1)(i-a)(i-b) of the Hindu

Marriage Act, 1955. Petition No C-11 of 2011 was instituted by the Respondent wife under the provisions of Section 18 (2)(a)(b) of the Hindu Adoption and Maintenance Act, 1956 seeking monthly maintenance of Rs.30,000/-, residence and litigation costs.

**PLEADINGS:**

3. The case of the Petitioner in Petition No.A-2722 of 2009 can be briefly summarised as under:

- (a) Within few months of the marriage, disputes arose between the parties and all attempts for reconciliation between the parties failed.
- (b) As the honeymoon was delayed till February-2007 due to the Petitioner's educational course, the Respondent was upset during the honeymoon and quarreled on petty matters.
- (c) Respondent was aware that she had to live in a joint family, however, the Respondent started complaining and wanted to stay separately.
- (d) Respondent was talking till late night on mobile and would not divulge with whom she was talking.
- (e) If the Petitioner did not permit the Respondent to visit her

parents' house, she used to become angry with the Petitioner.

- (f) Respondent did not respect the Petitioner's parents and did not look after them.
- (g) On 21<sup>st</sup> October, 2008, the Respondent had picked up quarrel with the Petitioner and his parents, and after the Petitioner left for his office, the Respondent quarrelled with his parents and abused them and took her clothes and ornaments and left the matrimonial house. Thereafter, the Petitioner's parents removed him from the matrimonial house and he is residing in the office.
- (h) Respondent had flatly refused to come back to the matrimonial house when the parents of the Petitioner and his relatives tried to reconcile the matter. Subsequently, legal notice was sent to the Respondent on 14<sup>th</sup> November, 2009 seeking divorce by mutual consent, however, the same was denied by reply notice.

4. During the pendency of the proceedings, the pleadings before the Family Court came to be amended to incorporate the subsequent event of lodgment of criminal complaint by the Respondent with Borivali Police Station on 24<sup>th</sup> September, 2013 leading to registration of FIR No.486 of 2013 on 22<sup>nd</sup> October, 2013 for the offences under Sections 498-A, 406, 341, 323, 504, 506 Part-II

read with 34 of the Indian Penal Code, 1860 against the Petitioner and his parents. Anticipatory Bail Application No.500 of 2013 was filed before the Sessions Court and interim bail was granted. It was pleaded that filing of the criminal case against the Petitioner and his parents have lowered the reputation before the public at large and the allegations made which are contrary to the facts are baseless and as such amounts to cruelty. There was no written statement filed by the Respondent to the amended portion of the petition.

5. In the written statement, the case of the Respondent was of denial and counter allegations briefly stated is as under:

- (a) Petitioner wants to divorce the respondent so that the Petitioner could remarry a Muslim-girl with whom the Petitioner has an illicit relationship, as few days after the marriage, the Petitioner's mother told the Respondent to divorce the Petitioner as the Petitioner is having the affair with the Muslim-girl. When she confronted the Petitioner about this the Petitioner started quarreling and abused her.
- (b) During the honeymoon, the Petitioner was always busy on the mobile phone and was not discussing freely with the Respondent.

- (c) For two to three months, they were living a normal married life and thereafter there restrictions imposed upon the Respondent. The Petitioner become very possessive about her and did not permit anybody talking to her. Petitioner was extremely short tempered and would loose control if the Respondent disagreed with him. Petitioner is in habit of drinking and used to come late at night and used to quarrel with her in most filthy language. The mother of the Petitioner used to abuse the Respondent by saying that she and her parents are beggars.
- (d) Her entire matrimonial life was nightmarish experience for her and she never experienced such poor treatment in her life nor had she met such mean-minded and miserable persons as the Petitioner and his parents. She was treated like a servant and while the Petitioner and his family enjoyed watching TV, the Respondent used to do all the house-work. The Petitioner and his family members intentionally removed the maid servant from the house which compelled the Respondent to do all the house work. She was treated with inhuman cruelty like slave.
- (e) In the month of March 2009, the Petitioner and his parents hatched a plan to remove the Respondent from the matrimonial house and accordingly, the petitioner's

parents went to Solapur and the Petitioner was alone with the Respondent in the matrimonial house. On 7<sup>th</sup> March, 2009, the Petitioner picked-up a quarrel with the Respondent and asked her to leave matrimonial home immediately and forcibly took the respondent with him and left her at her parents' place and since then i.e. from 7<sup>th</sup> March, 2009 the Respondent is staying with her parents.

- (f) On 15<sup>th</sup> April, 2009, the mother of the Petitioner visited the respondent's parents house and created a big scene by quarreling and abusing in most filthy language and asked the respondent to divorce the Petitioner and that the petitioner and his mother offered the Respondent Rs.2 Crore and flat and good maintenance in exchange of divorce.

6. In Petition No.C-11 of 2011, the Respondent has reiterated the contents of the written statement. It was contended that on 7<sup>th</sup> March, 2009, the Petitioner had forcibly removed the respondent from the matrimonial house and dropped her to parents' place by his own car. It was pleaded that the respondent-wife has been treated with tremendous mental cruelty and that the Petitioner is not ready to maintain the Respondent. As regards the income of the Petitioner, the case of the Respondent was that the Petitioner is a

qualified engineer and owner of M/s. Sameer Construction and a partner with his brother Sunil in the firm named M/s.Sunil Construction. The Petitioner and his parents are owners of Sulochana Nursing Home and own hotel named Sairaj Resorts at Solapur and agricultural land. The Petitioner is a trustee in Om Sai Super Specialty Hospital situated at Borivali, Mumbai. The Respondent contended that the income of the Petitioner and his family is about Rs.5,00,000/- per month, apart from the other income from the landed properties in Solapur whereas the Respondent is not employed and has no source of income to maintain herself.

7. In the written statement filed in Petition No.C-11 of 2011, after denying the contentions of the Respondent, the case of the Petitioner was that the Respondent is educated and self-employed and had been working prior to the marriage and is presently earning Rs.3,000/- p.m.

8. The Petitioner claimed to be working with M/s. Sameer Construction drawing monthly salary of Rs 10,000/. It was contended that the business of M/s. Sunil Construction and Sairaj Resorts belongs to father of the Petitioner, Arjun Anant Waghmare, that M/s.

Sameer Construction is a partnership firm and the partners are Kishor Kantilal Maniyar, Naina Kishor Maniyar and Arjun Anant Waghmare. It was pleaded that the Petitioner is non functional director of Sulochana Nursing Home and is not paid any remuneration.

**EVIDENCE:**

9. The Petitioner examined himself and the Respondent has examined herself. Alongwith oral evidence both parties have produced certain documentary evidence.

10. The Petitioner adduced oral evidence and documentary evidence produced on record was proof of marriage, the complaints addressed to the police station on 7<sup>th</sup> July, 2009 and 5<sup>th</sup> November, 2009, the salary certificate issued by the firm M/s. Sameer Construction dated 5<sup>th</sup> January, 2011, the certificate of his Chartered Accountant, copy of the legal notice dated 14<sup>th</sup> November, 2009 addressed by the Petitioner to his Advocate and the response dated 4<sup>th</sup> December, 2009.

11. In the cross-examination, the Petitioner has given various

admissions as regards the financial capacity of the Petitioner and his family members. It was admitted that the entire marriage expenses were born by his family; that since 2004 he was working with M/s.Sameer Construction Company in which his father held 20% stake in the company and other 80% share were held by other partners; that the partnership firm was constituted in 1997 by his father and prior thereto his father was may be dealing with in real estate business. He has further admitted that Sulochana Nursing Home is the family business of his family and that Om Sai Super Specialty Hospital belongs to his father. He has further admitted that his family owns the resort by name Sairaj Resorts, which belongs to his father. He has admitted that his father had allotted two separate accommodation for his two married brothers.

12. In respect of his own income, he admitted that he is diploma holder in civil engineering; that he is having investment in LIC; that he had visited Thailand in June, 2012; that he contested the BMC elections in February-2012.; that he is owner of Vento Car which has been gifted by his father and that the car loan is in the name of his father and his father is paying the EMIs. He has also admitted that he is director of Om Sai Super Specialty Hospital and Sulochana

Nursing Home. He has admitted that he contested BMC elections and had spent an amount more than 3 lakhs which he has raised by borrowing from his father and balance amount from the third parties in respect of which an account of his expenditure was submitted during election campaign.

13. In the cross-examination, he has admitted that he does not have any proof to show that he is residing in the office of his father since 2009 to 2012; that no complaint has been lodged by the partners of partnership firm other than his father in the police and that no eviction proceedings have been initiated by his father. He has admitted that he consumes liquor but has denied the suggestion that he was in the habit of returning home after consuming the liquor.

14. In the cross-examination, the Petitioner has deposed that the Respondent used to insult the Petitioner in front of his parents and used to demand separate accommodation. Pertinently in the cross examination, the suggestion given was that the Respondent used to harass the Petitioner on petty issue like his mother had asked the housemaid to come late, that like his brother they should start living away from the parents and insulting his parents by giving back

answers, which has been denied by the Petitioner.

15. He has deposed in the cross-examination that after 2 and ½ months, the Respondent started demanding separate residence and started quarreling on that point. The Petitioner has admitted that he has not given details of the date and time of quarrel and instances of cruelty alleged to have been inflicted by the Respondent on him and his parents. The suggestion given was that the Petitioner had driven the Respondent out of the house on 7<sup>th</sup> March, 2009, that his parents were not at home and that the Petitioner took the Respondent in his own care and left her to her maternal home.

16. The Respondent filed her affidavit in lieu of evidence and has reproduced the contents of the written statement. The Respondent produced the documentary evidence viz. the copy photograph of marriage, copy of invitation card, notice to Applicant-husband through advocate, copy of complaint letter to Police Station, Borivali, dated 7<sup>th</sup> July, 2009, copy of letter to Police Station, Borivali dated 5<sup>th</sup> November, 2009, copy of complaint by father to police station dated 27<sup>th</sup> July, 2009, copy of notice issued dated 14<sup>th</sup> November, 2009, brochure of Sameer Constructions, invitation card of

Hotel Sairaj family resort at Solapur which was owned by the Applicant-husband, scrutiny of nomination of the Applicant-husband in BMC election 2012, payment receipt of BMC dated 31<sup>st</sup> January, 2012 paid by Applicant-husband, letter of nomination of election commission, affidavit of Applicant-husband in BMC election, payment receipt dated 25<sup>th</sup> January, 2012, nomination for dated 22<sup>nd</sup> January, 2012.

17. During her cross-examination, she has admitted that her husband was not beating her or abusing her. She has further admitted that they had one maid servant in the matrimonial house. She has further admitted that she is not aware as to whether her husband is a partner in Sunil Construction and hotel Sairaj Resorts. She has further admitted that she is not aware if her husband is getting any remuneration from Sulochana Nursing Home and Om Sai Super Specialty Hospital. During her cross-examination, the Respondent has stated that her husband is getting salary Rs.40,000/- p.m. from Sameer Construction. She has admitted that initially her husband was working as a site supervisor in Sameer Construction and now he is a partner in the firm.

18. As regards her case that the Petitioner and his parents had subjected her to cruelty, in her cross-examination, she has stated that he used to return home at late night and used to shout at him if she asked him to take her out. She has stated that during the honeymoon, the Petitioner used to talk on her mobile and that she doubted that he was talking with her special friend. She has stated that she was scared of her husband because he used to shout at her.

19. During her cross-examination, she has admitted that she does not know the name of Muslim-girl, with whom the Petitioner has affair and that she had never seen her and does not know where she lives. She has stated that he used to come home in drunken condition and had an affair with the girl. In response to specific question as regards the allegation of abuse by the Petitioner, the Respondent stated that he was not abusing her but telling her that she is not intelligent. As regards the mental and physical cruelty she has stated that the Petitioner and his family used to force her to do house work and used to ask her as to why she is not leaving matrimonial house. She has stated that the petitioner used to create a scene to insult her in the eyes of people and used to abuse her and her parents in filthy language by saying that she was insane. She has further admitted that

she has not filed any police complaint against the Petitioner for driving her out of the house and quarreling with her on 7<sup>th</sup> March, 2009 and that there is no petition filed for restitution of conjugal rights. She further admitted that her reply notice does not bear the facts that the Petitioner and her mother offered her a sum of Rs.2 crore in exchange of divorce. During her cross-examination, she has admitted that the car owned by her husband was gifted by her father-in-law.

20. An additional affidavit of evidence came to be filed by the Petitioner, wherein he has deposed as regards the filing of complaint on 24<sup>th</sup> September, 2013, and the registration of FIR under the various offences of the IPC. He has further deposed that the allegations made in the FIR is that in July, 2013, the Petitioner and his family had caused mental agony and hardship to the Respondent and had called upon the Respondent not to reside in the matrimonial house. He has further deposed that the allegation of the FIR that he was having illicit relationship with Yasmin Sayyed.

21. In the cross-examination, the Petitioner has stated that he does not know Yasmin Sayyed. He has further denied the suggestion

that Yasmin Sayyed worked with Sulochana Nursing Home. He has admitted that he had falsely stated that the High Court had asked the police not file chargesheet and he has admitted that the High Court had directed the police to continue with the investigation.

## **FINDINGS OF TRIAL COURT:**

22. The trial Court framed the following issues:

(i) In Petition No.A-2722/2009, as under:

| <i><b>Issues</b></i>                                                                                                                                                                | <i><b>Findings</b></i>     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 1. Does the Petitioner prove that the Respondent has after the solemnization of marriage, treated the Petitioner with cruelty?                                                      | No                         |
| 2. Does the Petitioner prove that the Respondent has deserted the Petitioner for a continuous period of more than two years immediately preceding the presentation of the Petition? | No.                        |
| 3. Is the Petitioner entitled to a decree of dissolution of Marriage, as claimed?                                                                                                   | No.                        |
| 4. What order and decree?                                                                                                                                                           | Petition stands dismissed. |

(ii) In Petition No.C-11/2011, as under:

| <i><b>Issues</b></i>                                                      | <i><b>Findings</b></i> |
|---------------------------------------------------------------------------|------------------------|
| 1. Does the Petitioner prove that the Respondent has deserted her without | Yes                    |

*reasonable cause and without her consent or he has willfully neglected her?*

- |    |                                                                                         |                                         |
|----|-----------------------------------------------------------------------------------------|-----------------------------------------|
| 2. | <i>Whether the petitioner is entitled for maintenance as claimed?</i>                   | <i>Rs.30,000/-<br/>Per month</i>        |
| 3. | <i>Whether the petitioner is entitled for separate accommodation as claimed by her?</i> | <i>Yes. As per<br/>Final order</i>      |
| 4. | <i>Whether the Petitioner is entitled for litigation Expenses?</i>                      | <i>Yes. As per the<br/>Final order</i>  |
| 5. | <i>What order and decree?</i>                                                           | <i>Petition<br/>stands<br/>Decreed.</i> |

23. The trial Court held that the grounds of divorce are either vague or pleaded without any specifications; that there was no direct evidence as the Petitioner has not examined his parents and that not a single word of insult is properly proved; that except the alleged incident dated 22<sup>nd</sup> October, 2008, there is no other incident which can be said to be grave or weighty, and the admission that he has not given specific details of the quarrels and instances of cruelty alleged to have been inflicted by the Respondent. The trial Court held that the testimony of the Petitioner is not creditworthy as he has come up with false theory to declare incorrect residence address and that he had falsely stated that the High Court had asked to police not to file

chargesheet, when in fact the High Court directed the police to continue with the investigation. The trial Court held that the Petitioner's father had created false record to show that he is not living in matrimonial house and in view of Section 23 (1) of the Hindu Marriage Act, held that a person taking disadvantage of his own fault cannot take divorce. As regards the lodging of the complaint and the FIR by the Respondent, the trial Court held that as the trial has not yet begun making any comment on the truthfulness of the allegation of the complaint would be interfering with the trial of the Court.

24. The trial Court held that the suggestion given to the Respondent about involvement with her friend Patil in absence of pleadings has subjected the Respondent to cruelty. The trial Court held in face of admission of husband that he consumed liquor that coming home late at night in drunken condition is mental agony to wife. The trial Court considered that the Petitioner belongs to upper strata of society and shouting at wife and calling her insane amounts to cruelty.

25. As regards the issue of maintenance the trial Court

observed that the Petitioner has admitted that he worked with Sameer Construction since 2002 and disbelieved that the Petitioner is not a partner in the partnership firm. The Trial Court considered the admissions of the Petitioner about his visit to Thailand in June-2012; he is owner of Vento Car; that the Petitioner has contested the BMC elections in which he has spent sum of Rs.3 lakhs and the documentary evidence produced by the Respondent and believed the version of the Respondent wife that the Petitioner and his family earning Rs.5,00,000/- p.m. and the Petitioner is living with his parents and doing family business..

26. The Trial Court by the common judgment and order dated 7<sup>th</sup> April, 2014 dismissed the divorce petition of the Petitioner and decreed the maintenance petition. The operative order dated 7<sup>th</sup> April, 2014, reads as under:

- “1. Petitioner A-2722/2009 stands allowed with costs.*
- 2. Petition C-11/2011 for maintenance stands decreed with costs.*
- 3. The husband-Sameer Waghmare is directed to pay permanent alimony of Rs.30,000/- per month to wife-Sunita Sameer Waghmare u/sec. 18 of the Hindu Adoption and Maintenance Act, 1956.*

*4. The order shall take effect from the date of Petition C-11/2011 i.e. 24.1.2011.*

*5. The husband-Sameer Waghmare is directed to provide 1BHK flat to wife-Sunita Sameer Waghmare in the vicinity where her parental home is situated. He shall provide such accommodation within 60 days and on failure to do so he shall pay amount of Rs.30,000/- per month to wife for availing such accommodation.*

*6. The husband is directed to pay litigation cost of Rs.20,000/- to wife.*

*7. Decree be drawn up accordingly to both Proceedings.”*

27. During the pendency of the appeal proceedings, the petition was amended to bring on record the subsequent events that in the writ petition filed under Section 482 of the Cr.P.C. seeking quashing of the FIR alleged by the wife, liberty was granted to the Applicant-husband and his parents to file discharge application before the trial Court, which came to be dismissed as against which the Criminal Revision Application Nos.206 of 2019 and 207 of 2019 were filed which came to be allowed.

#### **SUBMISSIONS:**

28. Heard Mr. Laxmikant Shukla, learned counsel for the

Appellant and Mr. Shreesh Oak, learned counsel for the Respondent.

29. Mr. Shukla, learned counsel for the Appellant submits the matrimonial cohabitation lasted for about two years. He would further submit the wife left the matrimonial house on 22<sup>nd</sup> August, 2008 and as per the wife it is on 7<sup>th</sup> March, 2009. He has confined his submissions only to the aspect of cruelty and would submit that considering that the criminal revision application is allowed quashing the FIR lodged by the wife, it is evident that the Respondent has levelled false allegations against the Petitioner and his parents which entitles the Petitioner to divorce on the ground of cruelty. He would urge that the Respondent has failed to substantiate the allegations of illicit relationship. He would draw the attention of this Court to the evidence to indicate that there was no cross-examination of the Petitioner as regards the alleged extra-marital affair. He would further submit that all this was circulated at the petitioner's native place which has resulted in damaging his reputation and due to the lodging of FIR he has withdrawn from the elections. He would further submit that the admitted position is that atleast since 2009, the Respondent is not residing with the Petitioner and till the year 2013 there was no police complaint filed by the Respondent.

30. As regards the maintenance proceedings are concerned, which is subject matter of challenge of Family Court Appeal No.177 of 2014, he would contend that the Respondent is a graduate and submit that the company is run by his family. He would further submit that as regards Om Sai Super Specialty Hospital, the same was earlier run by his elder brother and is not functioning. By inviting attention of this Court to the partnership deed, he would contend that Sameer Construction is a partnership business in which his father is a partner holding 20% share.

31. *Per contra*, Mr. Oak, learned counsel for the Respondent submits that the respondent-wife was not a party to the proceedings before Sessions Court and there was no notice to the Respondent at the time of hearing of the revision application. He would further submit that Respondent became aware of the order of the sessions court only in the year 2022, when the application for amendment was filed. He would further submit that it is the Petitioner who has subjected the respondent-wife to cruelty and the instances cited in the Petition are extremely vague and without any specific details. He would further submit that the Petitioner has failed to examine his parents to prove the allegations of cruelty. As regards desertion the

learned counsel for the Respondent would contend that on 7<sup>th</sup> March, 2009, she was thrown out and as such ground of desertion is not available to the Petitioner. He has taken this Court to the observations of the trial Court as regards the conduct of the Petitioner in dealing with the Respondent and would contend that the Petitioner has failed to prove cruelty on part of the Respondent. He would further contend that the trial Court has come to a specific finding that the testimony of the Petitioner is not creditworthy, as he has taken false stand and the provision of Section 23 (i) of the Hindu Marriage Act, 1955, do not permit the petitioner to take advantage of his own fault. As regards the question of maintenance, he would submit that the trial Court on consideration of the documentary evidence has granted a sum of Rs.30,000/-. He would further contend that an application was moved for reduction of the maintenance and this Court had directed a sum of Rs.20,000/- to be paid towards accommodation and Rs.20,000/- to be paid towards maintenance, which was challenged in the Apex Court, that was however not successful.

32. In rejoinder learned counsel appearing for the Petitioner submits that the Respondent was present to oppose the discharge application before the trial Court. He would further submit that the

Respondent has not filed Petition for restitution.

33. Considered the submissions and perused the papers and proceedings with the assistance of the learned counsel appearing for the parties.

#### **ANALYSIS AND CONCLUSIONS:**

34. Mr. Shukla, learned counsel for Petitioner has confined his submissions to the aspect of cruelty and has not pressed the ground of desertion. Before adverting further, it will be beneficial to refer to the provisions of Section 13 (i)(ia) of Hindu Marriage Act, 1955 which reads thus:

35. In the case of **Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73**, the Apex Court construing the question of 'cruelty' as a ground of divorce under Section 13 (1)(ia) of the Act made the following observations :

*“Treating the Petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose*

*of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."*

36. Applying the law laid down by the Apex Court, the evidence on record will have to be analysed to consider whether the Petitioner has established such conduct on part of the Respondent wife which is something more than normal wear and tear of matrimonial life. The instances of cruelty on which the Petitioner seeks dissolution of marriage has been rightly summarized by the Trial Court as under:

- "i) that she was insulting him and his parents.*
- ii) that she was talking clandestinely to some one on phone.*

*iii) that she spoilt the mood during honeymoon.*

*iv) That she quarreled with him on 22.10.2008 and returned to her parental home.”*

37. Considering the instances of cruelty cited by the Petitioner, in our view, the same cannot be said to be so grave and weighty so as to cause an apprehension in the mind of the Petitioner that it will be harmful to reside with the Respondent. Despite thereof we have proceeded to examine the evidence on record to ascertain proof of the incidents alleged. As regards the behaviour of the Respondent during the honeymoon, in the cross examination, the Petitioner has admitted that it was the joint decision of the parties to go on the honeymoon and they returned to Mumbai as per the schedule. That being so, the case of the Petitioner that during the honeymoon the Respondent did not behave properly as the honeymoon was delayed cannot be believed.

38. The next instance is as regards demand of the Respondent for separate residence. The Petitioner has deposed that the Respondent started demanding separate residence and behaved arrogantly and stated that she has no intention to continue the marital obligation. The demand to stay separately, in our opinion, by

itself, will not amount to mental cruelty unless it is shown that the said demand had become a bone of contention between the parties and have led to numerous fights leading to mental agony. At this juncture it needs to be noted that the Petitioner in his cross examination has admitted that the Petitioner's two married brothers had been given separate accommodation. Viewed from that aspect, it cannot be said that the demand if raised was so unreasonable as to cause mental cruelty.

39. The Petitioner has deposed generally about the conduct of the Respondent that she used to insult, humiliate and abuse the Petitioner and his parents without giving the date of occurrences or the details of the incidents. As the Petitioner has failed to state the material particulars as to the alleged incidents, there is no sufficient evidence produced to substantiate the allegations. Pertinently, the case of the Petitioner could have been corroborated by his parents, but the Petitioner has failed to examine his parents. The only incident which can be said to be proved is the incident of 22<sup>nd</sup> October, 2008 as in the cross examination of the Petitioner, no material admission has been elicited as regards this incident.

40. The question is whether upon consideration of the evidence on record, the Petitioner has made out a case of such cruelty as would entitle the Petitioner for dissolution of the marriage. If the cumulative effect of the instances of cruelty indicated above is considered, in our opinion, the conduct of the Respondent cannot be construed to constitute such cruelty as would entitle the Petitioner to decree of divorce.

41. Even if it is accepted that the aforesaid instances of cruelty as deposed cannot be construed to be grave and weighty, there is another dimension to the present matter viz the filing of the FIR during the pendency of the Petition and the allegations made by the Respondent in the written statement which in our opinion entitles the Petitioner to dissolution of marriage as indicated hereinafter.

42. In the written statement, the allegations of the Respondent can be summarised as under:

- (a) The Petitioner was extremely short tempered and used to loose control if she disagreed with him.
- (b) The Petitioner is having an illicit relationship with a muslim girl.

- (c) The Petitioner is habituated to drinking and used to come late at night and quarrel with her and abuse her in most filthy language.
- (d) The Petitioner and his parents removed the maid servants and forced the Respondent to do all the housework.
- (e) The entire matrimonial life was nightmarish experience for her and she had never experienced such cruel treatment in her life nor had she met such mean minded and miserable persons as the Petitioner and his parents.
- (f) The Petitioner was manhandling her and quarrelled over smallest issue and threatened her and abused her.

43. Now if we consider the cross examination of the Respondent, she has admitted that she does not know the name of Muslim-girl with whom the Petitioner has an affair and that she had never seen and does not know where she lives. In response to specific question as regards the abuse by the Petitioner, the Respondent admitted that he was not abusing her but telling her that she is not intelligent. As regards the mental and physical cruelty she has stated that the Petitioner and his family used to force her to do house work and used to ask her as to why she is not leaving matrimonial house. She has stated that the Petitioner abused her in filthy language by

calling her insane.

44. The admission of the Respondent that there was one maid servant in the matrimonial house renders false her allegation of ill-treatment and cruelty at the hands of the Petitioner and his parents of removing all house-help and forcing her to do all the work has been proved to be false. The Respondent had further deposed that she was abused and manhandled by the Petitioner, however in the cross examination she has admitted that the Petitioner was not beating her or abusing her. She has further admitted that her allegation of abuse in filthy language was being called as unintelligent and insane and by utmost cruelty she means that he used to return home late in the night and used to shout at her even if she asked him to take her out.

45. In light of the vital admissions given in the cross examination, the allegations of the Respondent terming ill treatment, abuse and mental and physical cruelty, going to the extent of describing her matrimonial life as nightmarish and calling her husband and his parents as mean minded and miserable persons was clearly unsubstantiated. By no stretch of imagination, it can be said

that calling the Respondent that “तुला अक्कल नाही, तु वेडी आहेस” amounts to abuse in filthy language or utmost cruelty is coming late at night and shouting if asked for outing. The parties are Maharashtrians and irrespective of any strata of society to which the parties belong, these are common utterances in Marathi language and cannot be considered as abuse in filthy language, unless the context in which the utterances were made demonstrate that the same was for the purpose of humiliating and insulting the person. The Respondent has not given the details of the incidents during which such utterances were made and as such simply by mouthing these words, it cannot be said that the Respondent was abused in filthy language.

46. Now we come to the grave and serious allegations levelled by the Respondent as regards the illicit relationship of the Petitioner. In the cross examination she has admitted that she does not know the name of the Muslim girl or where she lives and that she has never seen her. This admission has to be viewed in the light of the FIR lodged by the Respondent. It needs to be noted that the evidence of the Respondent concluded in the month of July, 2013. In the month of October, 2013, the Respondent registered an FIR against the Petitioner and his family members for the alleged offences punishable

under Sections 498-A, 406, 341, 323, 504, 506 Part-II read with 34 of the IPC. The allegations in the FIR have been noted in some detail. It is alleged that the Petitioner was having an illicit relationship with one Yasmin Sayyed and that in the cupboard the Respondent had found the photographs of the Petitioner with one lady and also certain letters in which the name of Yasmin Sayyed was mentioned. Same was alleged upon confrontation, the Petitioner abused, threatened and assaulted her. It is alleged that the Petitioner and his parents abused the Respondent by calling her and family members as beggars. It is further alleged that the Petitioner and his parents made demands for money and flat from the Respondent's parents and used to send the Respondent forcibly to her parents' house and if she did not agree, they would abuse and assault her. It is alleged that respondent's in-laws removed all the servants from the house and made the Respondent to do all the household work. It is alleged that the Petitioner was constantly under the influence of liquor.

47. It is alleged that in the month of July-2013, the respondent's in-laws told the Respondent to bring money from her parents for purchase of flat and upon the Respondent expressing the inability of her parents due to their financial condition, the Petitioner

abused and assaulted and the Respondent and threw her out of the house with the assistance of her in-laws.

48. The Petitions before the Family Court came to be amended with a specific case that by filing of the criminal case against the Petitioner and his parents has lowered their reputation before the public at large and family members and by making baseless allegations the conduct amounts to cruelty which entitles the Petitioner for divorce. Pertinently after the petition was amended by the Petitioner, there was no written statement filed to the amended petition.

49. Now if the consider the allegations in the FIR in the background of the admissions given by the Respondent it can be seen that it is alleged that the Petitioner was having affair with the Muslim-girl named Yasmin Sayyed, whereas in the cross-examination, Respondent has stated that she does not know the name of Muslim-girl with whom the Petitioner has an affair. Further before the Family Court it is not the case of the Respondent that there was any demand for dowry or abuse or assault in the month of July, 2013. In the FIR, the allegation is that in the month of July-2013, the Petitioner and his

parents abused and assaulted her and demanded that the Respondent bring money from her parents and also demanded a flat and had forcibly thrown her out of the house. In the written statement, the specific contention of the Respondent is that on 7<sup>th</sup> March, 2009 the respondent had not driven out by the Petitioner and her in-laws. Considering the case put forward in the Family Court, it is crystal clear that the allegations made in the FIR were completely false and baseless. After having led evidence and given vital admissions in the cross examination, the Respondent has gone ahead and after closure of her evidence in the month of July, 2013, lodged an FIR in the month of October, 2013 and made false and baseless allegations against the Petitioner and his parents.

50. The Trial Court did not find substance in the contention of the Petitioner of false implication as the FIR alleges abuse and assault in the matrimonial house in 2013. The Trial Court held that the matter is subjudice before the criminal court and it is not known whether there is judgment of conviction. In our opinion, bare perusal of the case put forward in the matrimonial petitions and the allegations in the FIR makes it explicitly clear that the Respondent has falsely implicated the Petitioner. Firstly, the FIR has been lodged

in the month of October, 2013 when the evidence of the Respondent was over in the month of July, 2013. Neither in the pleadings nor during the evidence there is any mention of the allegations which finds place in the FIR. Secondly, the FIR alleges illicit relationship with one Yasmeen Sayed whereas in the cross examination, the Respondent admits that she does not know the name of the muslim girl. Thirdly, the FIR alleges abuse and assault on the ground of dowry and being thrown out of the matrimonial house in September, 2013 when in the matrimonial petition, it is the Respondent's own case that on 7<sup>th</sup> March, 2009, the Petitioner took the Respondent by his car to her parent's house and left her there and since then she is residing with her parents. In the face of such contradictions the Trial Court failed to appreciate that the Respondent has falsely implicated the Petitioner and made wild, reckless and baseless allegations. The fact remains that the FIR has been quashed in the revision application preferred by the Petitioner and his parents.

51. The Petitioner had amended the petition and pleaded the false implication as a ground of cruelty. He has deposed that the false complaint has lowered the image and reputation of the Petitioner and his parents in the society and has caused mental trauma to them. As

the issue involved is whether the allegations made in the written statement by the respondent-wife would amount to cruelty, a useful reference may be made to the decision of the Apex Court in the case of **V. Bhagwat vs. D. Bhagwat (Mrs)** reported in **(1994) 1 SCC 337**. The Apex Court in the facts of that case was considering the question as to whether the allegations made by the respondent-wife in her written statement constitute mental cruelty. The Apex Court after analysing the provisions of Section 13(i)(i-a) of the Hindu Marriage Act and after considering the various decisions have held in paragraph 20 thus:

*“it must be remembered that the wife was merely defending herself against what are, according to her, totally unfounded allegations and aspersions on her character. It was not necessary for her to go beyond that and allege that the Petitioner is a mental patient, that he is not a normal person, that he requires psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations– and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. It is not as if these words were uttered in a fit of anger or under an emotional stress. They were made in a formal pleading filed in the Court and the questions to that effect were put by her counsel, at her instructions, in the cross-examination..... Making such allegations in the pleadings and putting such questions to the husband while he is in the witness-box, is*

*bound to cause him intense mental pain and anguish besides affecting his career and professional prospects..... These assertions cannot but constitute mental cruelty of such a nature that the petitioner, situated as he is and in the context of the several relevant circumstances, cannot reasonably be asked to live with the respondent thereafter. The husband in the position of the Petitioner herein would be justified in saying that, it is not possible for him to live with the wife in view of the said allegations. ....”*

52. In the case of **Joydeep Majumdar Vs. Bharati Jaiswal Majumdar** reported in **(2021) 3 SCC 742**, the Apex Court was considering a case of dissolution of marriage in which the Family Court had given a finding that the respondent-wife had failed to establish her allegations of adultery against the husband. The Apex Court was considering the issue as to whether the conduct of the Respondent would fall within realm of mental cruelty and observed in that case the allegations had been propensity to irreparably damage character and reputation of Appellant and it would be difficult to expect condonation of such conduct by affecting the party and held that the Appellant was entitled to dissolution of marriage.

53. Applying the ratio of the above decisions to the facts of the present case, it cannot be disputed the respondent-wife has made

reckless and baseless allegations not only in the written statement but has also filed a criminal complaint leading to registration of FIR against the Petitioner and his parents. Upon perusal of the evidence, the respondent-wife has failed to establish the allegations of adultery and perusal of averments in the FIR would also indicate that the averments made therein are completely contradictory to the allegations made in the written statement. As such, in our opinion, the irresponsible and false baseless allegations made by the respondent-wife and failing to justify the same by evidence by itself would amount to cruelty and would entitle to the Petitioner-husband to dissolution of the marriage.

54. While considering the conduct of the Respondent in context of “cruelty” as contemplated under the provisions of Section 13 (1)(i-a) of the Hindu Marriage Act, 1955, the strata of the society to which the Petitioner belongs will also be relevant. In the instant case, the Petitioner belongs to an affluent family and the conduct of the Respondent alleging illicit relationship, dowry demands and filthy abuse and assault as against the Petitioner and his parents to the extent of describing them as mean minded and miserable persons, without being able to substantiate the allegations, has resulted in

lowering the reputation of the Petitioner and his parents in the society and constitutes cruelty within the meaning of Section 13 (i)(i-a) of Hindu Marriage Act, 1955. We do not think that this is a case, where the appellant could be denied relief by invoking Section 23(1)(a) of the Hindu Marriage Act. On the contrary, the allegations of illicit relationship and the lodging of FIR making reckless and false allegations has subjected the Petitioner to serious traumatic experience which can safely be termed as 'cruelty' coming within the purview of Section 13(1)(i-a) of the Hindu Marriage Act. Therefore, we hold that the appellant is entitled to the decree for dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act.

55. Now let us consider the issue of maintenance granted to the Respondent. The challenge raised is considering the monthly salary of Rs.10,000/-, the monthly maintenance Rs.30,000/- per month is excessive and the direction to provide residence is liable to be interfered with. The documentary evidence produced by the Respondent is the brochure of Sameer Construction, the invitation card of Hotel Sairaj Family Resorts at Solapur, the scrutiny of nomination of husband in the BMC elections in 2012, payment of receipt of BMC dated 31<sup>st</sup> December, 2012, letter of nomination of

Election Commission, affidavit of Petitioner in BMC election, the payment receipt dated 21<sup>st</sup> January, 2012, nomination dated 22<sup>nd</sup> January, 2012. On the other hand the Petitioner has produced his salary certificate issued by Sameer Construction and copy of ledger account showing the salary of the Petitioner, the copy of the partnership deed of Sameer Construction, the copy of undertaking filed by the Petitioner on 13<sup>th</sup> March, 2006 and the copy of the letter issued by the Bharat K. Shah, Chartered Accountant and Auditor of the company.

56. The Petitioner has come with a case of monthly salary of Rs.10,000/- from the firm of Sameer Construction and has produced copy of the salary certificate on record and ledger account of the company. He has also produced on record the deed of partnership firm of Sameer Construction, which shows that his father having only 20% share and there are other partners, who are not family members, who are having 80% shares. He has deposed that he has no immovable property in his name and the business of Hotel Sairaj was carried out by Arjun Anant Waghmare, who is the proprietor and that the business of Sunil Construction belongs to Arjun Anant Waghmare. He has deposed that he is a Director of Sulochana Nursing Home Pvt.

Ltd but he is not paid director-fees or remuneration. In support he has produced the letters issued by the Chartered Accountant-Auditor of the company. He has deposed that he has no income except the salary which is getting from Sameer Construction. He has further deposed that he has no place to reside as he has left the house and reside in the office. He has deposed that the Respondent is having her own income and as such is not entitled to maintenance.

57. In cross examination, the Petitioner has admitted that he is director of Om Sai Super Specialty Hospital Pvt. Ltd. and Sulochana Nursing Home Pvt. Ltd. He has admitted that at the time of filing nomination form of BMC elections, he was having Rs.3,15,824/- and was owner of 10 *tolas* of gold worth of Rs.3,50,000/-. He has admitted that he does not have any proof to show that he was residing in the office of his father since 2009 to 2012. He has admitted that Sulochana Nursing Home Pvt. Ltd. is the family business of his family and Om Sai Super Specialty Hospital belongs to his father. He has admitted that his family owns a resort by name and style Sai Resorts which belongs to his father. He has admitted that his father has allotted two separate accommodation to his two married brothers.

58. It is not disputed that the Petitioner holds a diploma in civil engineering and since the year 2004, he is working with M/s.Sameer Construction. The Petitioner claims that M/s.Sameer Construction is partnership business and his father holds 20% shares in the partnership firm. A perusal of the partnership deed executed on 11<sup>th</sup> September, 1997 discloses that the deed has been executed between the father of the Petitioner, who is stated to be carrying out proprietorship business under the name and style of Sameer Constructions and Kishor Kantilal Maniyar and Naina Kishor Maniyar as parties on the second part and object of the partnership is limited to implementation of Slum Rehabilitation Project. The Petitioner has not produced any material on record to demonstrate the position of the partnership firm in the year 2013 and seeks to rely on the partnership deed of the year 1997 which was limited to the execution of the slum rehabilitation project.

59. The Petitioner places reliance on the salary certificate issued by partner of M/s. Sameer Constructions which certifies the salary of the Petitioner at Rs.10,000/- per month and the ledger account of the firm. Admittedly the Petitioner's father is a partner in M/s. Sameer Constructions and as such the possibility of obtaining

the certificate and ledger account only for the purpose of matrimonial dispute cannot be ruled out. The undertaking produced by the Petitioner is affirmed by the Petitioner's father which refers to he being the owner of M/s. Sunil Constructions and there is reference to a slum rehabilitation project.

60. Admittedly the Petitioner is a qualified engineer and is admittedly working in the construction business of the family apart from being director in Sulochana Nursing Home Pvt Ltd, which is owned by his family. Now let us consider the lifestyle of the Petitioner to ascertain whether the same is commensurate with the monthly salary of Rs.10,000/- as pleaded. The Petitioner has admitted that he has visited Thailand in June, 2012, that he owns a car and that he had contested BMC elections. In our opinion, a person earning a salary of Rs.10,000/- per month is not financially capable of visiting Thailand for fun or maintaining a car, and, similarly contesting BMC election is beyond the reach of a person with such salary. In the cross examination, the Petitioner has admitted that in the documents furnished for contesting election, it is mentioned that the Petitioner is submitting income tax returns since 1998. It was therefore expected of the Petitioner to produce the income tax returns which could have

led to some inference in respect of his income, which the Petitioner has failed to do. In such situation adverse inference can be drawn against the Respondent.

61. From the evidence which has come on record, it is evident that the Petitioner belongs to an affluent family engaged in various businesses such as construction, hotel and nursing homes. It is a matter of common knowledge that in family owned businesses, it is not necessary for the family members to be shown as part of management, and the fact remains that the income derived from the various businesses is for the benefit of all the family members. The lifestyle enjoyed by the Petitioner justifies the inference that the Petitioner is the beneficiary of the family income. As such it can safely be inferred that the Petitioner is part of the family owned businesses and the aspect of maintenance will have to be considered by taking into account the said fact. In case of salaried employees, the income of the husband can be ascertained from his salary certificate. However, in the present case, what we have is family run business in which the Petitioner is shown to be a mere employee drawing a salary of Rs.10,000/-. As there is no direct substantiated evidence on record regarding the monthly income of the Petitioner,

this Court will have to be guided by the attending circumstances which demonstrate the affluent lifestyle of the Petitioner and his family members to determine the issue of monthly maintenance.

62. It is an admitted position that the Petitioner's family has ventured into construction business, hotel business and nursing home. It has also come on record that the Petitioner's father has provided two separate accommodation to the married brothers of the Petitioner. The entire expenses of the marriage was borne by the Petitioner's family. This gives a fair idea about the financial capability of the Petitioner and his family members and the version of the Respondent about the gross monthly income being Rs.5,00,000/- cannot be improbable. It can be safely assumed that the appellant is capable of paying the monthly maintenance as granted. It cannot be disputed that the wife is entitled to the same status as that of the husband and we have already seen that the Petitioner belongs to an affluent family, is Director in the nursing home, owns a car and has travelled to foreign country as fun tour. On the other hand the Petitioner has failed to prove that the respondent-wife is having any source of income.

63. Now, comes the issue of direction of the Family Court to provide accommodation to the Respondent. The Petitioner has admitted that the petitioner's father has provided flats to his two brothers and it is also not disputed that the family is into construction business. The Respondent comes from a middle class family with limited family income and that her father is a pensioner and the Respondent is living with her parents with her brothers.

64. Section 3(b) of The Hindu Adoptions and Maintenance Act, 1956 defines maintenance to include in all cases, provision for food, clothing, residence, education and medical attendance and treatment. Considering the definition of maintenance, the claim of the Respondent for accommodation cannot be faulted. It is the duty of the Petitioner to meet the housing need of the Respondent. The Family Court, in our opinion, has rightly directed the Petitioner to provide 1BHK flat to the Respondent in the vicinity of parental house and upon failure to do so, to pay an amount of Rs.30,000/- p.m. for availing such accommodation.

65. Having regard to the discussion above, Family Court Appeal No.176 of 2014 is allowed and the marriage between the

parties solemnised on 24<sup>th</sup> January, 2007 stands dissolved by decree of divorce under Section 13(1)(i-a) of Hindu Marriage Act, 1955. Family Court Appeal No.177 of 2014 challenging the maintenance and the direction of providing for accommodation stands dismissed.

66. In view of the disposal of the appeals, interim application does not survive and stands disposed of.

**(Sharmila U. Deshmukh, J.)**

**(Nitin W. Sambre, J.)**