



Judgment

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

FAMILY COURT APPEAL NO.9/2022.

Dr.Purneshwar Pund s/o Mohanrao
Pund, at Checkpost Bortalao,
Teh. Dongargarh, District Rajnandgaon,
Chattisgarh. Pin 491445. ... **APPELLANT.**

VERSUS

Sushma Purneshwar Pund,
resident of c/o. Marotrao Ingole,
Shivaji Nagar, Warud, Tehsil
Warud, District Amravati,
Maharashtra, Pin 449606. ... **RESPONDENT.**

Mr.P.M. Pund, Appellant - Inperson.
Mr. P.S. Patil, Advocate for the Respondent.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

JUDGMENT PRONOUNCED ON : SEPTEMBER 26, 2023.

JUDGMENT (PER VINAY JOSHI, J.) :

This is an appeal under Section 19 of the Family Courts

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Act, 1984 raising a challenge to the judgment and order of dismissal of a petition No.A-234/2015 seeking decree of divorce on the ground of cruelty and desertion as provided under Section 13[1] [i-a], [i-b] of the Hindu Marriage Act. The appellant-husband sought a decree of divorce on two counts, however, the Family Court held that the appellant failed to establish either of the ground making him disentitled for annulment of the marriage.

At the inception we have noticed that the Appeal is running into hundreds of pages, therefore, we requested the appellant to engage a Counsel who can assist us properly, however, the appellant flatly denied and insisted that he shall be heard in-person. In view of that, we have heard the appellant, as well as gone through the written notes of arguments filed by him. We find that the memo of appeal and the written notes of argument are by and large in the nature of general grievances.

2. This appeal occasioned us to deal with one another matrimonial dispute in between educated couple. The appellant is a Veterinary Assistant Surgeon, attached to the Government Veterinary Hospital, whilst the respondent-wife is Bachelor of Homeopathic

Medicine & Surgery [BHMS]. Initially, the appellant-husband has filed a divorce petition No.32A/2013 in the Family Court at Dist. Balod, Chattisgarh State. At the instance of the respondent-wife, the said petition was transferred to the Family Court at Amravati, by the Supreme Court vide order dated 02.01.2014. The respondent-wife while resisting divorce petition, has raised a counter claim for restitution of conjugal rights in terms of Section 9 of the Hindu Marriage Act. During pendency of the proceedings, the Family Court, Amravati has granted interim maintenance to the respondent-wife @ Rs.25,000/- per month. Since the appellant did not comply the interim order, the respondent – wife has applied to the Family Court for dismissal of the divorce petition in terms of Order XXXIX Rule 11 of the Code of Civil Procedure. In turn, the Family Court vide order dated 18.01.2018, has dismissed the divorce petition, but, continued the counter claim for restitution of conjugal rights.

3. The order of dismissal of divorce Petition was challenged by the appellant in Family Court Appeal No.32/2019 before this Court. In the meantime, the Family Court proceeded with the restitution petition which ultimately came to be dismissed on merits.

During the pendency of the appeal, the appellant deposited entire arrears in the execution proceedings. Since the interim order was complied, this Court vide order dated 24.01.2020 has restored the husband's divorce petition and directed the Family Court to decide the same on merits. However, this Court has clarified that dismissal of restitution petition has attained finality, which shall not be reopened. In this background, the parties led evidence in divorce petition, which ultimately came to be dismissed vide the impugned judgment and order.

4. Though both parties have stepped into the witness box, they have not examined any witness in support of their respective contentions. It is appellant's case that his marriage was solemnized with the respondent on 24.05.2006 at Taluq Warud, District Amravati, as per the Hindu customs prevailing at the relevant time. At the time of marriage, the appellant was serving as Veterinary Surgeon at Dondi, District Balod, Chattisgarh State whilst the respondent wife was pursuing her studies for BHMS Course. On account of education, frequently she was staying at her father's house at Warud and Gondia for the period from the year 2006 to the

year 2013. Intermittently she use to visit at appellant's house at Dist. Balod, but, majority of time she was staying at her parents house.

5. It is appellant's case that the respondent was not interested in matrimonial life, and thus, she stayed at her father's house. She took long span of ten years to complete BHMS Course, which was double than the normal period. The respondent used to quarrel, insult and physically assault the appellant at house as well as at public place. Not only that the respondent used to abuse the appellant and his old age parents. She was not interested to live at village Dondi, District Balod, which was a small place. The appellant used to tolerate her behaviour with a hope that the marriage would sail smoothly in near future. The appellant stated that the respondent has misused her freedom and even forced the appellant to cook food and do baby sitting. She was not knowing cooking and was not interested in household work. The appellant has provided all comforts of life, but, in vain.

6. The couple had two male issues from the wedlock. In the month of April, 2012, while respondent was pregnant, she wanted

to attend marriage ceremony. She quarrelled with the appellant, bet him and said that she is not interested to live with him. Thereafter, she delivered a Baby at her father's house. The respondent returned on 15.01.2013 without giving prior intimation to the appellant, as he was at training program at Pune. The respondent and her father again quarrelled with the appellant. On 29.03.2013, the respondent called her father and returned to Warud by taking gold jewellery and other valuables. The appellant has tried for re-union, but, she never responded. The entire attitude of the respondent was indecent and unfair, therefore, the appellant sent a legal notice seeking divorce, but, she refused. Therefore, the appellant had filed the petition as aforestated.

7. In response, the respondent wife denied all the allegations made by the appellant. However, she did not dispute that the marriage took place on 24.05.2006, and at the relevant time she was prosecuting her BHMS Course at Gondia. However, she denied that most of the time she lived with her parents, and refused to live with her husband. She denied that she quarrelled or insulted the appellant or his parents.

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8. The respondent would submit that at the time of marriage, gold ornaments worth Rs.3 lakhs were offered. After marriage the appellant and his parents used to quarrel on the count of dowry demand. They used to ask her to bring Rs.5 lakhs from her father. Parents and sister of the appellant always instigated him to beat her. Since there was persistent demand, father of respondent gave Rs.2 lakhs by raising a loan, however, there was no change in the appellant's behaviour. The respondent gave birth to two male issues, but, on both occasion, the appellant did not turn to Warud to see the new born. Finally the respondent herself along with her father went to Dondi on 03.01.2013, but, the appellant abused them in filthy language. The appellant quarrelled with her and snatched gold ornaments worth Rs.3 lakhs. She also filed a complaint with the police station at Dawani, District Balod. Due to ill-treatment she was compelled to live with her parents at Warud. The respondent is ready and willing to cohabit with the appellant, but, he used to ill-treat her. With these contentions, the respondent prayed for dismissal of the petition.

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9. The Family Court has formulated two issues pertaining to the cruelty and desertion to be proved by the appellant – husband. The Family Court has assessed the evidence of the appellant, since the onus lies on him to establish the grounds for divorce. The Family Court noted that the evidence affidavit of the appellant was quite lengthy running into 35 pages, which was not the part of the pleading at all. Particularly, the Family Court has noted the admission of the appellant that the contents of affidavit right from paragraph nos.2 to 23 and 25 to 46 are not disclosed in the petition. Thus, mostly the evidence was without foundation of pleadings. The Family Court held that the entire allegations are vague, general and thus, the appellant failed to establish the ground for divorce.

10. The appellant-husband has claimed divorce on the ground of cruelty and desertion which reads as below:-

“13. Divorce. - (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party -

(i) -----

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) -----

(1A) -----

(2) -----”

11. Before examining the judgment of the Trial Court and the material adduced by the parties, it has become imperative to understand the concept of cruelty. The term “cruelty” which is one of the ground for divorce in terms of Section 13(1)(ia) of the Act includes mental as well as physical cruelty. The word “cruelty” has not been defined in the Act. The term “cruelty” has been used in the Act in the context of human conduct or behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. Cruelty may be mental or physical, intentional or unintentional. If it is a case of physical cruelty, it is a question of fact and degree. Always the concept of cruelty depends upon the type of life the parties accustomed to or their social conditions. Whether one spouse has been guilty of cruelty depends upon various factors of particular case. In reported decision

of Supreme Court in case of Savitri Pandey v. Prem Chandra Pandey¹, the term cruelty has been explained in paragraph 6, which reads as below:-

“6. 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

1. (2002) 2 SCC 73

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.”

12. It is to be borne in mind that the cruelty alleged may largely depend on the variety of factors like education, culture, type of life, economic and social conditions, human values, etc. Certain kind of behaviour may be termed as cruelty in one case, which may not be in other. Each case depends on its own facts and must be judged in above parameters. Concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to the status of the parties. The question is to be determined from the whole facts and the matrimonial relations between the parties.

13. In case at hand, the appellant alleges mental as well as physical cruelty. Though it was the appellant's endeavour to put up a ground of mental cruelty, however, he has also pleaded that the respondent used to physically abuse him in the house as well as in public. However, besides the bald allegation, there is no supporting material. The appellant has not stated the instances or occasions as

to when he was physically assaulted and in whose presence. The evidence in this regard is quite vague from which nothing can be perceived.

14. While putting a case on the ground of mental cruelty, the appellant has pleaded that for the period from the year 2006 to 2013, respondent wife was residing at Warud to pursue her BHMS Course. There are no specific allegations of matrimonial hassle during the said period. It is his case that thereafter, she returned to Dondi. She was of quarrelsome nature and was not interested in matrimonial life. She used to quarrel, insult and physically abuse the appellant at his house, as well as at public place. She has also abused his old parents and thus, her behaviour was cruel one. Though the petition bears such allegations, however, neither the appellant stated any particular occurrence, nor as to when there was quarrel in between the parties. The appellant has not deposed instances of physical assault in private or in public. All the time in general manner, he stated that the respondent and her father quarrelled with him. The appellant has not examined any witness in support of his contention.

15. We have examined the oral evidence of the appellant, which is in the sort of arguments. Rather it was drafted by the appellant-in-person, therefore, mostly it is about legal principles extracted from the reported judgments. Contextually we may say that the present appeal drafted by the appellant-in-person runs into 231 pages, from which we are unable to find a point which would convince us to appreciate the ground of cruelty. The general principles, like life and personal liberty, principles of natural justice, misuse of the provisions of the Domestic Violence Act, women's tendency of making false allegations, Article 14 of the Constitution of India etc. has been stated. Written notes of arguments also runs on similar lines. It also mostly speaks about philosophy, but, fails short to make out his case. Though the appellant gave long list of citations at the end of appeal memo, however, none of them are either furnished or referred during the submission.

16. The appellant stated that though duration of BHMS Course is of 5 years, however, the respondent took 10 years to complete the same just to stay away from the appellant. The said

ground does not stand to reason as merely because the respondent took long duration to complete her education that *ipso facto* does not mean that she was intending to avoid the company of the appellant. It is stated that the appellant was forced to cook and do baby sitting. The said contention nowhere spells out that it amounts to act of such nature or behaviour which could be stated to be cruel to other spouse. In the present era, cooking and baby sitting by husband is usual phenomena which cannot be taken as adverse even if accepted as it is. The appellant stated that on 15.01.2013, the respondent returned to her house at village Dondi, District Balod without intimating him. The said circumstance cannot be treated as an in-descent conduct affecting the mind of common man. Both are educated one and in the scenario, if wife returned to her husband's house without intimation, it does not matters much. Rather, these instances quoted by the appellant show that he was quite sensitive and was taking all the things of the respondent as an adverse one.

17. The appellant in his evidence admitted that the respondent stayed with him till 29.03.2013, but then he never tried to bring her back. He admits that he never tried to meet his children

living with the respondent, and also not taken care of day to day need of his children. Even the appellant does not know in which standard his children are studying. All these admissions destroys his case that the behaviour of the respondent was of such nature which can be termed as 'cruelty'. Rather, vague allegations and his attitude in not making efforts to bring the respondent back, heavily goes against him. In absence of any material, the marriages cannot be lightly annulled for mere asking. The Family Court has rightly considered the aspect of cruelty, while holding that the appellant failed to establish the same.

18. So far as the ground of desertion is concerned, the petition fails on technical front. In order to seek divorce on the ground of cruelty, the desertion must continue for two years preceding to the presentation of the petition. Two essential factors need to be proved that the parties have separated, and intention was to sever the matrimonial ties. It has come in the evidence that the couple cohabited till 29.03.2013, whilst divorce petition has been filed on 09.07.2013 i.e. within 4 months from the separation. Section 13(1)(ib) requires that the desertion shall be for the period of two

years preceding to the Petition. Thus, on technical front the petition fails.

19. Be that as it may, the divorce is also claimed on the ground of cruelty. The term “desertion” for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without consent or reasonable cause. In other words, it is a total repudiation of the obligations of the marriage. Desertion cannot be equated with separate living by the parties to the marriage. It is appellant’s own case that for the period from 2006 to 2013, the respondent was staying at her matrimonial house for education purpose. It is evident that for certain cause with mutual understanding she was staying with her parents. The said stay was not with the intention to sever the matrimonial ties or with *animus deserendi*. Moreover, it is not appellant’s case that during the said period he asked or insisted the respondent to come back but she denied, rather the evidence unfolds that he never tried for re-union.

20. In order to secure decree on the ground of desertion,

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there shall be intentional permanent forsaking, abandonment of one spouse without consent or reasonable cause. In other words, there must be withdrawal of the party from the matrimonial obligation without reason, on the other hand, the evidence of appellant discloses that for educational purpose, his wife was living with her parents, she returned twice, but, the quarrel erupted. There is no evidence to hold that the wife intended to forsake matrimonial life, and thus, ground of desertion also fails on facts too. Precisely appellant failed to establish both grounds to secure a decree of divorce.

21. In view of above, we are of the considered view that the Family Court has aptly dealt with the issues involved, while holding that the appellant failed to establish both grounds for seeking divorce. The impugned judgment calls no interference. In the circumstances, the appeal fails, hence, dismissed.

JUDGE

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