



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

FAMILY COURT APPEAL NO.19 OF 2017
WITH
FAMILY COURT APPEAL NO. 25 OF 2017

APPELLANT : Harish @ Roshan Bhaskar Karnewar,
(Original Respondent) Aged about 33 years, Occupation :
Service, R/o Plot No.37, Munzebaba
Layout, Ambazari, Nagpur - 440013.

..VERSUS..

RESPONDENT : Leelavati @ Reena W/o Roshan
(Original Petitioner) Bhaskar Karnewar, Aged about 32
years, Occu : Pvt R/o C/o. Shankar
Katarpawar, Golchha Marg, Near
Karachi Stores, Sadar, Nagpur.

Mr Vishwadeep Mate, Advocate for appellant.
Ms. Jyoti Dharmadhikari, Advocate for respondent.

CORAM : **VINAY JOSHI AND**
VALMIKI SA MENEZES, JJ.

RESERVED ON : **02/08/2023**

PRONOUNCED ON : **26/09/2023**

JUDGMENT : (PER : VALMIKI SA MENEZES, J.)

1. By these Family Court Appeals, the appellant
Harish @ Roshan Bhaskar Karnewar, the original petitioner

in a petition for dissolution of marriage by decree of divorce bearing Petition No.A-562/2013, and respondent in Family Petition No.A-697/2013, assails common judgment dated 02/12/2016 passed by the Family Court at Nagpur. Petition No.A-697/2013 has been filed by petitioner's wife Ms. Leelavati @ Reena Karnewar for restitution of conjugal rights; Ms. Leelavati is the respondent in Family Petition No.A-697/2013. For the purpose of these appeals, the parties are being referred to by their original nomenclature "petitioner" (Husband - Harish) and respondent (Wife – Leelavati).

2. The petitioner instituted a plaint (Petition No.A-562/2013) against the respondent under Section 13(1)(i-a) and under Section 13(1)(iii) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") to obtain a decree of divorce mainly on the ground that the respondent had threatened him to commit suicide and her behaviour was abnormal, leading to a break down in their marriage due to mental torture and cruelty suffered by the

petitioner; the second ground raised by the petitioner in his pleadings contained in the plaint alleged that the respondent was suffering from fits of epilepsy which was an incurable disease leading to her being of unsound mind, and further, that mental disorder was of a kind that the petitioner could not be expected to live with the respondent.

3. The respondent filed a petition bearing No.A-697/2013 under Section 9 of the Act for restitution of conjugal rights claiming that the allegations made by the petitioner of her suffering from an incurable mental disorder, by virtue of which, the petitioner could not live with the respondent, were false and made up, and in reality the respondent has been driven out of the petitioner's home on this excuse, even though the respondent desired to live together. She claimed maintenance at Rs.15,000/- p.m. for herself and Rs.5,000/- p.m. for her daughter, claiming that the petitioner was earning a gross salary of

Rs.41,753/- p.m., as a Shunting Driver in Central Railways.

The respondent has further pleaded that she was under treatment of a Neurologist since she lost consciousness twice (“Mirgi”), which was diagnosed as being a seizure, which was not an incurable mental disorder or disability which would incapacitate her.

4. In counter to the petition, the respondent has categorically denied both grounds pleaded by the petitioner, and has specifically pleaded that she had informed the petitioner about suffering from a seizure prior to their marriage, and after their marriage, during her pregnancy, she was diagnosed both, by a Neurologist and Radiologist of having suffered from a seizure with no mental disorder which caused incurable unsoundness of mind such that the petitioner would not be in a position to reside with the respondent.

5. The Trial Court, to avoid conflicting decisions in the two petitions, heard the matters together, in which

common evidence was adduced by the parties. The issues, as framed by the Trial Court in the two petitions, based upon the pleadings of the parties, are as under :-

	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Does the petitioners prove that the respondent has treated him with cruelty ?	No
2)	Does the petitioner prove that the respondent has been incurably of unsound mind or has been suffering from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent ?	No
3)	Whether he is entitled to have a decree of divorce ?	No
4)	What order & decree ?	As per final order.
<u>Restitution Petition</u>		
1)	Does the petitioner prove that the respondent has withdrawn himself from her company without any sufficient reason or cause ?	Yes
2)	Whether she is entitled to have a decree of restitution of conjugal right ?	Yes
3)	What order and decree ?	As per final order.

6. The parties led evidence before the Trial Court. The petitioner recorded his own deposition, after which he examined one Dr. Nitin Chandak (PW-2), a Neurologist and Dr. Satish Vyankatrao Tata (PW-3), a Radiologist; the respondent deposed as (RW-1) and recorded evidence of Advocate Amit Band (RW-2).

By its common judgment in these petitions, the Trial Court has recorded two findings based upon the evidence before it. The first finding is to the effect that the petitioner had failed to prove that the respondent was suffering from “Epilepsy” or any incurable mental disorder which would make her unsound of mind to such an extent, that the petitioner could not be expected to live with the respondent. The second finding recorded by the Trial Court was to the effect that the respondent lived a normal life and the evidence on record demonstrated no mental disorder of any nature or a behaviour that would constitute of a ground of cruelty meted out by the respondent to the petitioner.

Consequently, the decree of the Trial Court has dismissed the petitioner's suit for divorce and has allowed the respondent's petition for restitution of conjugal rights with maintenance to be paid by the petitioner to the respondent.

7. Based upon the pleadings, evidence on record and the common judgment passed by the Trial Court on both the petitions, the following points for determination arise before us in these appeals:-

POINTS FOR DETERMINATION :-

a] Whether the impugned judgment and decree of the Family Court is vitiated by and contrary to law, on grounds of perversity of findings that the respondent does not suffer from any mental disorder or epilepsy constituting a ground under Section 13(1)(i-a) and under Section 13(1)(iii) of the Hindu Marriage Act, 1955 ?

b] Whether the impugned judgment and decree calls for any interference under Section 96 read with Order

41 of the Civil Procedure Code ?

8. We have heard the submissions of the learned counsel for the rival parties and perused the pleadings of the parties, the evidence led by them and the impugned judgment and decree.

The main plank of the submissions made by the learned counsel for the petitioner was that the respondent suffered from mental disorder of epilepsy, and that the manifestation of this disorder rendered it impossible for the petitioner to live with the respondent. It was further argued by the petitioner that, due to respondent's unsound state of mind, had exhibited a behaviour of such a nature that it amounted to treating the petitioner with cruelty, rendering the marriage open to grant of a decree of divorce in terms of the grounds specified under Section 13(1)(i-a) and under Section 13(1)(iii) of the Act.

Learned Counsel for the petitioner took us through the pleadings contained in the plaint which was specific to these two grounds and the answer thereto which is contained in the written statement. He also took us through the evidence, more particularly of the medical practitioners who had treated the respondent. He contended that the finding of the Court below that “Epilepsy” was not a mental disorder or that the behaviour of the respondent constituting grounds of cruelty, had not been proved, were perverse and contrary to the weight of the evidence on record.

9. Replying to the contentions raised by the petitioner, learned Counsel for the respondent argues that the evidence of the Doctors led by the petitioner clearly brings on record that the respondent had suffered a seizure on a few occasions, but that the same has neither repeated nor is it a condition that she suffers continuously or that leaves her in a mental state as covered by the grounds under Section 13(1)(iii) of the Act. She further argues, after

taking us through the evidence of the petitioner at Exh.24, and the alleged suicide note at Exh.47, the circumstances in which the note at Exh-47 written were explained by the respondent in her cross-examination; it was contended that the letter was written by the respondent as per the dictum of the petitioner, in a moment when he was drunk and threatening the respondent that she should leave his house; it was only as a measure to calm down the petitioner at that moment and to change his behaviour towards the respondent, that the note was written though there was no attempt ever by the respondent to commit suicide.

10. To consider the rival arguments and in order to answer the points for determination, it will be apposite to quote the relevant provisions of Section 13 of the Hindu Marriage Act, 1955, which set out grounds for divorce:

“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) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(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) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation. - In this clause-

(a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

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

(iv) Deleted.

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

Explanation. - *In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.*

(1A)

(2) A wife may also present a petition”

11. The grounds raised in the petition for dissolution of marriage in the present case are restricted to the two grounds under Section 13(1)(i-a) and under Section 13(1)(iii) of the Act. In fact, the pleadings in the petition, more specifically those content at paras 3, 4, 7 and 9 of the plaint

alleging the respondent's aggressive behaviour of shouting or threatening to commit suicide and writing a suicide note, connect this behaviour to be an abnormal mental condition on the part of the respondent, putting the petitioner under mental pressure, amounting to a ground of cruelty for divorce. Thus, the ground of cruelty, as pleaded in the plaint appears to be intrinsically connected with the allegations contained in the plaint that the respondent's abnormal behaviour was due to the fact that she suffered from frequent attacks of epilepsy for which, despite taking treatment, her behaviour rendered the atmosphere impossible for the petitioner to live with the respondent.

The specific pleadings alleging grounds of incurable unsoundness of mind under Section 13 (1)(iii) of the Act have been specifically pleaded in paragraphs 3, 4 and 9 of the plaint, which have been specifically denied by the respondent in the written statement.

12. In order to prove grounds for divorce under Section 13 (1)(iii), the petitioner would be required to plead and to prove by leading evidence the following :

- a) That the respondent has been incurably of unsound mind or
- b) has suffered continuously or intermittently from a mental disorder of a kind and extent that the petitioner cannot reasonably be expected to live with the respondent.

The explanation to Section 13 (1)(iii) of the Act further clarifies that under Clause (a) thereof “mental disorder” is :

- i) a mental illness or
- ii) an incomplete development of the mind or
- iii) a psychopathic disorder or
- iv) a disorder or disability of the mind.

All the above four parts of the explanation

clarifying the word “mental disorder” may include schizophrenia.

13. Clause (b) to the explanation further clarifies that “psychopathic disorder” means :

- i) a persistent disorder or disability of the mind including subnormal intelligence
- ii) such disorder results in abnormally aggressive or seriously irresponsible conduct which may or may not require medical treatment.

14. From the pleadings in the petition, it appears that the petitioner claims that the respondent regularly suffered from attacks of epilepsy, which according to him created an unsound state of mind in the respondent. The pleading also seems to suggest that epilepsy is also a mental disorder, which even though treated, in the case of respondent continued to cause mental imbalance and abnormal behaviour in the respondent.

15. To prove this case, apart from the evidence led by the plaintiff/petitioner as stated in his affidavit, which is a repetition of his pleadings in the plaint, he has examined one Dr. Nitin Chandak, a Neurologist, under whom the respondent received treatment during the period 13.08.2011 to 08.07.2015 on Out Patient Department (OPD) basis. The medical evidence shows that the respondent was treated at the relevant time for a seizure/fits. It was further deposed by PW-2 Dr. Chandak that an EEG (Electro Encephelo Gram) was performed on 13.08.2011 and 24.05.2014 to determine whether there was any abnormality in the brain and none was found, the reports being normal. In cross-examination, the witness further deposed that every seizure disorder is not epilepsy and that every fit is also not epilepsy. The medical evidence further determines that every person suffering from epilepsy can lead a normal life.

Two facts are clear from this evidence; the first is that the respondent only suffered from a brain seizure and

not from epilepsy. The second fact as deposed by an Expert, a Neurologist by profession was that epilepsy itself is a medical condition in which a person suffering from it can lead a normal life. Thus clearly, even assuming the respondent was suffering from epilepsy, this was certainly not a mental disorder or a psychopathic disorder or for that matter can be even considered as leaving the respondent incurably of unsound mind.

16. For the sake of argument, even if we assume for a moment that the respondent was in fact suffering from epilepsy (which the medical evidence suggests she was not), the question as to whether epilepsy, even if considered a disease or mental disorder could be claimed as a ground for divorce has been dealt with by a Single Judge of this Court in *Raghunath Gopal Daftardar vs Sau, Vijaya Raghunath Daftardar*, reported in *AIR 1972 Bombay 132*. In that case, the petitioner alleged that the respondent wife did not disclose, before their marriage, that she was suffering from epilepsy, which according to the petitioner was an incurable

disease, and was not disclosed by the wife prior to solemnization of the marriage. The petitioner in that case claimed a decree of nullity of marriage on grounds of fraud and in the alternative for a decree for judicial separation on grounds of cruelty. Adverting to the medical evidence led in the matter, the following observations have been made by this Court in Raghunath Gopal Daftardar (supra) :

"5. The most important piece of evidence on this point is that of Dr. Sardesai, P. W. 5. The witness is an M. D. of the Bombay University and has also passed M. R. C. P. examination of the Edinburgh Royal College of Physicians. Since February 1959 he is attached to the Sassoon Hospital as an Honorary consulting physician. He is both a physician and neurologist practising as a consulting Physician at Poona since August 1960. He is also practising in Neurology since then. Admittedly, the respondent is being treated by this Doctor since about February 1961 for epilepsy. Now, he says that it would not be correct to say that the type of epilepsy the respondent is suffering from, is incurable. He has prescribed 'Dilantin Sodium' to the respondent for this disease and the Doctor says that he has prescribed it with a view to keep her malady under control. When he was asked whether it could be said that the respondent was cured of the disease, he replied that it would not be possible for him to say whether he epilepsy had been cured, because this could only be said if the drug is withdrawn. Later on, he has stated thus :-

"It would be wrong to say that epilepsy is a disease which cannot be cured.

The latest publication on 'Therapeutics' by Goodamn and Gillam is the standard book on the Science of Treatment. An older view which believed in the past was that epilepsy was incurable. It would not be correct to say and it is also not to my knowledge that at the present day, there are some authorities in medical science of treatment, who believe that epilepsy is incurable."

6. It is, therefore, quite clear from his evidence that the disease epilepsy is not an incurable disease. As regards the type of epilepsy from which the respondent is suffering, he has said that if the respondent ceased to get any epileptic fits for a period of three years, he would say that she is cured. He has also said that he was treating the respondent since February 1961 and he could find that for a period of about one year before her marriage, she did not get any epileptic fits. He further says that the drug which he prescribed has worked well. According to him, the respondent is receiving the treatment even today and the disease is well under control. Reliance is then placed on the testimony of Dr. Otturkar, P. W. 3. According to the petitioner the prescription, Ex. 179, dated 2nd June 1962, given by Dr. Sardesai to the respondent, was shown to Dr. Otturkar by his father. Dr. Otturkar being his close friend. Dr. Otturkar asked the petitioner's father whether the respondent was getting any fits and when the latter told him that she was, looking to the prescription, he told the petitioner's father that she was being treated for epilepsy. However, Dr. Otturkar further said that he would get it confirmed from Dr. Sardesai. Now, Dr. Otturkar has given his version of the talk Dr. Sardesai had with him, in his evidence. This version is little different on the point, from the one given by Dr. Sardesai and to which I have already made a reference. Now, according to Dr. Otturkar, what Dr. Sardesai told him was that epilepsy was such a kind of disease which could not be cured but could only be

controlled. Dr. Sardesai also told him that the disease could only be kept under control by regular treatment and if the treatment is discontinued, the patient would again start getting epileptic fits. But later on, he admits that Dr. Sardesai also said that the patients suffering from epilepsy were required to take medicines for a very long time and continue the same treatment for about three years after they cease getting any epileptic fits. Now, I have already pointed out that Dr. Sardesai, who was examined by the petitioner himself, nowhere says that epilepsy does not admit of any cure. On the contrary, he says that it is not an incurable disease. But Dr. Otturkar, perhaps to oblige the father of the petitioner, who is his friend, told the Court something different from what the opinion of Dr. Sardesai was. It is material to note that no question was put to Dr. Sardesai regarding the version given by Dr. Otturkar. Coming to the evidence of the petitioner, he says that he came to know from Dr. Otturkar that the disease was incurable and hereditary. There is nothing in the evidence of Dr. Otturkar to show that the disease is hereditary. He only says that what he came to know from Dr. Sardesai was that it was incurable. But I have already pointed out that that was never the opinion of Dr. Sardesai much less he gave that opinion to Dr. Otturkar. The petitioner's father, who is also examined in this case (P. W. 1), repeats the same story. When the petitioner took the respondent to the house of the latter's sister on 6th July 1962, his father was not at home. He was on tour in Nagpur. He, therefore, contacted the petitioner on telephone and what he came to know from the petitioner was that the opinion of Dr. Sardesai was that the disease was incurable and hereditary. Thus the evidence adduced by the petitioner not only does not show that the disease is incurable, but on the contrary it shows that the disease of epilepsy can be cured.

11. The difficulty arises because the word "fraud" is not defined in the Hindu Marriage Act, 1955. But in my opinion, the provisions of Section 17 of the Indian

Contract Act cannot apply to fraud as understood in Section 12(1)(c) of the Hindu Marriage Act. It is necessary to bear in mind that there is a difference between the marriage under the Special Marriage Act, 1954 and the marriage under the Hindu Marriage Act, 1955. The Special marriage Act, 1954 provides a special form of marriage in certain cases. It is permissible to a Hindu, by virtue of this Act, to have his marriage with another Hindu or a person belonging to any other community solemnized in accordance with the requirements of the Act: The rights, obligations and status of the parties to such civil marriage in matters relating to restitution of conjugal rights, judicial separation, nullity of marriage and divorce are regulated by the provisions contained in that Act. The succession to property of two Hindus married under that Act as also to the property of the issues of such marriage is governed by the relevant provisions of the Indian Succession Act, 1925 and not by the Hindu Law of succession. It is significant to notice that no ceremonies are necessary for the marriage being valid under that Act. Obviously, therefore, the marriage under the Special Marriage Act, 1954, is a contract. The position under the Hindu Marriage Act, 1955, however, is different. It is needless to say that marriage under the Hindu Law is treated as a samskara or a sacrament. Hindu Marriage Act, 1955, contemplates a ceremonial marriage which must be solemnized in accordance with the customary rites and ceremonies of one of the two parties. Non-observance of the essential customary rites and ceremonies of at least one of the parties would amount to failure to solemnize the marriage. In other words, a marriage under the Hindu Marriage Act, 1955 which is not solemnized by performance of the essential ceremonies is, under the Act, no marriage at all: It is true that the conditions laid down in Section 5 of the Hindu Marriage Act must also be fulfilled before a marriage under that Act is gone through. But the non-fulfilment of every one of the conditions and requirements enacted in Section 5 does not ipso facto render the marriage null and void or even voidable: It

seems to me, therefore, that under the Hindu Marriage Act, the marriage which is a ceremonial marriage which is a ceremonial marriage is essentially a sacrament (Samskara).

12. In this connection, I may refer to Boodapati Ankamma v. Boodapati Bamanappa, AIR 1927 Mad 332, in which Vardachariar, J. has observed at page 334 that a Hindu Marriage is a sacrament and not a civil contract and that it will not be permissible to apply to a Hindu marriage all the principles of the Law of Contract. Similarly, in Harbhajan Singh v. Smt. Brij Balab Kaur, Air 1964 Punj 359, which is a case after the Hindu Marriage Act, 1955, came into force, the Punjab High Court has said that the word "fraud" is not used in Section 12 of the Hindu Marriage Act in a general way and on every misrepresentation or concealment, the marriage cannot be dissolved. If the term "fraud" is to be interpreted according to the definition given in the Indian Contract Act, then it would become impossible to maintain the sanctity of the marriage. All sorts of misrepresentations will be alleged by the petitioners in order to break the marriage tie. This obviously could not be the intention of the legislature. In Anath Nath De v. Lajjabati Devi, also, the case was under the Hindu Marriage Act, 1955, and S. Datta, J., who delivered the judgment, has observed at page 779 that the marriage according to Hindu law not being a contract, the consent at the stage of negotiations though obtained by fraud cannot affect the validity of the marriage. It is true that in that case no fraud was alleged at the time of the solemnization of the marriage and, therefore, the petitioner could not be granted any relief. But at the same time, the case was decided on the footing that even under the Hindu Marriage Act, 1955, the marriage is a sacrament and not a civil contract. My attention is also drawn to the provisions of Section 19 of the Indian Divorce Act, 1869. That section, so far as it is relevant here, reads thus :-

"Nothing in this section shall affect the

jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud."

13. This Act also does not define fraud and, therefore, it is of no assistance to us in this case. But it is well settled under the Indian Divorce Act that fraudulent misrepresentation in inducing consent to marriage does not vitiate a marriage. I have not been pointed out any decided case under the Indian Divorce Act, 1869, which lays down that non-disclosure or concealment of a fact and/or misrepresentation of a fact amounts to fraud. It seems to me, therefore, that even under the Indian Divorce Act, 1869, the definition of 'fraud' given in Section 17 of the Indian Contract Act does not appear to apply. It is true that this High Court has held in A. v. B., 54 Bom LR 725 (AIR 1952 Bom 486) that a Hindu marriage is also a civil contract. But at the same time, the learned Judge (Tendolkar, J.) has held in that case that a Hindu marriage is also a sacrament. The Hindu Marriage Act, 1955, does not depart from this position, under the Hindu Law. I am, therefore, of the opinion that Section 17 of the Indian Contract Act, 1872, does not apply to a case of fraud under Section 12(1)(c) of the Hindu Marriage Act, 1955."

17. At this juncture, we must note that though Raghunath Gopal Daftardar (supra) was rendered in a matter claiming a decree of nullity on grounds of fraud, mainly that the respondent was suffering from epilepsy, which was claimed to be an incurable disease, as on the date of passing of that judgment, the grounds contained

in Section 13(1)(iii) of the Act were not available in their present form. The provisions of Section 13(1)(iii) were amended w.e.f. 27.05.1976, after Raghunath Gopal Daftardar (supra) was rendered, allowing for claiming of decree of dissolution of marriage on grounds of unsoundness of mind or mental disorder.

However, we find no difficulty in applying the reasoning and the ratio laid down in Raghunath Gopal Daftardar (supra) which we, with the greatest respect, approve of, in holding that the condition of “epilepsy” is neither an incurable disease nor can it be considered a mental disorder or a psychopathic disorder, for making a ground under Section 13(1)(iii) of the Hindu Marriage Act. We are further of the opinion that there is an abundance of medical evidence, as of this date, that such a medical condition could not justify any petitioner’s stand that the condition would be an impediment to the spouses living together.

On that count, we hold that the petitioner has failed to prove that the respondent was suffering from epilepsy or even that, if she were suffering from such a condition, the same could be considered as a ground under Section 13(1)(iii) of the Act for claiming a decree of dissolution of marriage.

18. The other ground on the basis of which the petitioner has claimed relief in the suit, was that the respondent's behaviour due to her mental condition of suffering from epileptic fits was causing him cruelty. This ground appears to be intrinsically connected with the ground that the respondent was suffering from a mental disorder. Having not proved the ground of epilepsy, in our considered opinion holding that the petitioner was subjected to cruelty or mental tortured due to the respondent's mental condition would be totally without any basis. There is no evidence whatsoever led by the petitioner to substantiate this ground. Reference made to the suicide note written by

the respondent was clearly explained by the respondent in her evidence, where she has stated the circumstances under which she was made to write the note literally under duress from the petitioner, and only to avoid being forced out of the matrimonial home by the petitioner. It is in the respondent's evidence, that on the relevant day, the petitioner was in a drunken state and threatening to put the respondent out of their home, and for fear of being left without a home, and for the sake of her minor daughter who was hardly one year old, she wrote out the note as dictated by the petitioner. In para 22 of her evidence, she has categorically stated that the letter (Exh-47) was written in her handwriting when the petitioner was under the influence of alcohol. There is no denial to the statement in her cross-examination.

The respondent has also specifically stated that she was under treatment of Dr. Chandak since she was suffering from "giddiness" ("mirgi"), which was

actually diagnosed as seizure for which she was prescribed tablet “levera” which is also an anti-epileptic drug. No cross-examination was forthcoming on this evidence led by the respondent, which appears to be fully corroborated by the extensive medical evidence given by Dr. Chandak, who was examined as PW-2 for the petitioner.

19. Looking at the evidence on record, the only conclusion that we can arrive at is, that there was no ground made out by the petitioner in terms of Section 13(1)(i-a) and Section 13(1)(iii) for seeking a decree of dissolution of marriage. The judgment of the Trial Court has considered all the evidence to which we have made a reference and has correctly arrived at its finding, rejecting both grounds for seeking a divorce. The judgment of the Trial Court has considered the medical evidence on record and written a finding that there is no evidence that the respondent had ever attempted to commit suicide or had indulge in behaviour to make

out a ground of cruelty or, that she was suffering from epilepsy or any form of mental disorder to make out a ground under Section 13(1)(iii) of the Act. We are in complete agreement with the findings of fact arrived at by the Trial Court, which are in consonance with the evidence on record. There is no perversity in any of the findings arrived at by the trial Court in passing a decree of dismissal of the petition.

We are therefore of the considered opinion that both the points for determination formulated by us are required to be answered in the negative. The appeal must therefore fail.

20. For the reasons stated above, we hereby dismiss the petitioner's Family Court Appeals with no order as to costs. Registry to draw the decree accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)