



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.233 OF 2016

Dnyaneshwar Mahadeo Ajbe,
Age 40 years, Occupation : Business,
R/o. Gajanan Colony Vadgaon, Gupta Road,
MIDC, Tq. and Dist. Ahmednagar. ...Appellant

Versus

Sau. Suchita Dnyaneshwar Ajbe,
Age : 36 years, Occupation : Household,
R/o. C/o. Shivaji Laxman Gunjal, House
No.87, Wagh Galli Naligaon,
Tq. and Dist. Ahmednagar. ...Respondent

WITH
CIVIL APPLICATION NO.224 OF 2024
IN
SECOND APPEAL NO.233 OF 2016

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Age 40 years, Occupation : Business,
R/o. Gajanan Colony Vadgaon, Gupta Road,
MIDC, Tq. and Dist. Ahmednagar. ...Applicant

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No.87, Wagh Galli Naligaon,
Tq. and Dist. Ahmednagar. ...Respondent

Adv. Madhaveswari D. Mhase for Appellant.
Mr. P. P. Kothari for Respondent-Sole.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 3rd DECEMBER 2024.

JUGMENT:-

1. The Appellant (Original Applicant) takes exception to the judgment and decree dated 15th December 2015 passed by District Judge Ahmednagar in Regular Civil Appeal No.135 of 2011, thereby setting aside the judgment and decree dated 23rd March 2011 passed by learned Civil Judge, Senior Division, Ahmednagar in H.M.P No.327 of 2009. [Hereinafter parties are referred as per original status in petition before trial court].

2. The Appellant/Applicant filed H.M.P No.327 2009 before the learned Civil Judge, Senior Division at Ahmednagar, seeking the decree of divorce, under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 contending that he married with opponent on 14th February 2005 as per Hindu Rights and Customs. Within 3 to 4 months of marriage, behavior of Opponent changed, she insulted his parents in presence of neighbors, refused to do domestic work, particularly she refused to serve his parents, she frequently visited maternal home. She insisted for separate residence from his parents. As per her demand, since February 2016, he arranged for separate residence but there was no change in her behaviour. On 24th April 2006, father of opponent and his 4 to 5 companions attacked him. He lodged complaint to Police Station but a defamatory news was got published against him adding his frustration. He stayed away from home for a month due to

frustration. However, since the Opponent was pregnant he returned back to home. Then Opponent delivered female child. She used to attend beauty parlour course with infant. He persuaded her to continue course after some period, but she quarreled with him. On 15th September 2007, first birthday of daughter celebrated. On 17th September 2007, daughter fell ill hence admitted to hospital which was adjacent to maternal home of the Opponent. Since, then Opponent shifted to the maternal home. He was not allowed to meet daughter. The parents of Opponent gave threats to him. On 30th September 2007, the he lodged complaint to MIDC Police Station and sought police protection but by way of counter blast a false complaint was filed against him. On 11th October 2007, he sent legal notice to opponent that without reasonable excuse she left the matrimonial home and also subjected him to cruelty. Hence, he filed present proceedings for dissolution of marriage.

3. The Opponent refuted allegations of cruelty and desertion contending that applicant harassed her and her parents. On 17th September 2007, applicant took her ornaments and expelled her from home along with daughter. Although, her parents and relatives tried to convince applicant for cohabitation, he refused her entry in the house. Then she lodged maintenance proceeding vide Petition No.873 of 2007, that has been allowed. She was always ready to cohabit with

applicant, but applicant prevented her entry in the house. The grounds raised in petition for divorce are false and baseless.

4. The Trial Court framed the issues recorded oral evidence of the parties, finally, granted decree of divorce, on ground of cruelty and desertion as per case put up by the applicant.

5. In appeal filed by Opponent before District Court, decree has been reversed, consequently petition came to be dismissed, which has assailed in this second appeal.

Ms. Madhaveshwari Mhase, learned Advocate appearing for applicant vehemently submits that petition seeking divorce was filed on two grounds provided under Section 13(1)(ia) to 13(1)(ib) of the Hindu Marriage Act, 1955. The Trial Court had rightly taken note of overall conduct of the Opponent and her parents, eventually recorded finding of cruelty and desertion meted towards applicant. Since year 2007, Opponent-Wife is residing with her parents. The marriage is irretrievably broken down therefore decree of divorce is inevitable. She would contend that there has been continuous separation for long period and marriage remains only the fiction. Therefore, the decree of divorce needs to be passed. She would submit that the Opponent has lodged false criminal cases against the Appellant. On 22nd February 2016, Crime No.32 of 2016 was registered against Applicant with

MIDC Police Station at the instance of Opponent for offenses punishable under Sections 307, 498(A), 504, 506 and 34 of the Indian Penal Code, 1860. After due investigation allegations were found to be baseless, consequently, “B” summary report has been submitted by police, which has been accepted by learned Magistrate vide order dated 5th December 2017. She would further submit that father of Opponent got published false news containing defamatory material against causing mental depression to applicant. All these circumstances are sufficient for grant of decree of divorce. However, Appellate Court reversed well reasoned judgment and decree of the Trial Court.

6. In support of her contentions she relies upon the judgment of the Supreme Court in the case of ***Rani Narasimha Sastry Vs. Rani Suneela Rani***, dated 19th November 2019 in Civil Appeal No.8871 of 2019 and judgment of Division Bench of this Court in the case of ***Darshana Alok Borkar Vs. Alok Namdeo Borkar***, dated 6th April 2021 in Family Court Appeal No.1 of 2019.

7. Per contra, Mr. P. P. Kothari, learned Advocate appearing for Respondent would submit that learned Trial Court neither framed proper issues nor had recorded proper findings on crucial aspects of the matters. There must be clinching evidence depicting severity of cruelty and its impact on Applicant’s mental condition to make out case

of divorce under Hindu Marriage Act, 1995. The Appellant who seeks divorce on the ground of cruelty must establish his case by leading cogent and impeccable evidence, so as to establish either physical or mental cruelty. In present case, Applicant mainly relied upon allegations against father of Opponent to make-out case of cruelty. He admits that he has no grievance against the Opponent. Mr. Kothari would further submit that the Appellant has contracted second marriage. He never attempted to take back Opponent for cohabitation and left her at mercy parents. Therefore, even on the ground of desertion, no case is made out to seek decree of divorce.

8. Having considered the submissions advanced, the issue that arises for consideration in this appeal is whether Applicant proves his case of cruelty and desertion by opponent for grant of divorce decree Under Section 13(1)(ia) or 13(1)(ib) of the Hindu Marriage Act, 1955. It appears that Trial Court accepted Applicant's case on both counts. However, it can be evinced from record that Trial Court neither framed proper issues nor has examined pleading and evidence in tune with requirement of law for granting decree of divorce on ground of cruelty and desertion within meaning of Hindu Marriage Act, 1955. The Trial Court impressed by complaint dated 24th April 2006 lodged by the Applicant himself leading to Registration of non-cognizable offence against father of opponent wife and consequential publication of news

item with cartoon reported in “Daily Sarvmat”. The Trial Court assumed that Opponent’s father assaulted Applicant and he was responsible for Applicant’s defamation. The Trial Court records that said incident is sufficient to make out case of cruelty towards Applicant. The Trial Court has further observed that since 17th September 2007, Opponent is residing at her maternal home. She has accepted in Miscellaneous Application No.873 of 2007 that she never resumed company of her husband after 17th September 2007. The Appellate Court differed with finding recorded by Trial Court observing that conduct of Opponent’s father cannot be considered as cruelty by Opponent, particularly when Applicant-husband admitted that there is no personal dispute between himself and his wife, the main cause of their differences was denial by Opponent to provide personal services to his parents. The Appellate Court further observed applicant failed to prove particular conduct on part of Opponent-wife to attract ingredients of cruelty. Insofar as aspect of desertion, only evidence relied is Opponent’s statement recorded during cross-examination in maintenance proceeding bearing No.873 of 2007 wherein she states that she is not ready for cohabitation. However, Appellate Court observed that since said statement was recorded prior to filing of the present proceeding of divorce it cannot be given much importance. The Appellate Court further observed that on 11th October 2007, Opponent had issued a legal notice dated 11th October 2007 calling

upon husband to take her for cohabitation. The Opponent-wife recorded evidence of her maternal uncle and her parents that they tried to convince the Applicant for cohabitation.

9. Consequently, the Appellate Court concluded that there is no evidence to prove the desertion at the hands of the Opponent-wife.

10. The Supreme Court of India in case of ***Dr. N. G. Dastane Vs. Mrs. S. Dastane***¹ defined meaning of cruelty in paragraph 32 as under:-

“32.

The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances.

The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures.”

11. Similarly, in case of ***Shobha Rani Vs. Madhukar Reddi***², the Hon’ble Supreme Court considered the meaning of word “cruelty” in reference to the provisions of Section 13(1)(ia) of the Hindu Marriage Act, 1955 observed as under:-

1 (1975) 2 SCC 326

2 (1988) 1 SCC 105

“4. Section 13(1) (i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

12. In light of aforesaid guidelines, if the pleading and evidence in this case is considered, there are no specific instances of cruelty attributed against the Opponent-wife. What has been relied upon is, alleged assault by father of the Opponent-wife and consequential news item published in “Daily Sarvmat” dated 24th April 2006, it can be observed that said news item was published on the basis of the non-cognizable N.C. registered at the instance of Applicant. There is nothing on record to depict that publication of so-called defamatory news was at the instance of the Opponent-wife. Pertinently, the Applicant-husband admitted during cross-examination that he has no personal grudge or dispute against the opponent wife. From the aforesaid evidence, it is difficult to draw inference of cruelty at the hands of Opponent-wife. There is no specific evidence on records to

indicate conduct of Opponent's father was at her instigation. Apparently, the Applicant failed to bring on record specific material depicting mental or physical cruelty meted towards him by Opponent-wife or her unlawful or illegal conduct that would constitute cruelty. The Appellate Court has rightly dealt with the aforesaid aspects and recorded finding of fact on appreciation of the evidence to conclude that Applicant failed to prove cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955. No fault can be found in the approach of the Appellate Court.

13. The Applicant has also placed into service ground of desertion in terms of Section 13(1)(ib) of the Hindu Marriage Act, 1955. The Supreme Court of India in the case of ***Savitri Pandey Vs. Prem Chandra Pandey***³, observed that the withdrawal of one party from State of things, i.e., marital status of the party or intentional permanent forsaking and abandonment of one spouse by other without others consent and without reasonable cause is considered as essence of desertion. The relevant observation reads thus:-

11. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e. the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage.

3 (2002) 2 SCC 73

14. In light of aforesaid guidelines, if the pleading and evidence in this case is considered, it is apparent that since September 2007, the Opponent is residing with her parents when she left the house under the pretext that daughter is unwell and medical facility is available in hospital abutting to her maternal home. The Applicant relies upon his own evidence and also heavily relies upon the oral evidence of the Opponent in Maintenance Application No.773 of 2007, wherein she replied to a question that she is not ready for cohabitation with the Applicant-husband.

15. To controvert aforesaid evidence, the Opponent-wife recorded her evidence and stated that she was expelled out of house on 17th September 2007 and she has been forced to reside with her parents. She never intended to abandon the company of the husband. Infact, she tried for cohabitation which was refused by husband. It has come on record that the Opponent-wife had issued a notice dated 11th October 2007 calling upon the Appellant for cohabitation. The Opponent has also relied upon the evidence of maternal uncle and parents to bring on record attempts to reconcile the dispute and restitution cohabitation. On the other hand, there is no evidence from the side of the Applicant that he made sincere attempts for cohabitation. On perusal of the written statement filed by Opponent-wife coupled with evidence, it is clear that she was ready and willing

for cohabitation. Therefore, mere admission given in maintenance proceedings prior to filing of petition for divorce by husband would not be sufficient to hold that she deserted the Applicant-husband. Consequently, the Applicant has miserably failed to prove his allegation of desertion against the Opponent-wife within the meaning of Section 13(1)(ib) of the Hindu Marriage Act, 1955.

16. Ms. Mhase, learned Advocate for the Appellant submits that in the year 2016, the Opponent-wife had filed false criminal case under Sections 307 and 498(A) of the Indian Penal Code, 1860, which ended in filing “B” Summary report as the allegations were found baseless. She would, therefore, submits that initiation of false criminal case by Opponent-wife would be sufficient to hold her guilty for mental cruelty to husband. Apparently, FIR was lodged during the pendency of this second appeal, i.e., on 22nd February 2016, the final report bearing “B” Summary No.134 of 2017 has been accepted by the Magistrate vide order dated 5th December 2017. The said report has been tendered during course of hearing of this second appeal. It is not part of the evidence recorded before Trial Court. Therefore, it cannot be taken into consideration in this second appeal.

17. Ms. Mhase, learned Advocate for the Appellant further submits that marriage has been irretrievably broken and there are no chances of reunion. It would constitute ground for grant of decree of

divorce under Section 13(1) of the Hindu Marriage Act, 1955. However, aforesaid submission is not acceptable in facts of the present case. It is true that the parties are residing separately since 2007. However, it has come on record that Applicant has contracted second marriage. The couple has a daughter. The Opponent-wife never shown her intention of separation or bring end of the matrimonial relationship. She is coming with a case that she was forced to live with the parents and the attempts for conciliation have been failed for want of response of husband. In light of the aforesaid background, it would not be appropriate to grant the decree of divorce on aforesaid ground.

18. In view of the aforesaid discussion, no substantial question of law emerges in this second appeal hence it stands dismissed.

19. In view of dismissal of second appeal, civil application does not survive and it is also dismissed.

(S. G. CHAPALGAONKAR, J.)