

Manjiri Vs. Nihar

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Court : Mumbai Nagpur

Decided On : Aug-04-2015

Judge : The Honourable Mrs. Justice Vasanti a. Naik & a.M. Badar

Appeal No. : Family Court Appeal No. 38 of 2015 with Cross Objection No. 30 of 2015

Appellant : Manjiri

Respondent : Nihar

Judgement :

Oral Judgment: (Vasanti A. Naik, J.)

1. By this Family Court Appeal, the appellant - wife challenges the judgment of the Family Court, dated 15.05.2013, allowing the Hindu Marriage Petition filed by the respondent - Husband and dissolving the marriage solemnized between the parties on 27.11.2009 by a decree of divorce. The respondent - Husband has filed the Cross Objection challenging the finding of the Family Court that the Husband had been unsuccessful in proving that the wife suffered from mental illness.

2. The marriage between the appellant-wife and the respondent-husband (hereinafter referred to as the wife and husband respectively for the sake of convenience) was solemnized on 27.11.2009 at Nagpur, according to Hindu rites and customs. The husband was involved in the business of Fabrication and Engineering at Kanker. In the Hindu Marriage Petition filed by the husband for a

decree of divorce, it was pleaded that after the parties started residing in the matrimonial home, the husband realized that the wife had myopic vision to the extent of 8.5 diopters in the left eye and 7.5 diopters in the right eye. It is pleaded that the said fact was not disclosed by the wife or her parents to the parents of the husband or the husband, though they knew about the condition of the husband that he did not wish to marry a girl with myopic vision. It is pleaded that the wife started picking up quarrels with the husband after the marriage without any rhyme or reason and avoided to do the daily chores. It is pleaded that on 22.12.2009, the wife picked up quarrel with the husband, started twisting her fingers and biting the nails abnormally. It is pleaded that after the wife threatened the husband that she would leave the matrimonial home, she opened her suitcase, threw all the clothes and garments in the house, left the house and sat in the four wheeler brought by her father. It is pleaded that the father of the husband and the father of the wife tried to persuade the wife but the drama went on for about four hours. It is pleaded that the husband realized that the wife urinated in her clothes in the corridor of the hotel where the parties had gone for their honeymoon. It is pleaded that the husband found that the wife was secretly taking some pills for curing the ailment.

It is pleaded that after passage of time, the husband became aware that the wife did not have control over her bladder and motions as a result of which some untoward incidents happened. It is pleaded that on 04.01.2010, the parties went to Kanker but at Kanker also the wife was not willing to do the domestic work. It is pleaded that wife used to roam in the bed room without wearing clothes even during the day time, and the said scene was witnessed by the husband as well as the maid servants. It is pleaded that in the month of March, the wife picked up the scissors and threatened the husband and his parents that she would commit suicide by stabbing herself. It is pleaded that though the wife was informed by the Gynecologist, not to climb the stairs and not to lift heavy objects as she was pregnant, the wife behaved abnormally and used to lift heavy objects. It is pleaded that the wife also punched her stomach with fists and stated that she did not want to bear the child. It is pleaded that the wife was taken by the husband and his parents to a Psychiatrist. It is pleaded that the husband was then informed by the parents of the wife that the wife had taken the treatment of Psychiatrist Dr. Avinash Joshi. It is pleaded that the wife was not taking tablets prescribed by the

Psychiatrist though she was reminded of the same by the husband.

It is pleaded that the husband had taken the wife to Dr. Sudhir Bhave, a Psychiatrist, on 08.12.2010, who in turn referred her to Smt. Anupama Gadkari for her Intelligence Quotient (IQ) test (Psychological assessment). It is pleaded that the two Doctors informed the husband that despite administering the medicines to the wife, there was no development and her diminished IQ, could not be cured. It is pleaded that the husband was also informed by Dr. Joshi that the mental disorder of the wife was incurable. It is pleaded that when the husband informed the wife about his decision in regard to separation, the wife and his in-laws threatened and warned him that criminal complaints and cases would be filed against him. On the aforesaid pleadings, the husband sought a decree of divorce on the ground of cruelty and unsoundness of mind of the wife.

3. The wife filed the written statement and denied the case of the husband. The wife denied that she had behaved badly with the husband and she had no control over her bladder and motions. It is denied that the wife was not ready to do the daily chores and the IQ of the wife was diminished. It is pleaded that the husband started finding faults with the wife at the instance of his mother and the wife was ill-treated and tortured by the husband on flimsy grounds. It is pleaded that the wife suffered mental tension because of the cruel treatment meted out by the husband and his mother. The wife denied all the adverse allegations in her written statement. The wife denied that she suffered from mental illness and that the three doctors had opined that her mental disorder was incurable. The wife pleaded that the husband wanted to get remarried with a lady of his choice and, therefore, the husband was reluctant to take back the wife to the matrimonial home. The wife also pleaded that in the aforesaid situation, she would not venture to go back to the matrimonial home and desperately stay there. The wife sought for the dismissal of Hindu Marriage Petition.

4. On the aforesaid pleadings of the parties, the Family Court framed the issues. The husband examined himself and also examined his father and the Psychologist and the Psychiatrist. The wife examined herself and closed the evidence on her side. On an appreciation of the evidence on record, the Family Court, by the

judgment dated 15.05.2013, allowed the Hindu Marriage Petition filed by the husband and dissolved the marriage on the ground of cruelty. The Family Court held that the husband had been unsuccessful in proving that the wife suffered from mental disorder of the nature, as specified in Section 13(1)(iii) of the Hindu Marriage Act. The wife has filed the appeal against the judgment and decree of divorce whereas the husband has filed a Cross Objection against the finding that the husband had failed to prove that the wife suffered from mental disorder.

5. Shri Shitut, the learned counsel for the appellant wife submitted that the Family Court was not justified in granting a decree of divorce on the ground of cruelty. It is submitted that the Family Court could not have held that the wife had a diminished IQ, on the basis of the evidence of the Psychiatrist and the Psychologist. It is submitted that there was hardly any evidence on record to show that the wife had a diminished IQ. It is stated that Dr. Anupama Gadkari, a Psychologist had clearly admitted in her cross examination that she had not brought the necessary documents to show which tests were performed on the wife before opining that the wife had a diminished IQ. It is submitted that though Smt. Gadkari was examined as an expert witness, the witness had come to the Court without necessary documents to prove that the wife suffered from a mental disorder or had a diminished IQ. It is submitted that the wife was never treated by Dr. Joshi before her marriage and the only prescription given by Dr. Joshi in the year 2011 could not have been relied on by the Family Court for holding that the wife had a diminished IQ since the beginning. It is submitted that the evidence of Psychiatrist Dr. Bhave was also not sufficient to prove that the IQ of the wife was diminished. It is submitted that the father-in-law of the wife had taken her to Dr. Bhave and Dr. Bhave had clearly admitted in his cross examination that only on the third occasion, the wife came to his clinic along with her father. It is submitted that the Family Court erroneously accepted the evidence of the Psychologist and the Psychiatrist to hold that the IQ of the wife was diminished and she could not have lived a happy married life with the husband. The learned counsel sought for the reversal of the judgment and decree passed by the Family Court.

6. Shri Damle, the learned counsel for the respondent - husband supported the judgment of the Family Court and submitted that the Family Court has rightly held

that the wife had treated the husband with cruelty. It is submitted that the wife had recklessly pleaded in para 46 of the petition that the husband wanted to get remarried with a lady of his choice and hence he was reluctant to take back the wife. It is submitted that the wife had gone to the extent of pleadings in paragraph 46 of the written statement that the wife did not want to come back to the matrimonial home and desperately stay there. The said fact was also stated by the wife in her examination-in-chief. It is submitted that in the cross examination she had admitted that she used to stay alone in one room and she threw the clothes and other belongings from the suitcase in the house and sat in the car that was brought by her father to the matrimonial home. It is submitted that the wife had admitted that after great persuasion by the family members, the wife re-entered the house. It is submitted that the Family Court ought to have considered the other facts and evidence tendered by the husband to prove that the wife had treated the husband with cruelty. It is submitted that certain material evidence has not been looked into by the Family Court while granting the decree of divorce. It is submitted that the Family Court ought to have granted a decree of divorce under Section 13(1)(iii) of the Hindu Marriage Act, as the wife suffered from a mental disorder of such a nature that it was virtually impossible for the husband to live with the wife under one roof. The learned counsel sought for the dismissal of the appeal filed by the wife and also sought a reversal of the finding on issue No.2.

7. On hearing the learned counsel for the parties and on a perusal of the original records and proceedings, it appears that the following points arise for determination in the Family Court Appeal and the Cross Objection :

(I) Whether the husband proved that the wife has treated him with cruelty ?

(II) Whether the husband proved that the wife is of unsound mind ?

(III) Whether the husband proved that the husband is entitled to a decree of divorce under Section 13(1)(ia) and (iii) of the Hindu Marriage Act?

(IV) What order?

8. We have already referred to the pleadings of the parties in the earlier part of the judgment. The husband reiterated the statements pleaded by him in the Hindu Marriage Petition in his examination-in-chief. The husband was cross examined on behalf of the wife. There is, however, nothing in the cross examination of the husband that can disprove his case in the examination-in-chief. The husband had stated in his cross examination that he had informed the mother of the wife about his condition that he was not ready to perform the marriage with a girl with spectacles. The husband denied the suggestion that he had deposed falsely about the alleged incident dated 26.12.2009 when the parties went to the hotel at Solapur for honeymoon. The husband denied the suggestion that he was expecting that the wife should do the entire domestic work in the house. The husband denied the suggestion that the wife was not suffering from any mental disorder and she was fit to reside with him. The husband also denied the suggestion that he had never taken the wife to Dr. Bhawe and that the case of the husband in regard to the treatment of the wife by Dr. Bhawe was false.

9. The husband examined the Psychologist Dr. Anupama Gadkari, who stated in her evidence that the IQ of the wife was 62, that was much less than the normal IQ of 90. The Psychologist stated in her evidence that the IQ of the wife was less since her birth. The witness admitted in her cross examination that she had not brought the case papers though she had taken notes when the wife was examined by her. The Psychologist stated in her cross examination that if the IQ is less than 70 then there may be a difficulty in leading a happy marital life. The witness stated that she used to bring the documents to the Court, if she was directed to do so. The Psychologist stated in her cross examination that the understanding of the wife was less and she could not understand the questions properly. The Psychologist denied that her observations were incorrect.

10. The husband also examined Dr. Sudhir Bhawe, a Psychiatrist who was treating the wife, as a patient. The Doctor stated in his examination-in-chief that the wife was suffering from a Psychiatric problem and with a view to cure the same, she was administered certain medicines. He stated in his evidence that behaviour could be improved but IQ cannot be improved by medicines. The Doctor stated that on the third occasion, the wife came to him with his father. The Doctor

observed that the wife was mentally retarded since the beginning. The Doctor denied the suggestion that the wife was not suffering from any problem and that she was suffering due to the behaviour of her in-laws and the husband. The Doctor admitted that he prescribed Sizodon tablet for reducing the behavioural problem of the wife. The Doctor, however, admitted that when he examined the wife, according to him, there was no need to send her to mental asylum. The Doctor stated that it was not necessary to mention about the ailments of the patient on the prescription. He denied the suggestion that he prescribed the medicines to the wife without considering her history.

11. Apart from the two aforesaid witnesses, the husband also examined his father. The father of the husband supported the case of the husband. The father of the husband reiterated in his cross examination that the wife used to fight with the husband and there was frequent quarrel between them. The father of the husband denied the suggestion that the wife was not taking the treatment of the Doctor Joshi, Dr. Bhawe and Dr. Anupama Gadkari. The father of the husband, however, fairly admitted that the wife never quarreled with him or his wife.

12. The wife examined herself and reiterated the statements pleaded by her in the written statement. The wife, however, admitted that she had undergone a surgery to her left ear and she was wearing spectacles even before marriage. The wife admitted that she threw clothes from the suitcase and sat in the four wheeler of her father on 21.12.2009. The wife further admitted that when all the family members persuaded her, she came inside the house. The wife admitted that the husband always took care of her. She, however, denied the suggestion that her mother-in-law behaved well with her. The wife also admitted that she used to sit alone in her room. The wife admitted that she knew Dr. Avinash Joshi since past more than ten years. She admitted that medicines were given to her as per prescription at Exh. 30. The wife admitted that she was taken to Dr. Anupama Gadkari and Dr. Bhawe and that at the time of tendering the evidence also, she was taking tablets.

13. On a perusal of the evidence, both oral and documentary, it appears that the husband was successful in proving that the wife had treated him with cruelty and

the husband was entitled to decree of divorce on the said ground. The marriage between the parties was solemnized on 27.11.2009. Admittedly, the wife created a scene on 21.12.2009 by throwing all the clothes and the other belongings out of the suitcase inside the matrimonial home and sat in the four wheeler of her father outside the matrimonial house. There is ample evidence from the side of the husband to prove that this drama went on for four hours. The wife came inside the matrimonial home after four hours and then was taken to her parental home by her father. The behaviour pattern of the wife, as could be reflected from the admitted facts hereinabove was such that it was not possible for the husband to believe that he could have lived with the wife under one roof in the matrimonial home. Though the Family Court has not discussed it in detail, we find that there is ample material on record to show that the wife not only suffered from a diminished IQ but also had no control over her bladder and motions. The husband has clearly narrated the facts in regard to the incident in Ritesh Hotel at Solapur, during honeymoon and apart from the stray suggestions to the husband in respect of the denial of the same, there is nothing on record to disbelieve the case of the husband. The admission by the wife that she used to sit alone in her own room in the matrimonial home clearly shows that the wife did not remain in the company of her in-laws who were residing in the matrimonial home for some time. The husband has clearly proved on the basis of his evidence, and the evidence of his father, the Psychologist and the Psychiatrist that the wife had diminished IQ.

The Psychologist has clearly stated in her evidence that the IQ of the wife was 62 whereas the IQ of normal person should be at least 90. Merely because the Psychologist had not brought the documents in respect of the tests conducted on the wife, in the Court while tendering the evidence, the evidence of the Psychologist cannot be disbelieved. So also, the evidence of the Psychiatrist Dr. Bhave is a weighty piece of evidence for holding that the wife had diminished IQ since the beginning. Both the Psychiatrist and the Psychologist have clearly stated in their evidence that the wife had diminished IQ since the beginning and it was not possible for them to cure a case of diminished IQ. It was admitted by the Psychiatrist in the cross examination that it was not possible for a person to lead a happy married life with the spouse with diminished IQ. The Family Court rightly considered the evidence of the husband and his witnesses to hold that the wife

had diminished IQ and the said fact coupled with the other facts proved by the husband in respect of the cruel treatment meted out by the wife would entitle the husband to a decree of divorce on the ground of cruelty. Though the wife had named Dr. Avinash Joshi, as a witness in the list of witnesses to be examined on behalf of the wife, the wife has failed to examine the said Psychiatrist. It appears that the Psychiatrist was called by issuance of summons and though he appeared in the Court, the wife failed to examine him. This presence of Dr. Joshi in the Court as a witness and the refusal on the part of the wife to examine him as her witness, would result in drawing an adverse inference against the wife that had Dr. Joshi been examined by the wife, he would have deposed against the wife in respect of her diminished IQ. These aspects were rightly considered by the Family Court to hold that the wife had treated the husband with cruelty and it was not possible for the husband to live with the wife in the matrimonial home.

Also, it is necessary to note that the wife was unsuccessful in proving that the husband wanted to marry with a girl of her choice and hence he refused to accept the wife in the matrimonial home. It is noteworthy that the wife had not only pleaded but had also stated in her evidence that she was not desirous of thrusting herself on the husband. In view of this, we do not find that there is any error whatsoever in the appreciation of the evidence by the Family Court. We find that the Family Court was justified in holding that the husband had failed to prove that the wife was suffering from mental disorder of the nature, as stipulated in Section 13(1)(iii) of the Hindu Marriage Act. In view of the aforesaid, Family Court Appeal as well as the Cross Objection should fail.

For the reasons aforesaid, Family Court Appeal and the Cross Objection are dismissed with no order as to costs.

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