

Avinash Ramdhan Chavan Vs. Pradnya

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Court : Mumbai Nagpur

Decided On : Jul-10-2015

Judge : The Honourable Mrs. Justice Vasanti a. Naik & Prasanna B. Varale

Appeal No. : Family Court Appeal No. 286 of 2014

Appellant : Avinash Ramdhan Chavan

Respondent : Pradnya

Judgement :

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

1. Since, this is a Family Court Appeal and the parties are young, the appeal is Admitted and heard finally at the stage of admission, after perusal of the original record and proceedings.

2. The appellant-husband had filed a Hindu Marriage Petition before the Family Court at Nagpur on 05.01.2012, seeking a decree of divorce on the ground of cruelty. The marriage between the appellant-husband and the respondent-wife was solemnized at Aurangabad on 14.02.2005 as per Hindu rites and custom. The appellant was then in government service and was posted at Warora. The appellant-husband shifted to Nagpur within a short time and the respondent-wife, who possesses a degree in Bachelor of Engineering (Electronics and Communication), joined the services at Nagpur with Datta Meghe Polytechnic College. Thereafter, the wife was appointed as a Lecturer in Shegaon Engineering

College at Shegaon, in 2005. The husband continued to serve and reside in Nagpur, whereas the wife resided at Shegaon for nearly one year. Thereafter, the wife joined the services as a Lecturer in Ramdeobaba Engineering College, Nagpur. After the wife joined the services in Ramdeobaba Engineering College, two nephews of the husband came to stay with the husband for preparation of their entrance examination. The wife started picking up quarrel with the husband every now and then and objected to the stay of his nephews in the matrimonial house. It is pleaded that the wife avoided cooking food for the nephews and started abusing the husband in filthy language. It is pleaded that the wife not only abused the husband, but also abused his nephews in filthy language and banged her head on the floor when the husband refused to act on her dictates.

It is pleaded that day by day the behaviour of the wife started turning from bad to worse. It is pleaded that the wife started quarreling with the husband on petty matters and used to complain for nothing. It is pleaded that the mother and the younger sister of the wife always interfered in the family matters. The wife some times threatened the husband that she would implicate the husband and his family members in false cases. It is pleaded that the wife joined the post- graduate (M.Tech.) course in the year 2007 and the husband paid the fees. After the wife was pregnant, she and her mother always complained about the behaviour of the husband, though he had taken due care of the health of the wife and had also given her medical treatment, as required. It is pleaded that the wife always dis-respected her in-laws and abused them. The wife refused to cook for her in-laws and declined to serve even a cup of tea to them. It is pleaded that on 14.02.2008, a male child was born to the parties from the wed-lock and when the husband went to Aurangabad to meet his wife and son, he was not welcomed by his wife and her family members. It is pleaded that the wife and her parents abused the husband and the wife went to the extent of saying that she had no intention to resume the marital ties. It is pleaded that after joining the company of the husband in June, 2008, the wife again left the matrimonial home and went to her parental home on 22.06.2008. It is pleaded that when the mother of the wife had visited the house of the parties, the wife not only picked up quarrel with the husband and abused him in filthy language, but also threw the utensils and other household articles on the husband and banged her head on the wall. It is pleaded that the

wife became uncontrollable and threw her small child in a fit of anger and left the matrimonial home along with the mother.

It is pleaded that though the husband requested the wife to change her behaviour, the wife did not mend her ways. It is pleaded that in July, 2009, the wife returned to the matrimonial home after nearly a year only to take away her belongings and her two wheeler "Kinetic Honda". When the husband tried to stop the wife from leaving the house, the wife gave threats of police complaints. It is pleaded that after leaving the matrimonial home, the wife joined the services in Pandit Jawaharlal Nehru College of Engineering at Aurangabad. It is pleaded that the wife again returned to Nagpur on 28.12.2010 with the intervention of the cousin brother of the wife and a common friend. It is pleaded that during her short stay after 28.12.2010, the wife used to snatch the child from the husband, used to abuse him for no reason and fault on his part and used to get furious on petty matters. It is pleaded that on 03.04.2011, the wife hit the husband with an iron rod and put him out of the house. It is pleaded that though, the husband wanted to enter the house, the wife was reluctant to open the doors. It is pleaded that on 03.04.2011, the wife not only hit the husband with the iron rod, but she compelled the husband to leave his house. It is pleaded that the acts on the part of the wife amount to cruelty and therefore, the husband was constrained to file Hindu Marriage Petition No.A-397/2011 for grant of divorce on the ground of cruelty. It is pleaded that with the intervention of the Counselor and to give the marriage a try, the husband started residing with the wife on experimental basis. The parties signed a compromise in August, 2011 and the husband withdrew the petition on 29.12.2011. It is pleaded that immediately on the second day of the withdrawal of the petition i.e. 31.12.2011, the wife picked up quarrel with the husband and made several sarcastic remarks.

It is pleaded that on 02.01.2012, when the husband asked the wife to handover the amount of Rs.20,000/-, which was required for the purpose of making labour payment, the wife picked up quarrel with the husband and stated that she had given the said amount to her friend for preparing a demand draft for her M.Tech. examination. It is pleaded that the wife was well aware that already a demand draft was prepared by the husband for seeking admission of the wife in M. Tech course.

It is pleaded that the wife stated that she had given the said amount to her friend and that she would secure the amount from her friend's house. It is pleaded that the wife asked the husband to accompany her to her friend's house, but instead of taking her husband to the friend's house, the wife took her husband to Police Station, Pratap Nagar, where she created a scene and criminal proceedings were initiated against the husband under Section 151 of the Code of Criminal Procedure. It is pleaded that the husband had to secure bail and give a bond with a view to avoid further complications in the matter. It is pleaded that after securing bail, the husband went to the matrimonial home, but to his utter surprise, the wife did not allow him to enter the house.

It is pleaded that the wife abused him and threatened him that she will involve him in more police cases. It is pleaded that in view of the threats by the wife, the husband had no other course open but to reside with one of his relatives at Nagpur and file a police report with the Pratap Nagar police station on the next day, as a preventive measure. It is pleaded that though, the husband was persuaded to withdraw the petition filed in the Family Court on the assurance given by the wife that she would behave properly in future, the wife showed her true colours after returning to the matrimonial home. It is pleaded that even after the compromise of the matter in the previous round of litigation, the wife abused the husband in filthy language by making false allegations against him. It is pleaded that the husband has been subjected to utmost mental cruelty and agony and since, there is no change in the behaviour of the wife, the husband is entitled to a decree of divorce on the ground of cruelty.

3. The wife filed the written statement and denied the claim of the husband. The wife admitted that she was working in the Engineering College at Shegaon for about a year. The wife denied that she had treated the husband and his relatives with cruelty. It was denied that she had stopped cooking food for the nephews who had come to stay in the matrimonial home for preparing for the entrance examination. It was denied that the wife has started serving in Pandit Jawaharlal Nehru Engineering College at Aurangabad after the baby was born. The wife denied almost all the allegations made against her. She denied that she threw utensils on the husband and was uncontrollable on some of the occasions. The

wife however admitted that there was a compromise in the Hindu Marriage Petition filed by the husband bearing HMP No.A-397/2011. It was stated that as the parties desired to live together in the matrimonial home, the wife joined the company of the husband in the year 2011 after the compromise pursis was presented in the Family Court. It is pleaded that on 02.01.2012, the husband picked up quarrel with the wife and demanded Rs.20,000/- which he had kept with her for making labour payment. It is pleaded that the wife informed the husband that she had given the said amount to her friend for preparation of the demand draft towards her M.Tech. examination. It is pleaded that after the wife stated so, the husband lost his temper and assaulted the wife with kicks and fists blows. It is stated that the wife rushed to Rana Pratap Nagar Police Station and the husband followed her and also misbehaved with her in the Police Station.

It is pleaded that the husband was booked in the chapter proceedings under Section 151 of the Code of Criminal Procedure. It is stated that after the husband executed the bond on 02.01.2012, he stopped coming to the matrimonial home and, therefore, the wife started residing in the flat along with her child. It is pleaded that the husband illegally asked the wife to vacate the flat which, according to him, belonged to his sister. It is pleaded that the flat belongs to the husband but it was purchased in the name of his sister for the reasons best known to him. It was pleaded that though the husband had misbehaved with the wife in the Police Station, the wife was ready and willing to cohabit with the husband as per the terms of the compromise, that were recorded in the Family Court. It is pleaded that the husband was not desirous of adjusting with the wife due to his ego problem and the wrong advice by his relatives. It is pleaded that the wife had not inflicted any cruelty on the husband and the husband was desirous of ruining her life. It was lastly pleaded that the husband had filed HMP No.A-397/2011 and since the same was withdrawn unconditionally, the present petition was liable to be dismissed on the principles of res-judicata. The wife sought for the dismissal of the 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 brother, Vinod Chavan and his friend, Rupesh Shelke. The wife examined herself and closed the evidence on

her side. On an appreciation of the evidence on record, the Family Court dismissed the Hindu Marriage Petition filed by the husband. The husband has impugned the said judgment in this Family Court Appeal.

5. Smt. Dhote, the learned Counsel appearing on behalf of the husband submitted that the Family Court did not consider the evidence in the right perspective while dismissing the Hindu Marriage Petition filed by the husband. It is stated that when the nephews of the husband came to reside with them in the matrimonial home, the wife started quarreling with the husband. It is stated that thereafter the behaviour of the wife was same and she continuously harassed the husband as and when she resided in the matrimonial home. It is stated that since the beginning the wife was not interested in residing in the matrimonial home and hence, she insulted the husband every now and then. It is submitted that the wife always left the matrimonial home without informing the husband and stayed in her parental home. It is stated that after the parties married on 14.02.2005, the wife was residing at Shegaon for one year and in October, 2007, she left matrimonial home at Nagpur and went to Aurangabad to a parental home. It is submitted that on 14.02.2008, when a male child was born from the wedlock, the husband went to Aurangabad to meet the wife and the child but the husband was not welcomed at Aurangabad. It is submitted that the husband was abused by the wife and her family members when he went to meet her and the child. It is stated that in June, 2008, the wife joined the company of the husband at Nagpur, only to leave the matrimonial home on 22nd June, 2008. It is submitted that in July, 2009, the wife came to the matrimonial home only for a few hours to take away all her belongings and also her "Kinetic Honda". It is stated that the act on the part of the wife to remove all her belongings from the matrimonial home including her vehicle in July, 2009 clearly shows that the wife had no intention to reside with her husband in the matrimonial home.

It is stated that though the wife was working in the Engineering College at Aurangabad in the year 2009, she has specifically denied this fact in her written statement and examination-in-chief. It is stated that though the wife returned to the matrimonial home in the year 2008 along with her mother and sister, she unnecessarily disputed this fact in the written statement and in the examination-in-

chief. It is stated that she however admitted the said fact in her cross-examination. It is submitted that the conduct of the wife in denying the facts initially and then admitting them in the cross-examination clearly shows that the evidence of the wife is not worthy of acceptance. It is submitted that the Family Court has taken an extremely stringent view while holding that the wife had not treated the husband with cruelty even if she threw the utensils on the husband or she flared up on the arrival of his nephews. It is stated that the approach of the Family Court in holding that these acts clearly reflect only normal wear and tear is unreasonable. It is submitted that even after the wife was brought to the matrimonial home, in view of the compromise during the pendency of Hindu Marriage Petition No.397 of 2011 and even after the withdrawal of the said petition by the husband, the wife did not change her ways. It is stated that the wife not only fought with the husband on trivial issues but also unnecessarily dragged the husband to the Police Station on 02.01.2012.

It is stated that the wife had claimed to have given an amount of Rs.20,000/- which was due and payable to the labourers, to her friend for preparing a demand draft for her M.Tech. examination though the demand draft for her M.Tech. examination was already prepared by the husband. It is stated that the wife took the husband to the Police Station on her two wheeler and unnecessarily lodged a false complaint against him, as a result of which he was detained for some time by the police. It is stated that after the husband returned from the Police Station on 02.01.2012, the wife refused to permit the husband to enter the house, as a result of which the husband was required to stay with the friends/relatives in Nagpur. It is submitted that during the pendency of these proceedings, the wife also lodged proceedings against the husband under the Protection of Women from Domestic Violations Act and has claimed a sum of rupees 20 lakhs towards damages. It is stated that the conduct of the wife clearly shows that she is not desirous of staying with the husband in the matrimonial home. It is stated that it is impossible for the husband to reside with the wife under one roof as he is under constant threat that the wife would become uncontrollable, bang her head on the wall or the floor if the husband does not accede to her unreasonable demands and would also file false police complaints against him. The learned Counsel sought for the reversal of the judgment of the Family Court and a decree of divorce in favour of the husband.

6. Shri Ahmed, the learned Counsel for the respondent-wife submitted that the husband is not entitled to rely on any of the allegations made by him in paragraph Nos.1 to 13 of the present petition as paras 1 to 13 in the earlier Hindu Marriage Petition bearing HMP No.A-397 of 2011 are identical and the husband has withdrawn the said petition. It is stated that the husband would not be in a position to rely on any of the pleadings made in paragraphs 1 to 13 of the present petition in view of the provisions of Order XXIII Rule 1(iv) of the Code of Civil Procedure. It is stated that while withdrawing the previous petition, the husband had not sought liberty and, therefore, the husband would be dis-entitled to seek a decree of divorce on the basis of the pleadings made in paras 1 to 13 of the present petition. It is stated that it is clearly mentioned in the consent deed executed by the parties in the previous petition that they had withdrawn all the allegations against each other. It is stated that the husband has not examined any independent witness in support of his case that his wife was treating him and his family members with cruelty. It is submitted that if the wife was shouting on the husband and throwing utensils on him, it was necessary for the husband to have examined an independent witness. It is submitted that witness No.3 for the husband, Rupesh has clearly admitted in his cross-examination that the wife had called him to the Police Station after the husband was detained by the police on 02.01.2012. It is stated that the intentions of the wife were good and this can be reflected from the admission of Rupesh that he was informed by the wife in regard to the detention of the husband in the Police Station.

It is stated that the case of the husband that the wife took the husband to the police station on her vehicle is not correct. It is submitted that an amount of Rs.20,000/- is not a big amount and the husband should not have made a big issue if the wife had given the said amount to her friend for preparing the demand draft for her M.Tech. Examination. It is submitted that the wife was not paid maintenance pendente lite during the pendency of the proceedings before the Family Court for about five months and hence the husband would not be entitled to a decree of divorce. The learned Counsel relied on the judgments reported in AIR 1993 Kerala 181 (C.S. Mangalam v. Velayudhan Asari), and 2002(5) Mh.L.J. 413 (Rekha Bhaskar Kadam v. Bhaskar Arjun Kadam), to substantiate his submission. The learned Counsel also relied on the judgment reported in 2014(3) All MR 93

(Mrs. Sanjana Sandip Pednekar v. Mr. Sandip Sitaram Pednekar), to submit that the married life should be assessed as a whole and a few isolated instances over certain period, like in this case, would not amount to cruelty. The learned Counsel sought for the dismissal of the Family Court Appeal.

7. On hearing the learned Counsel for the parties and on a perusal of the judgment of the Family Court, it appears that the following points arise for determination in this Family Court Appeal-

(i) Whether the husband proves that the wife treated him with cruelty?

(ii) Whether the husband is entitled to a decree of divorce on the ground of cruelty?

(iii) Whether the judgment of the Family Court is just and proper?

(iv) What Order?

8. To answer the aforesaid points for determination, it would be necessary to consider the pleadings of the parties and the evidence tendered by them. The husband has categorically pleaded and has also stated in his evidence that the wife joined his company after the marriage only for some time, then resided at Shegaon for one year and then again joined his company at Nagpur after joining Ramdeobaba Engineering College at Nagpur. It is stated by the husband in his evidence that when the nephews of the husband came to stay with them for preparation of the entrance examination, the wife started picking up quarrel every now and then and objected to the stay of the nephews in the matrimonial home. It is stated that the wife stopped preparing food for the nephews and also started abusing the husband in filthy language. It is stated that the wife became uncontrollable due to the stay of the nephews in the matrimonial home and on a couple of occasions banged her head on the floor when the husband refused to act on her dictates. It appears from the evidence of the husband that the behaviour of the wife started turning from bad to worse and the wife started quarreling with the husband on petty issue and threatened the husband that she would implicate him and his family members in false cases. It is stated by the husband in his

evidence that the wife joined the post graduate M.Tech. course in the year 2007 and the husband helped her to take up the course in all respects. It is stated by the husband that when the wife was pregnant, the husband took necessary care but, the wife was not satisfied and always disrespected the husband and her in-laws.

It is stated by the husband that the wife abused the husband and his family members and refused to cook for her in-laws and even serve a cup of tea to them. It is stated that when the husband visited Aurangabad to see the wife and the baby boy that was born, the husband was not welcomed by the wife and her family members. It is stated that the wife abused the husband and informed him that she was not desirous of staying with him. The wife came to the matrimonial home in September, 2008 only to return to her parental home on 22.06.2008. Again in July, 2009, the wife returned to the matrimonial home to remove all her belongings including her two wheeler i.e. "Kinetic Honda". It is the case of the husband that the attitude and the conduct of the wife clearly shows that she did not want to reside with the husband in the matrimonial home. The husband stated that the wife again returned to Nagpur on 28.12.2010 with the intervention of some relatives and friends and during her short stay, the wife used to snatch the child from the husband and abuse him for no reason. It is stated by the husband in his evidence that on 03.04.2011, the wife hit the husband with an iron rod and also compelled him to leave the house. It is stated that in view of the conduct of the wife, the husband was compelled to file Hindu Marriage Petition bearing HMP No.397 of 2011 against the wife for a decree of divorce. It is stated in his evidence that with the intervention of the mediator-counselor, the parties again started residing together on experimental basis but the wife did not mend her ways. According to the husband, the fight between the parties on 02.01.2012 was the last straw on the camels back.

It is stated by the husband that the wife had wrongfully claimed that she had given the amount of Rs.20,000/-that was handed over to him by his employer for payment to the labours, to her friend for securing a demand draft for her M.Tech. Examination. According to the husband, the statement of the wife was not correct as he had already prepared a demand draft for her M.Tech. Examination. It is stated by the husband that the wife wrongfully took the husband to the Police

Station on the pretext that she would take him to her friend's house to secure the amount of Rs.20,000/- which she had given to her friend for preparing the demand draft. The husband stated that the act on the part of the wife to forcibly take the husband to the Police Station and then make a hue and cry in the Police Station and ensure that the husband is detained in the Police Station for some time, clearly amounts to cruelty. According to the husband, it was impossible for the husband to stay with the wife under one roof and hence he was entitled to a decree of divorce.

9. The husband examined his brother who also supported the case of the husband. Nothing has come out from the cross-examination of either the husband or his brother and friend to shatter the case of the husband in his examination-in-chief. The wife has examined herself. The wife has admitted certain facts in her cross-examination, though she had denied those facts in her written statement and in her examination-in-chief. The wife had denied in the written statement and in her examination-in-chief that her mother and sister had brought her to Nagpur and stayed in the matrimonial home at Nagpur. She however admitted in her cross-examination that they had accompanied her to Nagpur. The wife had also denied that she was serving in Aurangabad in Pandit Jawaharlal Nehru Vidyapeeth, but in her cross-examination, she admitted this fact. It is rightly submitted by the husband that the wife has denied almost all the facts pleaded by the husband in the Hindu Marriage Petition, though she proceeded to admit some of the facts in her cross-examination. The wife has admitting her cross-examination that the wife had removed the Kinetic Honda from the matrimonial home and had taken it to Aurangabad. The wife admitted in her cross-examination (though she had denied the said fact in her written statement and evidence) that she came to Nagpur along with her mother and sister. The wife admitted that within two days from the date of withdrawal of the previous Hindu Marriage Petition filed by the husband, there was a quarrel between the husband and the wife. The wife admitted that in January, 2010, her husband demanded the money that was given to her.

It is stated by the wife in her cross-examination that she had told her husband that she would secure the money from her friend because she had given the said amount to her friend for admission. The wife stated in the cross-examination that

she had proceeded on her two wheeler for taking money and at that time the husband forcibly came with her. The wife admitted in the cross-examination that she went to the Police Station as her husband had accompanied her forcibly and she was afraid that he would beat her. The wife admitted that when her husband returned to the house on 02.01.2012, the wife was present in the house. She stated in the cross-examination that nobody had contacted her on phone for taking the husband in the house. The wife admitted that she was residing in a house in the name of elder sister of her husband. She admitted that the husband of Suchitra Rathod is a doctor and having hospital at Yavatmal and they are financially sound. She stated that she did not know that the said house was purchased by Suchitra. The wife denied the suggestion that because of the frequent quarrels, the husband suffered mental cruelty.

10. On a perusal of the evidence of the parties, it is clear that though the parties were married in the year 2005, the parties did not reside together continuously for long. The husband and the wife were staying apart time and again due to one reason or the other. For almost one year after the marriage, the wife was residing at Shegaon as she was working in the Shegaon Engineering College. When the wife joined the company of the husband in the matrimonial home in 2007, the wife was enraged as the nephews of the husband had come to Nagpur for preparation of entrance examination. The husband has categorically pleaded and also stated in his evidence that the wife was extremely enraged because of the stay of his nephews in the matrimonial home. There is evidence on record to show that the wife did not cook food for the nephews and also banged her head on the floor when the husband did not accede to her requests. It is stated by the husband in his evidence that the wife did not cook the food for her in-laws and never offered even a cup of tea to them. The evidence of the husband is supported by the evidence of his brother and his friend who have clearly deposed that the wife was arrogant and short tempered and treated the husband with cruelty. Specific instances are stated by the husband in regard to throwing of utensils by the wife after getting enraged and also of banging her head on the wall and the floor. The husband has specifically deposed about the wife hitting him with an iron rod on 03.04.2011 and driving him out of the matrimonial home. There is nothing in the cross-examination either of the husband or his witnesses to disbelieve his case in

the examination-in-chief.

The Family Court has lightly brushed aside the evidence in regard to the aforesaid acts of the wife on the ground that the acts do not tantamount to cruelty and reflect only normal wear and tear in the matrimonial home. Even if we were to discard the pleadings and evidence of the husband in regard to the acts of cruelty by the wife before compromise in the previous petition bearing HMP No.397/2011, the subsequent acts of the wife can be independently said to have inflicted cruelty on the husband. Only two days after the husband withdrew the petition filed by him, the husband and the wife had a big fight on 02.01.2012. On the previous day, i.e. on 01.01.2012, the husband had asked the wife to retain a sum of Rs.20,000/- that was due and payable to labourers. The wife has admitted in her written statement that the amount of Rs.20,000/- was to be paid to the labourers. It is difficult to understand as to why the wife had given the said amount to her friend for preparing the demand draft for the M.Tech. examination of the wife. Firstly, there is a material on record to show that the husband had prepared the demand draft for the M.Tech. examination of the wife and secondly even if a demand draft was to be prepared, the wife should not have given a sum of Rs.20,000/- that was admittedly payable to the labourers, to her friend. Assuming that the husband lost his temper because of the act on the part of the wife to give the amount of Rs.20,000/- that was meant for the labourers to her friend, it is apparent from the reading of the evidence of the parties that on the pretext that she would secure the amount of Rs.20,000/- from her friend, the wife took the husband to the Police Station on her two wheeler.

The admissions of the wife in her cross-examination clearly point out that the wife had proceeded on a two wheeler and the husband accompanied her. The wife has stated in her cross-examination that the husband accompanied her forcibly. Assuming that the husband had accompanied her forcibly on the two wheeler, she should have taken her husband to her friend for securing the amount of Rs.20,000/- but the wife took the husband to the Police Station and lodged an oral complaint against him. It appears that the husband had to face chapter proceedings due to the action on the part of the wife to forcibly take the husband to the Police Station on her two wheeler and lodge complaint against him. Though

it appears from the evidence of the friend of the husband that he was informed by the wife that the husband was detained in the Police Station, that does not absolve the wife of her act of forcibly taking the husband to the Police Station and lodging a complaint against him though the wife had wrongly claimed to have given the amount of Rs.20,000/- meant for the labourers to her friend. The wife had no business whatsoever to give the amount of Rs.20,000/- that was asked to be retained by her only on the previous day, to her friend, more so when the said amount was meant for the labourers. It could be gathered from the evidence of the husband and the evidence of the wife in her cross-examination that the wife was riding her two wheeler and the husband accompanied her on the pillion seat, though it is not clearly stated so and the wife forcibly took the husband to the Police Station to lodge a complaint against him. It also appears that during the pendency of these proceedings, the wife has lodged a complaint against the husband under the provisions of the Protection of Women from Domestic Violence Act. The wife appears to be much more educated than the husband and it can be gathered from the evidence of the parties that only because of her higher education, the wife was behaving arrogantly with the husband and treating him with cruelty.

11. Though, we are firmly of the view that the husband can establish on the basis of the conduct of the wife after effecting of the compromise in the previous petition in August, 2011 that the wife treated the husband with cruelty, we are of the considered view that the allegations made by the husband against the wife in respect of the incidents which occurred before the institution of the previous petition, can also be looked into, in the circumstances of the case. We find from the record and proceedings of Hindu Marriage Petition No.A-397 of 2011, which we had secured in this case, that there was a compromise between the parties in the month of August, 2011 as the parties decided to reside together on experimental basis. On 28.12.2011, the husband had filed an application for permission to withdraw the Hindu Marriage petition. A pursis was jointly filed by both the parties seeking the dismissal and closure of the proceedings. It appears from the roznama that the application, dated 28.12.2011 was allowed and the petition was dismissed in terms of the pursis. However, on Exhibit-1, the Family Court passed an order on 28.12.2011 that the petition was dismissed for want of

prosecution. The provisions of Order XXIII Rule 1(4) of Civil Procedure Code cannot strictly apply in the facts and circumstances of the case. Several serious allegations were levelled by the husband against the wife in Hindu Marriage Petition No.A-397 of 2011. With the intervention of the Counsellor and the Mediator, the parties decided to give a try and consider whether it was possible to reside in the matrimonial home under one roof.

The consent terms clearly stipulate that the parties had decided to reside together on experimental basis. Merely because it is stated in the consent terms that the parties had withdrawn the allegations against each other, it does not mean that the husband was dis-entitled from raising the grounds of cruelty on the basis of the instances that had occurred before August, 2011. The Family Court erroneously relied on the judgment, reported in AIR 2006 Delhi, 335 to hold that the husband was not entitled to file a petition for a decree of divorce, as the previous petition filed by the husband was withdrawn without seeking the leave of the Court. In the said case, there was no lis between the husband and wife and the suit was one for partition and separate possession. We cannot strictly apply the provisions of Order XXIII Rule 1 (4) of the Code of Civil Procedure to the case in hand, specially when the parties had decided to reside together on experimental basis and just two days after the husband withdrew the petition, the wife had dragged the husband to the Police Station on her two wheeler. We find on a reading of the evidence of the husband and the witnesses examined by him that he had successfully proved that the wife had treated the husband with cruelty. The wife spoke to the husband in a loud voice and quarreled with him for no reason. When the husband did not accede to her demands or requests, the wife banged her head on the floor or on the wall. The wife did not cook for her in-laws and also refused to give food to the nephews of the husband.

The Family Court was not justified in holding that the change in behaviour of the wife after the nephews came to the matrimonial home cannot be said to be unreasonable. It appears that the husband was kept out of the house on a couple of occasions and the wife had locked the house from inside. Also, the wife was guilty of throwing the utensils on the husband after she had lost her temper. The observation of the Family Court that because of the stay of the nephews in the

matrimonial home, the wife may not have got privacy and, therefore she must have been furious, is unreasonable. The Family Court was not justified in holding that the wife must not have thrown utensils and articles on the husband for if it was so, the husband would have lodged a complaint against the wife in the Police Station. Despite the fact that the Family Court found that most of the allegations made by the husband were proved, the Family Court erroneously held that on the basis of the allegations, it cannot be said that the marriage between the parties was irretrievably broken down.

12. The acts of the wife, as proved by the husband, surely amounted to cruelty. Even if we discard the pleadings and the evidence in respect of the acts which are referable to the period before the compromise between the parties, on the basis of the conduct of the wife after the compromise also, the husband would be entitled to the decree of divorce. It is clearly proved by the husband by his pleadings and evidence that even after the compromise in August, 2011, the wife did not mend her ways. The wife continued to quarrel with the husband on petty issues and taunted him. It is pleaded by the husband and also proved that the wife did not permit the husband to enter the house on 02.01.2012. The wife quarreled with the husband and abused him in filthy language. The wife had no business to give the amount of Rs.20,000/- to her friend for securing a demand draft when the demand draft was already prepared by the husband. Even assuming that the demand draft was not prepared by the husband, still the wife could not have given the amount entrusted to her to her friend, when the amount was meant for making labour payment. The parties quarreled on 02.01.2012 on the aforesaid issue which according to the wife was small. We do not find that the act on the part of the wife to hand over the amount of Rs.20,000/- to her friend, when her husband had entrusted the said amount to her to be kept in safe custody for payment of labourers, is correct, in any way. We have already mentioned herein above that it could be gathered from the evidence of the parties including the admissions of the wife in her cross-examination that the wife had reached her husband to the Police Station on the pretext that she would take him to her friend's house so that the amount of Rs.20,000/- could be returned to him.

On the oral complaints made by the parties against each other, Chapter proceedings were initiated against the husband under Section 151 of Code of Criminal Procedure and the husband was detained in the Police Station for a few hours. The acts on the part of wife in ensuring that the Police Authorities should take some action against her husband when he was not at fault appears to be incorrect. The case of the wife that she was beaten mercilessly by her husband on 02.01.2012 and hence she had taken the husband to the Police Station is not worthy of credence. The said case is unbelievable as no man would accompany the wife to the Police Station on her two wheeler after beating her mercilessly. We find that the parties did not continuously reside together from 2005 to 2011. Though, the period between the date of solemnization of the marriage and the last parting on 02.01.2012 appears to be long, the parties have actually resided with each other for a very small period. We find that the wife has treated the husband with cruelty and there are no chances that the husband and the wife would happily live together in the matrimonial home under one roof.

The judgments reported in (2013) 5 SCC 226 (K. Srinivas Rao v. D.A.Deepa) and (2007) 4 SCC 511 (Samar Ghosh v. Jaya Ghosh) and relied on by the counsel for the husband support the case of the husband. The judgments reported in 2002 (5) Mh.L.J. 413 (Rekha Bhaskar v. Bhaskar Arjun) and AIR 1993 Kerala 181 (C.S. Mangalam v. Velayudhan Asari) and relied on by the counsel for the wife cannot be made applicable to the case in hand. These decisions pertain to the question of striking off of defence for flouting the Court's order. We are not considering an issue of striking off of the defence. The submission made on behalf of the wife in respect of the non-payment of the maintenance amount for a period of five months by the husband is seriously disputed by the counsel for the husband. In any case, we are not required to consider that issue in the instant appeal. The judgment, reported in 2014 (3) ALL MR 93 and relied on by the counsel for the wife is also distinguishable on facts. In the case in the reported judgment, the Court found from the allegations that there were only petty quibbles and trifling differences between the parties. Such is not the case here. In the instant case, the acts of the wife clearly constitute cruelty on the husband and the Family Court ought to have granted a decree of divorce in favour of the husband in the circumstances of the case.

13. Hence, for the reasons aforesaid, the Family Court appeal is allowed. The Hindu Marriage Petition filed by the husband for grant of decree of divorce on the ground of cruelty is allowed. The marriage solemnized between the parties on 14.02.2005 is dissolved by a decree of divorce.

Order accordingly. No order as to costs.

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