

Vibha Vs. Arun

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Court : Mumbai Nagpur

Decided On : Sep-14-2016

Judge : The Honourable Mrs. Justice Vasanti A. Naik & The Honourable Ms. Justice Indira Jain

Appeal No. : Family Court Appeal No. 33 of 2016

Appellant : Vibha

Respondent : Arun

Advocate for Def. : Ms. Khisti

Advocate for Pet/Ap. : Shri. Rahul Dharmadhikari

Judgement :

Kum. Indira Jain, J.

1. Admit.
2. Heard finally with the consent of the learned Counsel for the parties as record and proceedings are received.
3. By this appeal appellant/wife challenges the judgment of the Family Court, Amravati dated 30-12-2015 dismissing the petition filed by appellant/wife for dissolution of marriage on the ground of cruelty under Section 13(1)(i-a) of the

Hindu Marriage Act, 1955.

4. Facts giving rise to the appeal may be stated in brief as under :-

Appellant is wife of respondent (hereinafter appellant shall be referred as 'wife' and respondent shall be referred as 'husband'). They got married on 11-03-2000 as per customary rites. After marriage wife went to Wardha to cohabit with the husband. The family of husband was consisting of his father, mother, brother, sisters and two kids of married sister. It is the case of wife that soon after marriage she realized that approach of family members towards her was not good. They used to taunt, disrespect and harass her. She was an Engineer whereas her husband was 12th passed. As she was highly educated members in the family were under the impression that she feels embarrassment in doing household work. According to wife though she is a qualified Engineer she has spent her entire time in taking care of the family members and further choosing to be a housewife.

5. It is pleaded by the wife that she underwent two miscarriages and in the third pregnancy delivered a male child on 26-12-2004. Child is in her custody. After two miscarriages she had to opt for a job at Wardha as it was difficult to maintain the family with the meager salary of the husband. Respondent however went on shifting his job from place to place and appellant used to accompany him. She requested respondent to shift to Pune in the interest of education of child and as Pune being a big city lot of opportunities would be available to him also. Respondent refused to shift to Pune. That left with no alternative to the wife to shift to Pune along with her four year old child at the house of her brother.

6. In 2009 she could get rented accommodation and started residing with her child separately. Respondent was rarely visiting Pune to meet his wife and child. She could secure job at Pune and settled there. A flat was purchased by her in 2010 in the joint name of her husband and herself. Respondent did not share a single pie towards installments. Thereafter respondent all of a sudden shifted to Pune and spent months together without doing any work. On the insistence of wife he started Laptop Service Center in the year 2011 at home. He did not pay attention and so business went in loss. Respondent used to remain at home without any work and started raising quarrels with the wife on trivial issues for no reasons. She was

being abused as she was educated and was doing a job.

7. In July, 2011 wife could get a job of Senior System Manager in I.B.M. Company and her responsibilities increased as she was required to work in a shift from 01.30 pm to 10.30 pm. Respondent started suspecting character of wife as she was required to remain at the work place till late in the night. He used to abuse her in filthy language saying that she is a characterless lady having relations with many persons and coming late in the house. Due to tremendous mental and physical stress wife was required to call her mother to stay with her for some time.

8. In August, 2012 wife came late at home from the office. Husband started abusing her in filthy language saying that she is characterless and having affair. On intervention of her mother respondent abused her mother too in filthy language and assaulted wife by giving fist blows on her face.

9. Thereafter on 10-03-2013 respondent raised quarrel with his wife on the ground that she should not visit her parents at Amravati. He became violent and threw a Laptop of her. He pushed her to the ground and delivered kick blows. She was locked in a room by the husband. Incident was witnessed by eight year old son who suffered tremendous mental shock and was frightened. She could manage to call her brother and mother from Amravati on 11-03-2013. Her brother and mother reached Pune and directly went to Police Station. She was called by her brother on phone and anyhow she could manage to escape from the house and reached the Police Station. Respondent was called at the Police Station. With the help of mediators dispute was resolved in the interest of child and wife came to Amravati on the same day along with the child as it was impossible for her to continue to live with her husband.

10. According to wife respondent is suffering from inferiority complex and due to constant ill-treatment it is not possible for her to pull on in the company of her husband. She states that for 13 years she was tolerating the extrinsic behaviour of her husband but when cruelty went beyond tolerance she had no option but to file a petition for divorce on the ground of cruelty.

11. Respondent/husband filed his reply and resisted the petition for divorce. The factum of marriage, educational qualification of husband and wife, birth of child are the facts not in dispute. On alleged cruelty, harassment and torture defence of husband is of total denial. He stated that on 10-03-2013 wife wanted to go to Amravati but he requested her not to go as child would lose his school and tuition classes. On the trifle issue she called her mother and brother at Pune who straightway went to Police Station and threatened him that if he refuses his wife to act according to her wish she would commit suicide and put him in jail. He states that access to child was denied to him. At Amravati she filed a petition for divorce under Section 13-B of the Hindu Marriage Act. The said petition was signed by him on the condition that she would allow him to meet the child. As access to child was denied he refused for divorce by mutual consent. On 07-10-2013 he sent a legal notice and thereafter received a notice from wife under the Protection of Women from Domestic Violence Act, 2005.

12. Respondent then states that after two years of marriage he got a job at Lloyd Steel, Wardha and tried to get the job for his wife in the same Company. After getting the job at Wardha she became more ambitious and secured job at Chennai. It was difficult for her to take care of child at Chennai and so he accompanied her to Chennai to look after the child. Thereafter she was transferred to Pune and started residing with the child and her parents. Respondent came back to Wardha for service purpose. He stated that his wife was highly educated and was treated with utmost respect in the family. Though he was serving at Wardha he used to visit Pune to meet his wife and child. She was earning Rs.1 Lakh per month and asked him to leave job at Wardha. At her instance he shifted to Pune and started computer repairing work. When he shifted to Pune he carried his savings of Rs.7,50,000/- which was spent by him for purchasing a flat. It is alleged that wife used to insult and abuse him as he was not so educated and he had to tolerate the ill-treatment for a long. She on her own severed the matrimonial relations since 2011. It is the contention of husband that wife cannot take advantage of her own wrong and she is not entitled for a decree of divorce.

13. On the aforesaid pleadings of the parties Family Court framed the issues. Parties adduced evidence in support of their respective cases. Wife examined

herself and reiterated the facts pleaded in the petition. Husband too entered the witness box and supported his defence.

14. On appreciation of the evidence of parties Family Court came to the conclusion that wife could not prove that husband treated her with cruelty and refused to grant a decree of divorce in favour of wife. It appears from the reasons recorded by the Family Court that conduct of respondent was not of such a nature and gravity so as to cause reasonable apprehension in the mind of wife that it will be harmful or injurious to her to live with the husband. Family Court was of the view that evidence on record was not sufficient to substantiate the allegations of cruelty. It was also observed that corroborative evidence was lacking. Wife had exaggerated her case in the course of evidence and so the Court found that sole reliance on the testimony of wife could not be placed. This judgment of Family Court is under challenge in this appeal.

15. Shri Rahul Dharmadhikari, learned Counsel for appellant submitted that Family Court was not justified in refusing to grant decree of divorce on the ground of cruelty particularly when there is uncontroverted evidence of the wife clearly indicating that husband used to raise suspicion on character of wife as she was coming home late from her work place. Learned Counsel submits that evidence of wife in paragraph 10 of her examination in chief has remained unshaken as absolutely there is no cross examination on the serious allegations made by wife against the husband. It is stated that evidence of wife has not been properly and legally appreciated as a result of which perverse findings have been recorded refusing to grant a decree of divorce.

16. Ms. Khisti, learned Counsel for respondent supported the impugned judgment and submitted that Family Court was justified in dismissing the petition for divorce as there was no sufficient evidence to prove cruelty at the hands of husband. Learned Counsel submits that appellant made exaggerations in her evidence and so Family Court was absolutely right in insisting for corroboration. Learned Counsel prays for dismissal of appeal with costs.

17. On considering the pleadings of parties, evidence on record and submissions made by the learned Counsel for parties following points would arise for

determination in this appeal:-

1] Whether the Family Court could have dismissed the petition filed by wife for decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act?

2] Whether wife is entitled to a decree of divorce on the ground of cruelty?

18. As indicated above wife examined herself and husband examined himself in support of their respective allegations and counter allegations. Wife was cross examined at length. In paragraph 10 of her examination in chief it is stated by wife that due to tremendous mental and physical stress she called her mother to reside with her for some time. She states that in the month of August, 2012 she was late to return home from work place. Respondent started abusing her saying that she was characterless and having some affair. When her mother intervened he also abused her mother in a third grade language. She then states that her husband abused her physically by giving fist blows on her face. She stated that thereafter it was the habit of her husband to abuse her physically. She was beaten with slaps and fists. On one occasion Police was called and understanding was given to respondent that strict action would be taken if he abuses his wife physically.

19. With the assistance of the learned Counsel for the parties we have gone through the entire evidence of wife and it can be seen that on these serious allegations deposed by wife in paragraph 10 of her deposition absolutely there is no cross examination. Those allegations are therefore uncontroverted and in the absence of cross examination they are required to be taken as proved.

20. It is apparent that learned Judge has not appreciated the evidence of wife in proper perspective keeping in view that certain important facts and serious allegations levelled by her were not at all controverted by the husband leading to the ultimate result that those facts which found place in the pleadings and deposed in evidence were duly proved. Even in the evidence of respondent we find that there is no specific denial to the allegations levelled by wife in paragraph 10 of her pleadings and evidence. Thus on the basis of evidence on record it is clear that conduct of the husband in suspecting the character of wife, physically assaulting and harassing her as she was coming home late from work place due to the

nature of her job are the facts duly established amounting to cruelty and wife is entitled to a decree of divorce on the ground of cruelty.

21. In her further evidence wife tried to point out that on one occasion her husband assaulted her and she received an injury to her right eye. She was referred to eye surgeon and permanent damage to her right eye was caused. We find that in petition no such pleadings are raised by the wife regarding injury to her right eye in an assault by husband. So safer course in such a case would be to keep this part of evidence out of consideration for want of pleadings.

22. The next significant factor in the case on hand is that petition for divorce under Section 13-B of the Hindu Marriage Act was filed by the husband and wife before the Court at Amravati but according to husband as access to child was denied he refused for divorce by mutual consent. This fact indicates that respondent accepted that marriage cannot be saved and no purpose will be served in continuing the marriage. It is not the case of husband that his signature on petition under Section 13-B of the Hindu Marriage Act was obtained by force, fraud or coercion. He voluntarily agreed to obtain a decree of divorce by mutual consent. The learned Judge of the Family Court has not adverted to this aspect.

23. On careful scrutiny of the material placed on record we find that findings recorded by the Family Court are not in consonance with the evidence adduced by the parties and the learned Judge has also lost the sight of the most important facts elicited in the cross examination of husband. In this premise findings recorded by the Family Court are found to be perverse and need interference in this appeal. Hence we pass the following order.

24. Appeal is allowed. The marriage between appellant/wife and respondent/husband stands dissolved by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act. In the circumstances no costs.

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