

**V. Bhagat Vs. Mrs. D. Bhagat**

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**Court :** Delhi

**Decided On :** Aug-20-1991

**Reported in :** AIR1992Delhi267; I(1993)DMC435; 1992RLR37

**Judge :** Mrs. Santosh Duggal, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13(1) and 23; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11 and 151; Matrimonial Causes Act, 1965; Divorse Reforms Act, 1969 - Sections 2(1); Lunacy Act

**Appeal No. :** I.A. No. 161 of 1991 in Mat. Ref. No. 1 of 1986

**Appellant :** V. Bhagat

**Respondent :** Mrs. D. Bhagat

**Advocate for Def. :** Mr. Bawa Shiv Charan Singh and ; Mr. B.K. Verma, Adv.

**Advocate for Pet/Ap. :** Mr. Anio Dewan, Sr. Adv. and; Mr. Atul Kumar, Adv

**Judgement :**

ORDER

**Santosh Duggal, J.**

1. The present application under S. 151 of the Code of Civil Procedure is moved by the petitioner, who has filed a petition for dissolution of marriage by a decree of

divorce against his wife, on grounds of adultery, cruelty and desertion.

2. In so far as this application is concerned, the petitioner contends himself to be entitled to a decree of divorce on the basis of some averments made by the respondent in the written statement. The plea is that in a number of paragraphs of the written statement, which he has pin-pointed in paragraph 169 of the amended petition to be paragraphs 4, 4C, 4E, 5, 12, 14, 20, 28-29, 32, 33-34, 36, 37B, 38, 43, 48, 58, 73, 80, 100, 138, 143 and 145, the respondent has imputed lunacy and insanity to him and since he is a practicing lawyer in the Supreme Court, all these allegations per se constitute cruelty of a very grave nature, as these were baseless and grotesque in nature. He contends that the allegations expose the respondent as to what type of person she is, and also are indicative of the fact that she has no intention of living with the petitioner, and thus besides being tantamount to cruelty entitling the petitioner to a decree of 26 divorce; these also constitute evidence of 16 desertion on her part, and accordingly the petition be allowed, without requiring the parties to go to evidence.

3. This application, after the case was received in this Court, shortly before the vacation, has been heard almost day to day and at length. The petitioner argued personally and in addition, he had Shri Anil Dewan, Senior Advocate appear for him, to address arguments in rejoinder. Mr. Bawa Shiv Charan Singh appeared for respondent.

4. It is to be noted, however, that after the written statement was filed in January, 1986, soon thereafter the petitioner moved an application similar to as the present one, being I.A. 3007/87, which application was dismissed after detailed consideration of the arguments advanced, and the facts pleaded, by order dated 24th May, 1988. The learned Judge, who was seized of this matter at the time, opined that apart from the fact that a party cannot be allowed a decree merely on the basis of what was stated in the written statement, when the basis for the prayer did not form any part of the petition; otherwise also,

'even if it be assumed that the Court can go into the question of cruelty on the allegations pleaded in the written statement, the Court has also to see what was the effect of those allegations on the petitioner.'

5. The implication is obvious to the effect that the learned Judge was of clear opinion that the parties have to go to evidence and the petitioner who complains to be hurt or harmed by something stated in the written statement has to prove so by evidence and such a relief could not be considered on bare averments in the written statement, I was informed during hearing that the petitioner filed a special leave petition against this order, but subsequently withdrew the same with the result that the said order is final between the parties. I am of my firm view. Held, that this order would operate as rest judicata between the parties because it is well established that even orders in interlocutory matters during pendency of certain proceedings can be rest judicata between the parties. (Reference: AIR 1977 SC 392, Y. B. Patil v. Y. L. Patil).

6. On this ground alone the present application was not entertainable but since by the time this matter came to me, reply to the application had been filed, and the respondent had not taken any plea of rest judicata, and there was order of Hon'ble Supreme Court for hearing and decision of this application, I propose to dispose of the same on merits in the light of submissions addressed.

7. To my mind, the question requires determination on first principles, as to whether petitioner in a petition under the Hindu Marriage Act, filed on the allegation of adultery, desertion and cruelty, can seek a decree of divorce, simply on the basis of the averments in the written statement per se, and without allowing any opportunity to the respondent to prove, explain or defend the same, and without himself going to evidence. The petitioner contends that such a relief can be granted and placed reliance on a number of decided cases. The refrain of his arguments was that the allegations made in the written statement in reply to number of paragraphs in the petition, impugn insanity and lunacy to him in various forms and that these have far reaching implications for him, as these have tendency of not only hurting him personally, but also harming him professionally since he . was a practicing lawyer and that it is obvious that his reputation was bound to suffer if his wife alleges him to be insane or lunatic.

8. Before proceeding to dispose of this petition on merits, I would like to put on record that this application has been moved on the threshold of proceedings, in

the sense that although the main petition has been pending since long, having been filed in 1985, but in spite of the fact that issues were framed as far back as on 27th May, 1988 and date of evidence fixed for 20th July, 1988, the petitioner did not take any steps for summoning evidence and the proceedings were stayed by virtue of his filing an appeal to the Supreme Court and also owing to some other applications moved by him for recasting of the issues which was dismissed. The respondent had also moved an application for framing of additional issue which was allowed and I am informed that the petitioner has filed an appeal against that order which is pending in this Court. It appears from the order sheets that subsequently also, dates were fixed for evidence but on account of some application or the other being moved by the petitioner, evidence never commenced. It is thus a queer case where though chronologically old, but the stage of proceedings is initial in the sense that Court's orders for filing of documents, admission and/or denial thereof, and summoning of evidence passed as far back as on 27th May, 1988 still remain uncomplished. It may be noted that the Court had even ordered day to day recording of evidence by that order, in view of the directions of the Supreme Court for expeditious disposal of the case, but that was frustrated by subsequent applications.

9. I have alluded to this state of record of proceedings for two reasons. One: that although I have given fullest opportunity to the petitioner to argue the petition, and reply arguments as well as those in rejoinder have been heard, but I would like to confine this order to the barest minimum discussion lest any observation made is considered to prejudge the issues or prejudice the parties and secondly because the petitioner makes recurring grievance of the matrimonial proceedings being protracted, and precious years being lost. Thus record has to be straightened, because primary responsibility for the proceedings having not made any headway so far must lie with the petitioner.

10. Now reverting to the application, which is subject-matter of this order, a reference to the petition reveals that allegations of adultery are of very grave nature, besides those of desertion and cruelty as set out in this petition. Mr. Bawa, counsel for the respondent informed that allegations of adultery are running into 44 paragraphs of the main petition. It is also to be noted that in the written statement,

now word imputing lunacy or insanity in so many words has been mentioned. The expressions used are in different terminology, in the paragraphs, which correlate to the paragraphs containing allegations of adultery, and also which narrates facts, which according to the petitioner constitute cruelty and desertion. These are set in terms such as 'suffering from paranoid disorder', 'having a morbid mind', 'suffering from mental hallucination', 'Imagining things', 'needing expert psychiatric and psychological treatment', 'Incoherent in thinking', 'his mental tensions and strains were result of his mental conditions', 'suffering from inferiority complex', 'confused sick mind, actions indicative of a conduct of not a normal mind', 'abnormal behavior', was mental patient having been referred to a psychiatrist by his own sister, and similarly akin expressions.

11. The petitioner has placed reliance on Butterworths Medical Dictionary in support of his plea that all these expressions connote mental disorder or mental disease. He referred to dictionary meaning of several terms as given in Butterworth Medical Dictionary, second edition.

12. Mr. Bawa's answer, who appeared for the respondent to all these was that the averments made in the written statement cannot be read in isolation, and out of context, and that these were in the nature of respondent's Explanationn as to why allegations of adultery of a very grave nature had been made by the petitioner against his own wife, which were according to her false and unfounded, and that she has further endeavored to give her reasons as to why the petitioner made such type of allegations. He explained that the respondent is resisting petitioner's prayer for divorce on principles, and that she was entitled to plead her case in the written statement. Had she replied to the allegations simply by stating that these were false, she would have certainly been debarred from producing evidence to show, as to why as per her version these had been made. The learned counsel pointed out that all the cases on which the petitioner has relied upon were those when after trial, the allegations in the written statement were held to have not been substantiated. He conceded that there are cases where what was stated in the written statement could be held to amount to cruelty per se, and that also in suitable cases a decree for divorce could be passed, but those were the cases where evidence had been adduced, allegations had been refuted on oath or found

to be false, unfounded or of wanton nature, and only in that state of facts, the Courts held that the petitioner's plea of cruelty in given cases was borne out even from averments in the written statement, which were found to be false and unwarranted.

13. The judgments on which the petitioner placed reliance are obviously decisions at the appellate stage where evidence had been recorded, and full trial taken place and where either opposite party had not even cared to go into the witness-box to substantiate as to what was stated in the written statement or the allegations were found to be false after trial, and there were certain cases where reports had been made even to the authorities where the husband was working, making wanton allegations or were repeated throughout during litigation.

14. For instance, in the case reported as AIR 1988 Delhi 222 Narinder Kumar v. Smt Suresh Kumari, the wife although being provided with the house by the father of the petitioner to live in, had been lodging criminal complaints against not only the husband, but even implicating his father and mother, and it was this conduct of the wife which was held to be tantamount to cruelty and desertion, indicating a situation, brought about by her conduct proved during trial, requiring the marriage to be dissolved because such complaints, not only to the police but also to the employer of the husband, were bound to cause him harm and harassment.

15. Similarly, in the Rajasthan case on which petitioner placed reliance, , Parihar (Priti) v. Parihar (Kailash Singh), the husband was a pilot officer (at the time of judgment, a Sq. Leader), and the wife had been found to have lodged complaints to the army authorities and it was held that the allegations were found to be in the nature of irresponsible insinuations, and were repeated during the course of litigation against the husband and his family, and in that context it was held that such allegations cannot be brushed aside even if the husband's allegations were found to be based on misinformation and imagination and hence not proved.

16. In the recent case from Bombay High Court on which petitioner relied emphatically, : AIR1991 Bom259 , Smt. Nirmala Manohar Jagesha v. Manohar Shivram Jagesha; in reply to husband's allegations of cruelty, resulting from short temper and erratic behavior, the wife had made allegations of impotency and lack

of manliness in husband. Whereas the husband and his brother came in the witness-box to prove the facts alleged in the petition, which were not found sufficient to tantamount to legal cruelty and thus husband held not entitled to divorce, but the wife had not even cared to examine herself and prove the serious allegation of impotency leveled against the husband and nothing to that effect was suggested even in the cross-examination of the husband. It was only in this background, that it was held that the husband was entitled to a decree of divorce because of the wife having made such grave allegation as of lack of manliness, which she had not even cared to substantiate.

17. Another judgment relied upon by the petitioner AIR 1987 Bom 220 Jaishree Mohan Otavnekar v. Mohan Govind Otavnekar, also arose out of the case where also the wife had failed to prove her allegations of cruelty, but in view of the allegation of adultery made in the written statement, she was held entitled to a decree of divorce. But a reading of the judgment reveals that the husband after making these allegations, had not pressed the plea and after trial allegations in the written statement were found to be thoroughly unwarranted, and it was then held that in the event of allegations of wanton nature having been made in the written statement, which remained unproved, the Court could draw an inference of torture and mental agony although she had not specifically pleaded that as a ground in the petition.

18. In the Division Bench judgment of this Court cited by the petitioner and reported as AIR 1985 Delhi 22 1 Sint. Kamini Gupta v. Mukesh Kumar Gupta, also the finding was that wife's allegation of adultery against the husband and his being womanizer and drunkard which she had repeated during trial, were false and unfounded and were not proved in spite of opportunities being given, and on that account the trial Court had granted a decree of divorce to the husband, which was confirmed by the Division Bench, in face of those facts.

19. Reliance was also placed by the petitioner on two other decisions : AIR1984 Bom413 , Dr. Keshaoao Krishnaji Londhe v. Mrs. Nisha Londhe, 0044/1990 : AIR1990 Cal367 , Sm. Santana Banerjee v. Sachindra Nath Banerjee. These are also distinguishable for the same reasons, as highlighted above.

There is no denying the fact, as held in , Kiran Mandal v. Sint. Mohini Mandal, that cruelty also includes mental torture, and that where wife is found to be of bad temperament, and had made false allegations against the husband that he had illicit relations with his brother's wife, that by itself constituted cruelty within the meaning of S. 13 of the Hindu Marriage Act, entitling the husband to a decree of divorce.

20. The crux of the matter, as a reading of all the judgments would reveal, is that the allegations which were of reckless nature, were found after evidence and trial to be false, wanton and unwarranted. There is not a single case which the petitioner could have shown where even without the parties having gone to trial, as in the present case, and where mere averments in the written statement, were found to be furnishing cause of action to the petitioning spouse for a decree of divorce. The petitioner's whole approach therefore stems from a fallacy that even without giving opportunity to the opposite party to prove correctness of the allegations, or put forward justification for making them; on bare averments in the written statement and on petitioner's ipsi dixit, (without coming in the witness-box), that these tend to harm and harass him, that a decree of divorce can be passed.

21. Petitioner's contention, is also to be discounted, that he being a practicing lawyer, these averments which have implication of suggesting insanity and lunacy, had the tendency to harm him in his professional career, and thus tantamount to cruelty, because as Mr. Bawa rightly argued, there is no reason to presume at that stage without any evidence, that any thing stated in the written statement, is likely to rebound in such a way, even without a word having been spoken anywhere in Court, but for the petitioner himself highlighting it during hearing of this application, and the earlier application, that his potential clients were likely to be influenced or prejudiced. All this certainly requires to be proved, and shown by evidence.

22. At this stage, distinction in use of certain expressions in ordinary layman's sense, as against technical definitions in the medical dictionary is also to be kept in mind. One can also not lose sight of the fact that what the respondent has said in the written statement is qua their intimate matrimonial relations, and petitioner's

attitude towards her. It is a matter of common knowledge that every person, possesses a multi-facet personality. It is not necessary, unless proved to be so ' that if a person is alleged to be a bad husband or bad wife, having same problems vis-a-vis his spouse, it would have the necessary implication of his being problematic in his relations towards others professionally, or otherwise expose him to be a person lacking competence in his field of activity.

23. There is thus no reasonable hypothesis for the petitioner to argue at this stage that what is stated in the written statement, which the respondent pleads to be as her Explanationn vis-a-vis the allegations made against her, which she termed as false and unfounded, is likely to hurt or harm him personally. I am supported in what I say by the Division Ben& judgment of this Court in the case of Sint. Kamini Gupta (supra), on which petitioner himself placed reliance to the effect that :

'It is not a case where the wife makes a charge of immorality in the written statement for the first time of which the husband should not be -allowed to take advantage. The wife's charges are deliberate, willful, injurious; and persist. It is not a case of single outburst. It is not a case of mere pinpricks. It is a case of a course of conduct persisted in by the wife right up to the end with a view to wound and humiliate the other spouse. The taunts, reproaches and accusations are the refrain of her evidence.'

24. Petitioner's answer to this was that it is not only on the basis of the written statement that he was seeking a decree of divorce on the ground of cruelty and desertion, but he had also made it a ground in his petition, He invited attention to what is stated in paragraph I I I of the petition where according to him there was a meeting in August, 1980 when the respondent in presence of others allegedly accused him, of being impotent, insane and one who cheated his mother. Interestingly, in this paragraph, the petitioner also complains that there was no support for his views against the respondent from his family. In succeeding paragraph he even states that he tried to get confirmation of what was stated in the said meeting, from the persons present there, but seem to be not too hopeful about those persons corroborating him. Nevertheless he argued that since the respondent has not specifically denied these allegations of having called him

impotent or lunatic; that coupled with what has been stated in the written statement, ought to be taken as an evidence of allegation being made repeatedly which are bound to hurt or harass him. The respondent has denied the allegations made in paragraph 11, and at this stage I do not feel impressed with the arguments that there ought to have been specific denial that she did not say so. We are thus left, as at present, with only mere averment in the written statement, and these, in the light of foregoing discussion, cannot furnish a ground at this stage for grant of a decree of divorce.

25. Towards the end, the petitioner along with Mr. Anil Dewan appearing for him, pleaded that In any case from the nature of the pleadings, it was apparent that there is no likelihood of the spouses coming together as period of 11 years has already expired since the parties have been living separately, and that this marriage required to be dissolved by a decree of divorce. Support is sought for this view from a Full Bench decision of this Court reported as ILR (1971) Delhi 6 Ram Kali v. Gopal Dass, where it was held that when the evidence was that there has been no resumption of cohabitation or restitution of conjugal rights, then there was no point in insisting on the maintenance of the union which utterly broken down.

26. Reliance for this view, was also placed on an English judgment reported as (1978) 1All ER 561 Grenfell v. Grenfell, to the effect that where the marriage is found to have irretrievably broken down, then such a marriage can be dissolved by decree of divorce. Apart from the fact that under the English Law, as provided by Matrimonial Causes Act, 1965 as amended by Divorce Reforms Act, 1969, Section 2(i)(e) permits the Court to grant a decree of divorce on the sole ground of irretrievable break down of marriage and the petitioner was wrong in urging that even in England irretrievable break down of marriage was per se not a ground for divorce. Otherwise also, the law in India is settled by the latest judgment of the Supreme Court : [1991]2SCR821 , Y. Narasimha Rao v. Y. Venkata Lakshmi, where it was held that a decree of divorce granted by a foreign Court, on the ground of irretrievable break down of marriage, could not be operative in India, for the reason that this was not a ground recognised in this country, and that the said decree is unenforceable. A similar view has been taken by this Court in a Division Bench judgment : AIR1990 Delhi1 , Smt. Nitu alias Asha v. Krishan Lal, to which

Mr. Bawa made reference, and also in AIR 1989 Delhi 12 Ashok Kumar Bhatnagar v. Sint. Shabnam Bhatnagar, (D. B.).

27. Petitioner's argument that since a person who is dubbed as a lunatic can even be confined under the Lunacy Act and thus to make such an allegation there is per se cruelty is too far-fetched and specious because the averments in the written statement have to be read at this stage only in the context of allegations in the petition, and their impact adjudged only after evidence, during trial. The judgment of the Supreme Court : [1988]1SCR1010 , Shobha Rani v. Madhukar Reddi, provides no parity of reasoning, because that was a case of proved demand of dowry by the husband or his parents in a petition filed by the wife on the ground of cruelty and it was in that context that it was held that since demand of dowry per se is unlawful and prohibited under law, the same amounted to cruelty entitling the wife to a decree of divorce.

28. Respondent's counsel also cited : AIR1982 Delhi107 , Smt. Pushpa Rani Krishan Lal, where it was held that even when allegations of adultery made by the wife in the written statement were found to be false, but in the absence of husband stating that these caused mental anguish to him, it was held that the false charge per se in these circumstances did not constitute cruelty so as to entitle him to a decree of divorce. The implication is that the averments in the pleadings per se do not constitute ground without being tested in evidence, and their full impact adjudged.

29. The case reported in 1979 MLR 352, Kundan Lal Verma v. Kanta Rani, was on entirely different footing as it was a case of allegation of impotency, which was not even pursued and rather abandoned by the wife. It was only in that setting of facts that it was held that such an allegation would be sufficient to entitle the Court to draw inference of cruelty on the part of the wife towards husband.

30. In the other Delhi case also, : AIR1987 Delhi52 , Sint. Savitri Balchandani v. Mulchand Balchandani, the allegations made in the written statement have been found to be false, scandalous and malicious.

31. In the case : AIR1978 All255 ; Smt. Gurbachan Kaur v. Sardar Swaran Singh, it has been held that where the husband has made false accusation of illicit pregnancy against his wedded wife, and the wife in the written statement had while countering the husband's allegation had alleged that he was having adulterous relations with his sister-in-law, which were also found to be false, it was held that the wife's allegation considered in the context of the circumstances did not constitute an act of cruelty entitling the husband to a decree of dissolution of marriage.

32. It is, therefore, not possible to countenance the position at this stage that mere averments in the written statement without any further proof and that too when the case has not progressed beyond the stage of pleadings that simply because cruelty or desertion is one of the grounds taken in the petition, a decree of divorce can be granted without the petitioner having at all proved his allegations and without affording an opportunity to the wife to explain her allegations.

33. There is another angle to be taken note of because a decree of divorce under Hindu Marriage Act is apart from proof of existence of one of the grounds contemplated in Section 13 of the Act; subject to parameters of Section 23. The respondent has already claimed an issue in this respect, which is as under:

'5-A. Whether the petitioner is guilty of conduct which disentitles him from the relief claimed?'

34. Accordingly, petitioner's right to get a decree of divorce, assuming what he alleges is borne out by evidence or otherwise averments in the written statement by which he pleads to be aggrieved are found to be false or unwarranted; will have to be further subject to satisfaction of the Court on issue No. 5A, within the contemplation of Section 23 of the Act.

35. In view of the foregoing, the application is hereby dismissed, with costs. Counsel's fee Rs. 1000/-.

36. It goes without saying that the views expressed and observations made herein are only with reference to the stage of proceedings ' and do not, in any manner,

imply or mean reflections or comments on the merits of the case.

37. Application dismissed.

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