

(1997) 02 BOM CK 0057

In the Bombay High Court

Case No : Family Court Appeal No. 130 of 1992 with Cross Objections and
Family Court Appeal No. 69 of 1996

Ashlesha Sushil Kadam

APPELLANT

Vs

Sushil Ramchandra Kadam

RESPONDENT

Date of Decision : 17-02-1997

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1), 9
Penal Code, 1860 (IPC) — Section 498A

Citation : (1998) 1 DMC 535

Hon'ble Judges : M.L. Dudhat, J;A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : P.G. Lad, for the Appellant; S.K. Shinde, for A.P. Mundargi, for the Respondent

Judgement

M.L. Dudhat, J.—These two Family Court Appeals are arising out of matrimonial disputes between husband and wife. Family Court Appeal No. 130 of 1992 is filed by the wife against the judgment and decree dated 18.10.1991 passed by the Principal Judge, Family Court, at Bandra, Bombay, in M.J. Petition No. 698 of 1986. By the aforesaid judgment and decree, the Family Court dismissed the petition filed by the wife for restitution of conjugal rights. However, the Family Court awarded permanent alimony to the child Tejas at the rate of Rs.850/- per month from the date of the decree and also further directed that wife will be entitled to receive the said permanent alimony of Rs. 850/- per month for and on behalf of minor child Tejas. Against the said judgment and decree, wife has filed Family Court Appeal being Appeal No. 130 of 1992.

Family Court Appeal No. 69 of 1996 is preferred by the husband against the appellant in Family Court Appeal No. 130 of 1992 by challenging the judgment and order dated 26.8.1993 passed by the II Joint Civil Judge, Sr. Dn., Thane in Marriage Petition No. 207 of 1989.

In the petition filed by the wife before the Family Court, (i.e.) M.J. Petition No.

698 of 1987, she contended that because of ill-treatment on the part of the respondent-husband and his family members, she was compelled to leave the matrimonial house and though she is ready and willing to go back to the matrimonial house and live with the husband. She, therefore, filed the said petition before the Family Court for restitution of conjugal rights. In the aforesaid petition, respondent-husband contended that in fact because of obstinate attitude of the wife, she used to create disharmony in the family. He further contended that his wife used to disrespect him, his mother, his father and his two sisters. It is the case of the respondent-husband in that petition that his is a joint Hindu family and after the marriage, more particularly after the birth of the son Tejas, the appellant-wife started using abusive language towards his parents by addressing them as an "old-man and old-woman" and addressing her sister as "Langadi" due to her inherent lameness. He further contended that she used to leave matrimonial house without informing the inmates of the house and live in her parental house which used to cause great disturbance. Apart from that, it was further contended on his behalf that after she left his house on 3.3.1986, she never returned to his house except at the time of death of his father and death of his grand-mother. Due to her such behaviour, it was impossible for his family members and himself to live with her. Further he contended that his wife went to the extent of filing false case against himself, his mother and two sisters u/s 498-A of the Indian Penal Code due to which all the family members were harassed and in fact he was required to be in police custody for one day. In view of this conduct, it was contended on his behalf that the petition filed by the wife for restitution of conjugal rights may be dismissed.

2. Husband on the other hand filed Marriage Petition No. 207 of 1989 before the learned II Joint Civil Judge, Sr. Dn., Thane for divorce on the ground of desertion and cruelty. On the same facts, as mentioned earlier in the said petition, wife took the same stand as she had taken in Marriage Petition No. 698 of 1987. After allowing both the parties to file their respective written statements before the Family Court as well as Jt. Civil Judge, Sr. Dn., Thane, both the respective Trial Courts allowed both the parties to lead evidence and make their submissions in respect of their claims in the petitions and in the written statements and after hearing both the sides, the Trial Courts dismissed the respective petitions filed by the wife for restitution of conjugal rights and by husband for divorce against which wife preferred Family Court Appeal No. 130 of 1992 and husband preferred Family Court Appeal No. 69 of 1996. Both these aforesaid appeals are subject matter of controversy before us.

3. Since parties to both these Family Court Appeals are same and since disputes in both these Family Court Appeals are intrinsically connected with each other, in order to understand the rival contentions in right prospective, we have read the evidence in both these appeals together and after hearing both the sides, we are disposing of both of these appeals by the common judgment.

4. In both these appeals, it is the case of wife that she was ill-treated, assaulted,

due to which she was constrained to leave the matrimonial house and that in fact it is her intense desire to return to the matrimonial house and therefore the Court should pass the decree of restitution of conjugal rights and dismissed the petition of husband for divorce. While on the other hand, it is the case of the husband that because of obstinate and bad behaviour of the wife, he had suffered mental torture and since the wife withdrawn from the matrimonial house on her own due to her obstinacy, he is entitled to get divorce from his wife on the ground of desertion as well as on the ground of cruelty. We are going to consider the aforesaid rival contentions in context of evidence as led by the parties.

5. Admittedly, the marriage between the parties took place on 22.12.1982 at Dadar Bombay by Hindu religious rites and ceremonies though there were some bickerings between the parties and between the family members of husband and wife, the said bickerings were in the nature of storms in the cup of tea as at the relevant time the wife and husband both were serving. However after the birth of child Tejas on 19.10.1983, major disturbance between the parties commenced. It is the case of the wife that after giving birth to the child Tejas, she resigned from her post and used to stay in the house with an intention to look after the child and the family. However, according to her, her mother-in-law and two sisters-in-law disliked her presence in the matrimonial house. Mother-in-law and sisters-in-law, being orthodox, refused to allow her to enter in the kitchen, refused to allow her to prepare anything even for the purpose of child and they used to use sarcastic language as by calling her "Bhais" (she-buffalow). It is her case that she was not allowed to take food alongwith her other family members and many a times she was not given food, tea etc. Whenever she used to point out to her husband the aforesaid injustice done to her, he used to take the side of his mother and sisters and many a times he used to assault her. Due to this, she used to go to her parental house, but, however, since she wanted to see that there is no breach to the matrimonial relationship, she used to return to the matrimonial house after residing with her parental house for some time. However, according to her, matter went beyond her control, more particularly on 3.3.1986 on which date she received merciless beating at the hands of husband due to which she left her matrimonial house and returned to her parents. She further contended that inspite of this treatment, because of her goodness, on two occasions i.e. on 18.12.1986 and on 1.1.1988 when she came to know that her father-in-law and grand mother-in-law died, she visited the matrimonial house only to return back to her parental house because of luke-warm attitude of her husband and his family members. She further contended that inspite of the said treatments, it is her intense desire to return to her matrimonial house alongwith her son Tejas and lead her future life as a house wife. As against this, it is the case of the husband that on all these occasions, without any rhyme and reasons/ his wife left the matrimonial house and inspite of his insistence requests to come back, she refused to return to matrimonial house. He further contended that the behaviour of his wife created total disharmony in the family and resulted into mental anguish, especially, when she filed criminal case against his old

mother, two sisters including lame sister and himself. Because of the said complaint, all of them were required to visit the police station and the Court and in fact he was in police custody for one day. Ultimately in the said police complaint, there was a regular trial and he and all others were acquitted in the year 1990. Relying on these facts, it is contended on behalf of the husband that not only his wife's petition for restitution of conjugal rights may be dismissed but this is a fit case, according to him, that he should be granted divorce on the ground of desertion as well as cruelty.

6. We have gone through both the petitions and written statements and also gone through the depositions and other documents and, according to our opinion, there is no use in continuing this matrimonial relationship. The reason being that the Trial Court in matrimonial petition filed by the husband for divorce has not taken into consideration the facts in right prospective. It is an admitted position that though the marriage had taken place on 22.12.1982 till son Tejas was born on 19.10.1983, relationship between the parties were normal except few bickerings and quarrels amongst the women. It is the case of the wife that during that time she was serving and she used to return in the house at 7 p.m. in the evening and thereafter her sisters-in-law and mother-in-law used to tell her to take rest. According to her, she used to feel at that time that since she was working, her mother-in-law and her sisters-in-law were not allowing her to do any work in the kitchen in order to see that she gets rest after her office work. However, after the birth of son Tejas, since she resigned her job and started residing in the house, she realised that in fact all the family members do not wish to allow her to enter in the kitchen and do the cooking and other things. This, according to her, was because of hatred they developed against her. On the other hand, it is the case of the husband that his father, mother and two sisters were orthodox and they never liked to do cooking by anybody who has not taken a bath and who is in her mensus and it is on this ground the wife was not allowed to do any cooking in the kitchen. According to him, had she observed the separation for three days, during the period of mensus, and had she observed to do cooking after bath, there would not have been any objection from her mother and two sisters. According to our opinion, it appears that the family of the husband believes in certain orthodox, right or wrong, it appears that they had an apprehension that during mensus, lady should remain separate from the other family members and should not cook. Further according to them, unless one takes bath, one should not cook the food by going into the kitchen. It appears that the wife, being an educated, did not believe in these things which had resulted into initial quarrels amongst ladies. The allegation of the wife that she was treated as untouchable in the house, she was not given food, she was not given proper clothing, is very difficult to believe. The reason being it is even the case of the wife that after the marriage till Tejas was born on 19.10.1983, there was no trouble in the matrimonial house and she was treated well. If that is so, after the birth of the child, there was no reason for the parents and sisters of the husband to develop the hatred towards the wife. Obvious reason being in

their whole family this was the first male child. Not only that, even as per the wife, her mother-in-law, her sisters-in-law and husband have got love and affectionate towards the child. This being so, the birth of the child cannot be the cause of developing hatred against the wife. According to our opinion, it appears that since the wife left the job and intended to do the job of house wife and since her mother-in-law and two sisters-in-law being orthodox, never wanted her to do anything during M.C. and without taking any bath (in which she never used to believe), this started rift between her on one hand and other family members on the other hand.

7. It appears that due to bickerings between the wife and other family members, wife used to give some exaggerated version to her husband because in a deposition the husband had stated that after hearing the complaints from the wife, he called a meeting where he himself, his wife, his two sisters, and his parents were present. In the said meeting, it was found that his family members had hardly done anything to annoy his wife. On the contrary, it is his wife who used to show disrespect to the parents by referring them directly "Mhatare, Mhatari" and to his sisters-in-law as "Langadi" (lame). It further appears that the wife used to leave the matrimonial house and return back after some time. It is the case of the husband that she used to do so without even taking the permission of the elderly persons showing indifference to other family members. On the other hand, it is the case of the wife that it is because when she was mercilessly beaten by the husband at the instigation of his two sisters and mother, she used to go for some period to her parents and return back after some time. The first time after the marriage she left the matrimonial house was on 24.2.1984. According to the wife, she entered in the kitchen for preparing something for her child dye to which her sisters-in-law and mother-in-law got enraged and told her husband when he returned from his office. Husband, therefore, had beaten her due to which she went to her parents house. On the other hand, it is the case of the husband that she had left on the said date without informing any members of his family showing disconcert to them and returned after 8-9 days. According to our opinion, it is very difficult to believe that the wife was beaten by the husband on 24.2.1984, that is why she left the matrimonial house. If that would have been so, then in that event, her family members, especially her parents who were in Bombay, would have definitely asked the husband or family members or made some enquiries/ complaints but there is nothing on record, excepting the bare words of the wife, to show that she was being beaten by her husband. Further, subsequent correspondence, according to our opinion, also falsifies her allegation to the effect that she was being manhandled by the husband. On the second occasion, i.e. on 19.5.1985, she left her matrimonial house. According to her, her husband went out of Bombay to Hubali to attend some marriage in his relation. At that time, her son Tejas was suffering from Diarrhea and, therefore, she had taken him to Hazarnav is Hospital. In spite of this fact that her child Tejas was suffering, no family members attended him in the hospital and even the husband after returning

from Hubali had not paid any hospital bills. On the other hand, it is the case of the husband that he had gone to Hubali to attend the marriage in his relations and in fact he requested his wife to come along with him. However, she refused to accompany him for that marriage, as she wanted to look after her child. It is his case that the wife on 19.5.1985 left the house with the child without telling family members as to where she is going and only returned after 27 months after he gave her notice through the Lawyer. According to him, when he came to know that Tejas was treated in Hazarnav hospital, he went there and paid all the bills. We do not go into these rival contentions but admittedly on 19.5.1985 the wife left the house and if she has not told the family members, viz. mother and two sisters, it was impossible for them to go to the hospital where he was admitted. As already pointed out above, his mother as well as his sisters, had love and affection towards the child and this being so it appears that it is because the wife had left the house without informing other family members of the family, they could not go to see the ailing child Tejas. Apart from that, it is an admitted position that on 19.5.1985 the wife left the matrimonial house and after waiting for a long time on 19.7.1985 the husband gave the notice through his Advocate calling upon her to come within eight days failing which he will take legal action. If really speaking, she had left the house because the husband had beaten her after coming from Hubali, then the aforesaid notice of the Lawyer would have been immediately replied stating in it that it is because of his mercilessly beating, the wife has left and therefore according to us, further after receipt of the aforesaid notice, wife within three days thereafter in fact returned to the matrimonial house. From this, it appears that on 19.5.1985 wife left without informing family members in absence of husband and only returned after the receipt of the notice. At this stage, it is pertinent to note that the notice dated 19.7.1985 which is at Exhibit "A" is an exhaustive notice wherein all the contentions as made by the appellant in his written statement which he has filed in the petition of restitution of conjugal rights and in the petition of dissolution of marriage were made. Thereafter on 3.3.1986 the wife once again left matrimonial house. It is her case that she contested the election of Municipal Corporation at Thane on behalf of Women's Organization and her husband never wanted her to contest any election. On 2.3.1986 she lost the election as hardly she got three votes and thereafter on 3.3.1986 husband after he returned from the office, gave her beating due to which she left the matrimonial house and thereafter she never returned to the matrimonial house except at the time of the day on which her grand mother-in-law and father-in-law expired on 18.12.1986 and 1.1.1988 respectively. It is the case of the wife that somewhere on 10.5.1987 she agreed to return unconditionally and she went to husband's house at 5 p.m. Thereafter at 9 p.m. husband took her and his son Tejas to Advocate Mr. Gogate as he intended to have certain unconditional writing from her. However, they went to the office of the Advocate Mr. Gogate as the same was closed as he had gone out of Thane and therefore he asked her to go to her parents' place at about 10 O'clock at night with her child. This is denied by the husband. According to our opinion, it is very difficult to rely on these facts, as

disclosed by the wife. Admittedly, it is even the case of the wife that husband is treating the child affectionately. In view of the fact that 100'clock at night it is difficult to believe that he will allow his wife and child to go to Thane at a distant place like Gurgaon. From these aforesaid facts, it appears that wife has left matrimonial house of her own without a-iv reason for doing so. Apart from that, on all these occasions, every time she left she came back with an apology except on 3.3.1986 when she left she never returned. All these aforesaid facts which are discussed above are bound to create mental anguish and turmoil in the mind of the husband. However, apart from that on 1.12.1988 wife filed a criminal case u/s 498A wherein his old mother, his lame sister and other sister were involved. Husband was in fact arrested by police and was under police custody for one day. We have already observed earlier that there is no evidence whatsoever in this case to show that in fact at any point of time husband or his family members were demanding any dowry or money from the wife or her parents. The said criminal case filed by the wife after about five years from the marriage merely to harass him, is bound to destroy his confidence in his wife and therefore in such type of circumstances, there is no question that the Family Court was right in dismissing the petition for restitution of conjugal rights filed by the wife. According to our opinion, all these facts taken together will clearly go to show that it was the wife who deserted the husband and it was the wife who caused mental anguish to the husband which has resulted in mental cruelty. At this point, we may mention that the Trial Court, in divorce petition filed by the husband, had not before it the result of the criminal case filed by the wife u/s 498A of the Indian Penal Code. We are sure, had that judgment been before the Trial Court, the Trial Court would have taken the other view by granting divorce to the petitioner. It is to be noted that after the marriage, on 22.12.1982, the wife, for no reason, abandoned matrimonial house on 3.3.1986 and thereafter there is no consummation of the marriage. Before hearing this matter, we asked both the parties to come to our Chamber with an intention to find out whether the differences between the parties could be narrowed down by our persuading so that they can come together and lead a peaceful life as husband and wife, but in spite of our best endeavour we could not succeed in doing so.

Continued on 17.2.1977

8. Since the marriage between the parties is broken irretrievably from 3.3.1986, whatever be the reason for this broken marriage, we are fully satisfied that the parties can no longer live together as husband and wife, hence it is better to close the chapter. It is also pertinent to note that wife has filed the petition for restitution of conjugal rights and if decree for restitution of conjugal rights is granted, for the reasons mentioned hereinabove, the parties shall never come together, and therefore, after the period of one year from the date of the decree, the husband will be entitled to get the decree of divorce u/s 13(A)(ii) of the Hindu Marriage Act. In view of this, it is better to put an end to the marriage between the husband and the wife.

9. Mr. Lad, learned Counsel appearing on behalf of the appellant contends that the amount of maintenance granted to the child Tejas may be enhanced in view of rising prices. The Trial Court granted an amount of Rs. 850/- per month for maintenance of the child Tejas. Before us the respondent-husband has willingly agreed to pay the amount of Rs. 1,000/- instead of Rs. 850/- per month for maintenance of the child Tejas from 1.3.1997.

10. In view of this. Family Court Appeal No. 130 of 1992 alongwith Cross Objections is dismissed and the Trial Court's order is confirmed with no order as to costs.

11. Family Court Appeal No. 69 of 1996 filed by the appellant-husband for dissolution of marriage, is allowed and the marriage between the appellant-husband and the respondent-wife is dissolved by a decree of divorce with no order as to costs.

12. The appellant-husband is directed to pay an amount of Rs. 1,000/- (instead of Rs. 850/- as granted by the Trial Court) per month to the respondent-wife for maintenance of his son Tejas till he becomes major.

13. Learned Counsel appearing for the respondent-wife, prays for grant of stay of the order for approaching the Supreme Court. Heard both sides.

The judgment and decree passed by this Court in Family Court Appeal No. 69 of 1996 is stayed for a period of two months from the date of decision.

Issuance of certified copy expedited.