

(1994) 02 BOM CK 0001

In the Bombay High Court

Case No : Family Court Appeal No. 1 of 1993

Atulkamar Natwarlal Kadakia

APPELLANT

Vs

Jyoti Atulkumar Kadakia

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Evidence Act, 1872 — Section 3, 59, 60
Hindu Marriage Act, 1955 — Section 13

Citation : (1994) 4 BomCR 219

Hon'ble Judges : M.F. Saldanha, J; H.H. Kantharia, J

Bench : Division Bench

Advocate : Ashwin Naik, for the Appellant; G.H. Gharat, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—Modern day jurisprudence advocates a benevolent approach in relation to the disposal of matrimonial litigation. This is further reinforced by the fact that a separate forum, namely, the Family Court, has been set up for the expeditious disposal of these proceedings. The first requirement in such situations is that the traditional approach of lengthy and legalistic pleadings requires to be curtailed, and secondly, that the Family Court itself must follow a more easy, relaxed and forthright procedure in the conduct of the proceedings. The object of setting up of a special forum was not in order to add to the number of courts, but in order to provide for a separate machinery where only this class of litigation would be taken up and quickly concluded. Working experience has unfortunately demonstrated that even though the Legislature intended that the parties themselves with the assistance of marriage counsellors and the Presiding Judge should arrive at quick conclusions, that the entire machinery has got bogged down in the old-fashioned procedure prevalent in Civil courts involving much paper work, long and formal recording of evidence and elaborate argumentative sessions and cumbersome judgments, all of which have contributed to a building up of arrears. An overhaul is essential in all these

aspects which the Bar and the Bench of those courts as also the litigants will have to understand. With a degree of speed and efficiency having to be insisted upon, it was never the intention of the Legislature that parties to a broken marriage should be subjected to another innings of torture covering a good portion of their productive life and subjecting them to needless expenditure. The accent is on simplification and not on complication, which was why even representation by advocates was countermanded. This Court had occasion to lay down specific guidelines whereby advocates would be permitted to appear with the sole object of drawing upon their ability and expertise in accelerating the pace of disposal. This is a branch of law in which there is no place for dilatory tactics, or for complicating issues and even in those cases where lawyers are permitted, the Family Court Judges shall firmly ensure that they do not in any manner contribute to the lengthening of the proceedings.

2. This Court has had occasion to also prescribe the special approach that needs to be adopted while disposing of matrimonial proceedings. Decrees are often refused merely on the ground of a strict or rather harsh construction of the law and on a rigorous assessment of the material placed before the Court. The handicaps and limitations of the spouses, their inability to sometimes obtain documents and witnesses, the reluctance of third parties to get involved in delicate matters of this type, even if they are family members or friends, are angles which cannot be overlooked and that Court must bear in mind the current legal thinking prevalent all over the world that the continuance of a broken marriage/causes far greater trauma to the parties and even to the children than its severance. In these circumstances, the Family Court is expected to adopt a benevolent, charitable and even helpful approach even to the extent of making considerable allowance because a refusal of a relief will only be in the most exceptional situations.

3. The appellant before us is the original petitioner in M.J. Petition No. 996 of 1988 which was subsequently transferred to the Family Court at Bombay. The petitioner therein who is the husband had sought a decree of divorce from his wife Jyoti whom he had married according to Hindu vedic rites at Bombay on 3-9-1987. The petitioner had set out a series of incidents on the basis of which he had contended that the respondent-wife had treated him with a degree of cruelty during the period when the parties lived together that would justify the dissolution of the marriage u/s 13(1) of the Hindu Marriage Act. The learned Judge of the Family Court has culled out the various acts or grounds on the basis of which the dissolution of the marriage had been prayed for and these are reproduced below though the quality of language and expressions used are far from happy :

- i) She would not take care of the said son Nihar.
- ii) She would not co-operate for the household work.
- iii) Not only she would not serve the food and do the household work, but when

there is something prepared liked by the said son Nihar, she would either secret it or throw it away so that the said Nihar would not get the same.

iv) She would at times allow to be kept smaller quantity of the said Nihar's liking food.

v) At any time, she would abuse filthily any person.

vi) She often became aggressive and violent;

vii) When they were staying at his father's place the respondent used to assault the said son.

viii) At both the places, suicide threats were imminent.

ix) She would squeeze the petitioner sexually; her sexual demands were excessive; she was a sex maniac.

x) In spite of the clear understanding about her not taking the non-vegetarian food in the house, she used to cook non-vegetarian food in the house;

xi) She used to take drinks.

xii) Not only she would take non-vegetarian food in the house but she cooked the same at the utter disliking and annoyance to the petitioner at the said temporary shelter and at the old residence at the annoyance of all inmates of the said house;

xiii) The respondent in fit of anger several times bite, made bruises over petitioner's body and torn his clothes. She would even throw on his body any hot cooked food;

xiv) She would not listen to any reason and continuously go on talking, abusing, cursing the petitioner, the said Nihar and petitioner's family;

xv) The respondent is incorrigible".

In sum and substance, it was on the basis of this material that the petitioner had sought a decree of divorce.

4. The respondent in her written statement had denied that she had been guilty of any acts of cruelty vis-a-vis the husband that would entitle him to a divorce and she contended that if at all some minor incidents had taken place, that these were the normal fall out of a marital life and that she in any event was not responsible for any break-up of the marriage. It transpired from the pleadings, that after the marriage on 3-9-1987, the couple lived with the husband's parents only upto March, 1988. Thereafter, they separated and lived at a flat at Lalbaug for about six months. It appears that on 3-9-1988, the spouses parted company and that the petition came to be filed on 6-9-1988. The learned trial Judge after recording the evidence adduced by the parties, which consisted essentially of the depositions of the two spouses and one witness who is a neighbour of the

petitioner by the name of Sachin Parikh, framed the issues and proceeded to decide the matter. By a judgment and Order dated 30th April, 1992, the learned Judge dismissed the petition. At the same time, the trial Court directed the petitioner-husband to pay a sum of Rs. 1800/- per month to the respondent-wife as and by way of permanent alimony. It is relevant for us to record here that there are no children born out of this marriage though the petitioner husband was earlier married and is the father of a son by the name of Nihar through a previous marriage. Admittedly, the custody of the son Nihar is with the petitioner-husband. The present appeal assails the correctness of the judgment dated 30th April, 1992, whereby the M.J. Petition has been dismissed and the relief denied to the petitioner.

5. Appearing on behalf of the appellant, Mr. Naik has seriously assailed the correctness of the trial Court's judgment. He commenced by pointing out to us that the marriage which took place in September, 1987 barely lasted one year and that even since September, 1988, the spouses have been living apart. It is his contention that the petitioner-husband was left with no option except to leave the matrimonial home because right through the period during which the spouses were married, the respondent-wife indulged in such conduct that it became impossible for his client to continue with the matrimonial relationship. We have reproduced above the broad heads of misconduct or cruelty that have been alleged against the wife and Mr. Naik submitted that even though any one of these acts may not be of such extreme gravity, that the cumulative effect of all these actions particularly the more serious ones such as the physical assaults on the husband, and the threats to commit suicide etc., were concerned, that they built up to a situation whereby the petitioner found it both unsafe and impossible to continue with the matrimonial relationship. Mr. Naik submitted that his client does not dispute the fact that he came to know the respondent in the year 1985 when they first met and there was a love affair going on between the two of them for about two years prior to the marriage. He states that both the parties have admitted to the position that they used to meet each other regularly, that they used to spend lot of time together and further-more that there is no dispute about the fact that they had sexual relations with each other during this period. Mr. Naik contends that having regard to this background, if the marriage could not last for even one year that the Court will have to infer that some valid cause and reasons for this did in fact surface after the parties got married. He has taken us in considerable detail through the entire deposition of his client who is the petitioner as also the supportive evidence of witness No. 2 Sachin Parikh. Mr. Naik has contended that the petitioner was earlier married and that his wife died on 28-3-1987. He states that his client is a businessman and the father of a 10 year old son and he submits that there is no reason why the Court should disbelieve his evidence on oath.

6. We need to at this stage mention one of the rather unusual features of the present case. The petitioner has stated in his petition and more emphatically in his evidence before the Court that the respondent-wife used to make abnormal

sexual demands on him. He has started by saying that on the wedding night itself the respondent-wife gave him no peace and that he was made to have sexual intercourse with her for as many as four times which almost finished him. These unusual accusations continue unabated and he contends all through that the respondent-wife used to virtually force him to have sexual relations with her indiscriminately regardless of what part of the day it was or how often she insisted on it. In sum and substance, the husband has labelled the wife as a sex maniac. If one scrutinizes the pleadings and the depositions, the main thrust of the charge against the respondent-wife appears to be that the respondent-wife has virtually driven him round the bend because of her abnormal and excessive sexual demands. Mr. Naik submitted that this abnormal behaviour on the part of the wife is a very strong and compulsive ground on which the Court must grant a decree to the husband. He contended that the petitioner was physically and mentally ruined principally on this ground as also because of the other instances of mis-behaviour on the part of the respondent-wife. As a corollary to the above, a charge has been made against the wife that she used to go around in the house indecently clothed, the actual expression used is that "she used to wear thin clothes". Mr. Naik submits that this sort of behaviour on her part in the presence of his father and mother who were residing in the house as also the young son is deposed to also by the witness Sachin Parikh and he submits that it was not only a matter of embarrassment and humiliation to the petitioner but that it caused him acute mental distress.

7. As far as the remaining incidents are concerned, Mr. Naik highlighted in particular two aspects, the first of them being that according to him the respondent wife did not at any time disclose to his client that she was a divorcee. Mr. Naik relies on the marriage form wherein the status of Jyoti has been shown as unmarried and he contends that this is the clearest proof of the fact that she has mis-represented her status. He submits that it came as a grave shock to his client when he came to know at a later point of time and at a stage when the relations between the parties had turned hostile and a Police complaint was lodged that Jyoti was previously married and that her marriage had ended in divorce. He submits that this is an incident of seriousness. Next, he relies heavily on the alleged incident when she is supposed to have consumed Calm pose and threatened to commit suicide. Alongwith these acts, Mr. Naik points out that the respondent-wife who was pregnant shortly after the marriage, had suffered a miscarriage. He states that the petitioner has very clearly pointed out in his evidence that for medical reason she had been advised to avoid sexual intercourse, that she disregarded the medical advice and forced the petitioner to have sexual intercourse with her, as a result of which she suffered a miscarriage. Mr. Naik contends that all these acts even though individual, separate disjointed dealing with different aspects of the marriage over a period of time, generally and cumulatively had the effect of resulting in a situation whereby the petitioner-husband was under great mental and physical stress, that he reached a breaking point as a result of the same and that he had to leave the matrimonial home is

September, 1988.

8. Before evaluating the submissions canvassed by Mr. Naik, we also consider it necessary to refer briefly to the position in law that was canvassed by him. Mr. Naik's contention is that even though the Hindu Marriage Act does not define the concept of cruelty that the case law over a period of time has culled-out certain principles on the basis of which it can be legally assumed that where one party to a marriage indulges in conduct and that too persistently, over a period of time, that mentally and/or physically is detrimental to the other spouse, where it seriously interferes with the welfare and well-being of that spouse and thereby contributes to a situation of marital break up that the Court would be justified in holding that the charge of cruelty has been established. In this context Mr. Naik relied on the well known decision in the case of Dr. N.G. Dastane Vs. Mrs. S. Dastane, wherein the Supreme Court considered a series of situations in paragraphs 50 and 51 and ultimately concluded that conduct of that type constituted the matrimonial offence of cruelty. Mr. Naik also relied on another decision of the Supreme Court, reported in Shobha Rani Vs. Madhukar Reddi, in the case of Shobha Rani v. Madhukar Reddi, wherein the Supreme Court observed as follows in paragraph No. 4 and 5 :

"The word "cruelty" has not been defined and could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

"There has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, there is a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. Judges may not go in parallel with them. There may be a generation gap between the Judges and the parties. It would be better if the Judges keep aside their customs and manners. It would be also better if Judges less depend upon precedents." (Para 5)

More recently, a learned Single Judge of this Court had occasion to deal with the aspect of cruelty while considering the case where indiscriminate of wild and baseless allegations of lack of manliness against the husband were made in the

written statement without there being any evidence or justification in support therefor. After a detailed consideration of the law on the subject, the learned Single Judge in the decision reported in Smt. Nirmala Manohar Jagesha Vs. Manohar Shivram Jagesha, , in the case of, Smt. Nirmala Manohar Jagesha v. Manohar Shivram Jagesha, once again held that instances of considerable seriousness which are far more grave than day to day skirmishes and what has often been referred to as "wear and tear of matrimonial life" would be sufficient to constitute the matrimonial offence of cruelty. On the basis of these judgments and several others which lay down by and large the same principle, Mr. Naik submitted that this Court ought to reverse the decision of the trial Court and pass a decree in favour of the petitioner-husband.

9. Mr. Naik also pointed out to us that since this is a matrimonial proceeding, that the Court must take cognisance of the situation in which the two parties are placed. He stated that admittedly, since the beginning of September, 1988, which makes close to six years now, the two parties are living apart and inspite of efforts made during the pendency of the proceeding before the trial Court, as also efforts made at the commencement of the hearing of the appeal that it is just not possible to arrive at some solution. It is his contention that the marriage has irretrievably broken down and in these circumstances the Court ought not to deny the petitioner-husband a decree because no useful purpose would be served through such a decision. The fact that the marriage has irretrievably broken down is undoubtedly a very important circumstance and Mr. Naik is perhaps justified in pointing out this fact as a supportive argument because it is certainly relevant. A matrimonial Court will in such a situation certainly adopt a benevolent, charitable and even helpful approach even to the extent of making considerable allowance, because refusal of a relief will only be in the most exceptional situations. We need to however clarify here that howsoever important this aspect of the matter is, that under the Hindu Marriage Act, even if a marriage is irretrievably broken down it is still necessary for a party seeking a relief to be able to come within the four corners of the section which prescribes the grounds on which such reliefs can be granted. It is, therefore, essential to first of all decide as to whether the party who has approached the Court namely the petitioner-husband in this case has qualified for the grant of relief within the four corners of the law and if that is so, then alone a Court would be justified in granting a decree of divorce or nullity as the case may be. Merely because it is demonstrated that the marriage is irretrievably broken down de-hors the other requirements will not be sufficient.

10. Mr. Gharat, learned Counsel appearing on behalf of the respondent-wife has emphasized the fact that the charges made against his client are not only unjustified but that they are un-proved. It is his basic contention that the petitioner has given evidence and sought to support it through that of his neighbour; whereas on the other hand the respondent-wife has also given evidence on oath and she has been cross-examined at length and she has denied the correctness of the allegations made against her. Mr. Gharat submits that the

respondent seriously contested the correctness of every charge that has been made against her and it is his case that the respondent-wife is virtually a victim of false charges. He has demonstrated to us from the evidence that the allegations of sexual excesses on the part of the wife have not only been disputed and denied but he further submits that even on grounds of probabilities, these should be rejected out-right. He lays emphasis on the fact that admittedly the appellant-husband was friendly with the respondent-wife for two years even prior to the marriage and even at a point of time when his previous wife was alive. He has also relied on certain correspondence and other documents on the basis of which he submits that the parties were much in love with each other long before the marriage and it is his contention that the petitioner-husband has ultimately walked out on his client for two reasons; the first being because the parties belong to different communities and the second ground according to her being that the husband is virtually living and doing business in a joint family atmosphere and that it is the family and community pressure that have virtually separated him from his wife. He, therefore, submits that there is no justification whatsoever for the Court to grant a decree dissolving the marriage. As regards the other heads of charge, it is his contention that the respondent-wife has not given any cause, least of all to substantiate the serious charge of matrimonial cruelty.

11. With the assistance of the two learned Counsel, we have very carefully gone through all the evidence on record which basically consists of the depositions of the two spouses, the evidence of neighbour Sachin Parikh and a few of the documents. Dealing with the last head we need to point out that there was considerable argument advanced with regard to the marriage registration form which is Exhibit - 34. The petitioner had specifically charged the respondent with conduct tantamount to fraud by alleging that right during the period of two years when he was friendly with her prior to the marriage that she had suppressed from him the fact that she was earlier married and that her marriage had ended in divorce. This plea is sought to be supported by the fact that in the marriage application form, the wife has shown her status as unmarried. He contended that this form was filled-in by her and that she had deliberately suppressed this vital information. On the other hand Mr. Gharat pointed out to us from the evidence that the respondent-wife has specifically denied that she filled-in the particular form. All that she has stated in her evidence is that the signature on it is hers. It was sought to be contended before the trial Court that a comparison of handwriting in some other letters would indicate that she is the author of the word "unmarried". Mr. Gharat put forward an explanation at the Bar which unfortunately does not find place in the oral evidence, that it was the husband who filled-in the form and that he showed the status of Jyoti as unmarried because he told her that he did not wish that any of his family members should be aware of the fact that she was a divorcee. Regardless of this explanation, the fact remains that the form in question which was undoubtedly produced before the trial Court cannot be said to conclusively establish that the word "unmarried"

was written by the wife Jyoti. If the petitioner was that serious about relying heavily on this circumstance, he ought to have conclusively established this fact or failing that, he ought to have persisted in the cross-examination of the respondent-wife when she was in the witness box and if possible got an admission from her. In the absence of this material, it is impossible to hold that this circumstance is proved against her.

12. Another aspect of the matter on which there was considerable debate is with regard to the circumstances under which the wife underwent a miscarriage shortly after the marriage. She has admitted that a month or two after the marriage she got pregnant; that she consulted a Doctor and that among other things, the Doctor had advised her to avoid sexual intercourse. She has however stated when asked about the circumstances under which she underwent a miscarriage that she was having certain other problems which used to result in persistent bleeding and that ultimately this was the cause of the miscarriage. On the other hand as indicated by us earlier it is the charge of the petitioner-husband that she was virtually so addicted to sex; that she disregarded medical advice and forced the petitioner-husband to have sexual relations with her even during that period which ultimately resulted in the loss of pregnancy. On the state of the record, we find it extremely difficult to accept this last contention in so far as even if one were to go by normal course of human conduct, it would be impossible to hold that the respondent-wife would deliberately indulge in reckless conduct which would have the effect of the loss of her child not to mention possible danger to her own life. In any event, the evidence even with regard to this aspect of the matter is virtually word against word and we do not see how this particular circumstance could really assist the petitioner-husband.

13. There is one unusual aspect of the matter that has been referred to by us in detail which is sought to be made a serious ground on which the charge of cruelty is based. This is the allegation that the respondent-wife was in the habit of dressing indecently, to be specific it is alleged that she used to wear thin clothes and that she used to go around the house wearing a "nightie". According to the petitioner-husband this sort of behaviour on her part not only embarrassed him but also gave him a lot of mental pain particularly since the wife used to behave in this fashion in the presence of other members of the household and even when the neighbour Sachin Parikh used to come over. It is in his context that we need to refer to the evidence of the neighbour Sachin Parikh. Undoubtedly, he has deposed to the effect that the respondent-wife used to wear thin clothes. Probably realising the gravity of the statement, he thereafter went on to state that she used to be this sort of attire between 8.00 p.m. to 8.00 a.m. We have carefully gone through his evidence whereby he refers to three specific aspects; the first of them being that there used to be many quarrels, between the respondent wife and the husband and that these were on account of "sex problems". According to him the husband used to tell him about the nature of the trouble between himself and his wife. Secondly, Sachin Parikh talks about the type of clothes which the respondent-wife is alleged to have been wearing and

thirdly he points out that she is alleged to have been virtually starving the son Nihar.

14. Dealing with the evidence of this witness Mr. Naik has made a serious grievance of the fact that the learned trial Judge has not so much as relied on this evidence at all but on the other hand that he has totally rejected it only on the ground that Parikh was unable to state the year in which the first wife of the petitioner-husband had died. Mr. Naik submitted that quite-apart from typographical errors that are manifest in the recording of the evidence that one needs to take the deposition in its entirety and not some isolated words or sentences here or there. Learned Counsel is right as far as this aspect of the matter is concerned and it is precisely for this reason that we have read the evidence of this witness completely and evaluated it as a whole. That he was a neighbour during that period of time is admitted but as far as the rest of his claims are concerned, we do have serious reservations in accepting his evidence. The tenor of his deposition is to the effect that he was extremely friendly with the couple and that he used to visit their house something like 20 times a day. Mr. Naik pointed out to us that this figure should in fact be two and not 20 and even if that is correct we still find it impossible in fact preposterous to accept that even if the couple were quarreling, that either of them would disclose to the neighbour that the grounds of their quarrel were "sex problems". This is something extremely personal and it is too much to expect a Court to believe that a next door neighbour would be confided with such intimate details. We do find a further string of bias when we test the evidence of Parikh in relation to the attire that he ascribes to the respondent wife. One has to be conscious of the fact that this is India and that under Indian conditions people at all levels of society women in particular, do observe certain basic norms of decency and morality. Regardless of what the personal conduct of a woman may be, it is too much to expect that she would be parading herself in front of elders or for that matter in the presence of neighbours when she is scantily clad. There is hardly any ground to believe this type of a story and in the context of the earlier deposition where this witness goes to the extent of stating that he was informed about the "sex problems" between the two parties, we do need to hold that the evidence will have to be wholly discarded on the ground that the witness is certainly biased and has come forward in order to oblige the petitioner-husband. In this light of the matter, we do not see any justification in Mr. Naik's submission that Sachin Parikh's evidence can be used as corroboration for the evidence of the petitioner.

15. As far as the generalit of the misconduct attributed to the respondent-wife is concerned, we need to first refer to one aspect of the deposition of the petitioner-because it is entirely on the basis this evidence that the petition must succeed or fail. Even if one brushes aside the minor infirmities the petitioner would have been entitled to succeed in a matrimonial proceeding if his evidence was absolutely cogent, trust worthy and made out a case within the ingredients of law. Mr. Naik's contention is that the circumstances pointed out by him taken

cumulatively would make out a case of cruelty. For this purpose, it would be necessary for us to record the finding that the evidence of the husband is absolutely reliable and trust worthy, that there are no exaggeration or that in the sum total every one of the allegations made by him have been established. The main thrust of his evidence revolves around the charge against the wife that she was given to sexual excesses. He has even labelled her as a sex maniac. According to him she almost finished him on the wedding night itself and he further contends that this was her consistent manner of behaviour even at all subsequent points of time, thereby making her out to be some sort of a female monster. A Court is required to go by aspects of plausibility and we have considered several aspects of the matter with regard to this particular evidence, the first of them being the age of the respective parties and the situation in which they were placed. The husband has made a serious grievance of the fact that the respondent-wife objected to the presence of his son in the bed-room at night. We fail to see what fault the wife has committed if a newly married person insists on privacy particularly at night and if she therefore requested that the son Nihar should be asked to sleep in another room. This in our considered view was perfectible reasonable and normal. Quite-apart from that, having regard to the over-all situation in which the parties were placed and the fact that as both of them have admitted that for a good two years even prior to the marriage except for the fact that they were not living together that they were virtually as good as husband and wife, even as far as their sexual relations were concerned, we find that the allegations under this head are exaggerated to the point of fabrication, which in turn destroys the credibility totally. It is on the basis of this background that we have assessed the charges that have been made by the petitioner-husband and we do feel that there is a very high degree of exaggeration on his part. In such a situation, a Court will have to very carefully assess the deposition of the witness concerned particularly in a case where it is that material alone which is being pressed into operation for the purpose of the reliefs claimed from the Court. We also find, that with regard to several material aspects of the matter most of which have been referred to by us in the earlier part of on judgment, that the petitioner husband was not telling the whole truth and that he has oriented the facts and circumstances principally in order to support his claim for a divorce from the respondent-wife. Had the instances that have been set out in the petition been established fully, Mr. Naik is right in his submission that the petitioner would have certainly qualified for the relief that he has prayed for. In the circumstances of the present case, however, it is our considered view that the evidence falls very short of that requirement. We do find that the learned trial Judge was justified on an assessment of the material placed before him in refusing the reliefs that have been prayed for. We are conscious of the fact that in a matrimonial proceeding a Court would normally not refuse a relief but this is one of the exceptional cases where the petitioner himself has totally disqualified himself.

16. As far as the ancillary relief of maintenance is concerned, neither of the

learned Counsel have addressed us with regard to the quantum of maintenance i.e. the permanent alimony that has been awarded to the respondent-wife. We, therefore, refrain from making any observation in that regard.

17. Having regard to the aforesaid situation, the appeal fails. The judgment and order of the trial Court dated 30th April, 1992 stands confirmed. The appeal is dismissed with costs.

Certified copy expedited.