

(2017) 07 BOM CK 0214
In the Bombay High Court
Case No : 354 of 2014

Kishor S/o Shamrao Dongre

APPELLANT

Vs

Smt.Rohini W/o Kishor Dongre

RESPONDENT

Date of Decision : 21-07-2017

Acts Referred:

Hindu Marriage Act, 1955, Section 13(1)(IA) - Divorce

Citation : (2017) 07 BOM CK 0214

Hon'ble Judges : Vasanti A Naik, A.D. Upadhye

Bench : DIVISON BENCH

Advocate : J.D. Bastian, S.D. Malke

Judgement

1. Being aggrieved by the judgment and decree, dated 10.10.2013 passed by the Family Court No.4, Nagpur in Petition No.A4 of 2010, the appellantororiginal petitioner has preferred this appeal. The respondentWife is the original respondent.

2. Brief facts of the case are stated as under: The appellant had filed a petition under Section 13-1(ia) of the Hindu Marriage Act for dissolution of marriage before the Family Court, Nagpur. The appellant had pleaded that the marriage between him and the respondent was solemnized on 06.07.1997 at Khairi Bouddha Vihar, Nagpur as per Buddhist custom and rites. After solemnization of the marriage, the respondentWife went to reside with the appellant at her matrimonial house. It is pleaded that there is a female issue, viz. Mithila born on 16.09.2001 from the wedlock. The appellant further contended that the respondent is hot tempered lady and quarrelsome one. She used to pick up quarrel on very petty matters. She always used to torture her husband by not preparing food and not doing other household work. It is further pleaded that he used to tolerate these acts of the respondent with a hope that one or the other day, the respondent would realize her fault and mend her attitude towards the appellant and his old parents. According to him, the respondent used to torture

her fatherinlaw. She also did not take care of her daughter. According to him, his father owned a two storeyed building. The respondent used to say that she wants entire ground floor portion and the same may be transferred in her name. According to him, on the first floor of the building, one widow lady, viz. Chhaya Mendhe resided on rent and she used to pay rent to his father. Said Chhaya Mendhe used to take care of his father as well as daughter Mithila. According to him, the respondent used to doubt about said Chhaya Mendhe regarding relationship with him. According to him, said Chhaya Mendhe had a daughter and she used to play together with his daughter and as such developed good relations with the appellant's family. The appellant further contended that the respondent used to give threats that she would commit suicide if they would not transfer the ownership rights of ground floor portion in her name and had also attempted the same twice. According to him, due to the said act, he himself and his parents became very depressed and frightened. According to him, the respondent is residing in the said house but they were not having relationship of husband and wife since last more than six months. The appellant had therefore filed the petition for decree of dissolution of marriage before the Family Court.

3. The respondent-Wife appeared in the proceedings and filed her written statement at Exhibit 18A and resisted the claim of the petitioner. She admitted that her marriage was solemnized on 06.07.1997 at Khairi Bouddha Vihar, Nagpur as per Buddhist custom and rites. She also admitted that the female issue Mithila was born on 16.09.2001 from the wedlock, however, she denied that she is hot tempered and quarrelsome lady, as alleged. She also denied that the appellant used to tolerate all the cruel acts of the respondent as contended. She denied that she used to torture her fatherinlaw. She admitted that the father of the appellant has constructed two storeyed building at the above place, however, she denied that she used to say that she want the entire ground floor to be transferred in her name. She stated that on the first floor of the above building, one widow, viz. Chhaya Mendhe reside on rent and she used to pay rent to the father of the appellant. However, she denied that said Chhaya Mendhe used to take care of the father of the petitioner and her daughter Mithila. According to her, the husband is having illicit relationship with Chhaya Mendhe and therefore the appellant wants to get rid of the respondent and treating her with cruelty. She denied that her daughter and the daughter of Chhaya Mendhe used to play together and therefore a good relationship is developed with the family of the husband. She denied that she used to give threat to the appellant and his parents that she would commit suicide if they would not transfer the ownership rights of the ground floor portion of the house in her name. All other adverse allegations are denied by her and lastly it is submitted that the petition filed by the husband be dismissed.

4. After framing the necessary issues, recording of evidence in the matter and hearing both the sides, the learned Family Court has dismissed the petition filed by the husband by its judgment dated 10.10.2013. The said judgment and decree is assailed by the original petitioner by way of instant family court appeal

on the grounds mentioned in the appeal memo.

5. We have heard Shri J.D. Bastian, Advocate for the appellant and Shri S.D. Malke, Advocate for the respondent, at length.

6. Shri J.D. Bastian, the learned counsel for the appellant, has vehemently submitted that the learned Judge of the Family Court did not consider the evidence on record in proper perspective and wrongly dismissed the petition. The learned counsel has heavily relied upon Exhibit 62 and submitted that the appellant is not the father of child, whose mother is Chhaya Mendhe. He further submitted that the appellant has no illicit relations with said Chhaya. He submitted that the respondent has also not proved the said fact. He further submitted that the appellant has proved the cruelty by adducing evidence in the matter and prayed for a decree of divorce.

7. Shri Malke, the learned counsel for the respondent, supported the judgment of the Family Court and sought for the dismissal of the appeal.

8. From the aforesaid facts and circumstances of the case and on hearing the learned counsel for the parties, it appears that the following points arise for determination in this family court appeal: I) Whether the husband proves that the respondent has treated him with cruelty?

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

IV) What order?

9. We have already mentioned the pleadings of the parties in the above paragraphs. Therefore, the evidence adduced by the parties only needs to be considered. The appellant has tendered his evidence by filing affidavit in examination in chief and asserted the contents made in the petition. He was cross-examined at length on behalf of the respondent Wife. In the cross-examination, he has stated that he has not specified the instances of the quarrel picked up by the wife in the affidavit filed by him. He denied that he has relations with Chhaya as husband and wife. He also denied that on 17.06.2010, Chhaya begotten a son from him at Mukherjee Nursing Home. He showed ignorance about the operation and the delivery intimation given by the said nursing home to the Nagpur Municipal Corporation, Nagpur. The birth extract, Exhibit 44, was referred to him in the cross-examination, however, he denied the said document. In the cross-examination, he has admitted that his wife has filed complaint in Police Station Jaripatka in respect of the quarrel picked up by him and his parents on 29.11.2009. He denied that his wife never ill-treated him or misbehaved with him. He denied that he himself, his parents and Chhaya ill-treated the respondent and tried to drive her out of the house.

10. The respondent Wife has also tendered her evidence by way of affidavit and asserted the contents pleaded by her in the written statement. In the cross-examination, she stated that her in-laws are residing at Indora, Nagpur so

also her parents are residing in the same locality. In the crossexamination, she stated that her motherinlaw is an old lady and cannot do any work and her fatherinlaw is also 75 years old, however, she denied the suggestion given to her that she is not providing early meals to her inlaws. She denied the suggestion given by the husband in respect of quarrel picked up by her. In the crossexamination, she denied that she has levelled false allegations against her husband about illicit relations with Chhaya. In the crossexamination, she admitted that she has taken electric and water meter in her parents name in the matrimonial house. She denied that she misbehaved with her husband and her inlaws.

11. Besides her evidence, the respondent examined Dr.Shilpa Shantanu Mukherjee, who runs the nursing home styled as Mukherjee Nursing Home at Indora. In her evidence, the doctor has stated that on 17.06.2010, patient Chhaya Dongre was admitted in her hospital for delivery by cesarean operation. She has also deposed that her husband had consented in writing and after consent she performed the operation. She was shown the birth certificate Exhibit 44 issued by the Nagpur Municipal Corporation, Nagpur and she admitted that the place of birth of the child is shown as Mukherjee Hospital and the name of mother is Chhaya and father is Kishor. She was crossexamined by the petitioner. In the crossexamination, Form No.1, Exhibit 62, was shown to her. She admitted that in Exhibit 62, the name of the father is shown as Sanjay Ramrao Dongre as name of the father of the child and the name of the mother is mentioned as Chhaya Sanjay Dongre. It was suggested to her that she is deposing false at the instance of the respondent that the appellant identified himself to be the husband of Chhaya at the time of admission of Chhaya in the hospital, however, the doctor denied the said suggestion.

12. On perusal of the oral as well as documentary evidence on record, it appears that the appellant has made vague pleadings about cruelty by the wife in the petition filed by him before the Family Court. The evidence adduced by him is on the same line. No specific instances are quoted by him in the pleadings. However, in the crossexamination of the respondentWife, she was given a suggestion about the same, however she denied it. There is no evidence on record to show that the wife has illtreated the husband. On the contrary, the allegation made by the wife against the husband about the illicit relations with Chhaya are proved by cogent evidence, the oral as well as documentary evidence. Admittedly, Chhaya is residing on the first floor though as a tenant. The said fact is not disputed by the husband. The respondentWife has clearly deposed that Chhaya Dongre gave birth to a male child in the Mukherjee Nursing Home. The husband has denied the said fact even when Exhibit 44, the birth extract, was shown to him. Exhibit 44 is a public document issued by the Nagpur Municipal Corporation, Nagpur. A perusal of the same reveals that the date of birth of Mayank is shown as 17.06.2010 and the name of the father is shown as Kishor Shamrao Dongre and the name of mother is shown as Chhaya. The said document being the public document is having presumptive value and no formal proof is required for

proving the same. The said document can be read in evidence. The only option left for the husband is to rebut the said document. The appellant has heavily relied on the document Exhibit 62, i.e. Form No.1, sent by Mukherjee Nursing Home to the Nagpur Municipal Corporation, Nagpur. In the said document, though the name of the father is shown as Sanjay Dongre and the name of mother is mentioned as Chhaya but this document is not proved by the appellant-Husband. The author of the said document is not examined. Moreover, Dr.Shilpa Mukherjee examined by the respondentWife has clearly deposed before the Court that the appellant-Husband is the person who had brought Chhaya in the hospital and signed the consent form. The delivery being cesarean delivery, the the person who brought the patient to the hospital for delivery needs to sign the consent form. The evidence of the doctor is sufficient to prove that the petitioner has brought Chhaya in the hospital and stated that he is the husband of Chhaya. The document, Exhibit 44, corroborates the oral testimony of the respondent as well as Dr.Shilpa Mukherjee. The learned Family Court has considered the oral as well as the documentary evidence in its proper perspective and rightly held that the respondent has proved the fact that the appellant-Husband has illicit relationship with Chhaya Dongre. The husband, therefore, cannot take advantage of his own wrong. Moreover, he has not proved the cruelty on the part of the wife. The findings recorded by the Family Court are based on relevant and admissible evidence and need to be confirmed. The appeal filed by the appellantHusband is devoid of any merit and is liable to be dismissed. Hence, the following order is passed. I) The family court appeal is hereby dismissed.

II) No order as to costs.

III. A decree be drawn up accordingly.