
(1993) 08 BOM CK 0060
In the Bombay High Court
Case No : F.C.A. No. 89 of 1992

Madhusudan Dhondu Parkar APPELLANT
Vs
Vandana Madhusudan Parkar RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)

Citation : (1994) 1 DMC 134

Hon'ble Judges : M.K. Mukherjee, C.J.;A.P. Shah, J

Bench : Division Bench

Advocate : S.H. Thatte and Thatte and Co, for the Appellant; S.V. Rajeshwar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Shah, J.—This appeal is directed against the dismissal of a Matrimonial Petition filed by the husband for a decree of divorce and in the alternative a decree for judicial separation on the ground of cruelty.

2. In order to appreciate the controversy between the parties, few admitted facts need to be stated first:--The marriage between the appellant Madhusudan and the respondent Vandana was an arranged marriage and it took place on May 13, 1979 at Bombay as per Hindu vedic rites and thereafter they made their matrimonial home in a one room tenement in a building known as "Anand" at Dadar. The said room belongs to the appellant's maternal aunt Muktabai. Out of this wedlock, a male child, Sachin, was born on November 19, 1980.

3. The present petition was filed by the appellant in the Family Court, Bombay on August 4, 1989 alleging several acts of cruelty on the part of the respondent, more particularly narrated in paragraph 14 of the petition. The appellant alleged that the respondent is of extremely quarrelsome nature and has been constantly ill-treating the appellant and his aunt Muktabai. She has caused separation between the appellant and Muktabai who, according to the appellant, is like his

own mother. The respondent has neglected to take care of Muktabai when she had a fall and had sustained injury to spinal cord in April, 1988. The respondent has also neglected their minor son Sachin during his illness. The respondent has lodged false complaints to the police and on the basis of one such complaint on March 5, 1989, one police constable took the appellant and Muktabai to the Police Station and had physically assaulted them. The appellant has also claimed a mandatory injunction against the respondent to vacate the room of Muktabai. He has lastly prayed for custody of Sachin and a sum of Rs. 300/- per month for Sachin's maintenance.

4. As far as written statement is concerned, the respondent has denied all the allegations made by the appellant and contended that the appellant has brought this false petition against her at the instance and instigation of Muktabai. According to the respondent, it is the appellant and Muktabai, who are harassing and ill treating her. The respondent has stated that the appellant and Muktabai were always insisting that she should ask for valuable articles from her parents and as she did not agree, she was not allowed to go to her parental house. The respondent has also stated that Muktabai has gone to the extent of preventing Sachin from calling the respondent as his mother and is instigating him not to have food with respondent. The respondent also contended that time and again Muktabai used to unnecessarily quarrel with her and abuse her and, therefore, she was compelled to approach the police.

5 In order to support his claim, the appellant has examined himself and aunt Muktabai. The respondent has entered the witness box, but did not examine any other witness. The Family Court, on appreciation of the evidence came to the conclusion that the appellant has failed to establish cruelty on the part of the respondent. The learned Judge found that the main cause of the friction between the parties is the dominating nature of Muktabai. The Family Court, therefore, refused to grant any relief to the appellant.

6. Shri Thatte, learned Counsel appearing for the appellant, submits that the appellant has established the allegations of mental cruelty and in support of his submission he cites various instances. Shri Thatte draws our attention to the admission of the respondent that she did file complaints to the police against the appellant and his aunt and submits that the said complaints were false and filing of such false complaints itself amounts to causing mental cruelty. He relies upon the evidence of the appellant and Muktabai to show that the respondent made allegations of illicit relationship between the appellant, and his aunt who is an old lady and is like appellant's mother. Shri Thatte submits that the respondent has deliberately neglected Muktabai and Sachin during their illness, Shri Thatte submits that in these circumstances the appellant is entitled to a decree for divorce.

7. With the assistance of Shri Thatte, we have gone through the pleadings and the depositions of the parties. Though the appellant has narrated several acts of cruelty in the petition, he has deposed only in respect of some of them. In

paragraph 14(A) of the petition, the appellant has alleged that about six months after their marriage the respondent and her family members deliberately caused separation between him and his aunt. However, from the appellant's own deposition, it appears that it is Muktabai who was to be blamed. In paragraph 10 of his deposition, the appellant has stated as follows :

"My aunt Muktabai was not pleased with the working of Vandana therefore she used to scold her due to the same Vandana and Muktabai started quarrelling. They used to use filthy language and day by day the quarrels went on increasing. My wife was feeling that I should take her side and quarrel with Muktabai and if necessary even assault her and that Muktabai is to be driven out of the house. I told her that I could not do so as Muktabai was older in age and that I must give respect to her and that the room was also of the Muktabai."

It seems that Muktabai was unnecessarily picking up quarrels with the respondent and there does not appear to be any substance in the appellant's contention that the respondent is responsible for the alleged separation between the appellant and Muktabai.

8. The second charge is that the respondent has failed to take care of Muktabai when she had a fall in April, 1983. The learned Judge, on perusal of the evidence, found that when Muktabai sustained the injury the respondent was not in the house and in fact during that period she was with her parents. It is not the case of the appellant that the respondent was informed about the accident to Muktabai and still she failed to attend to Muktabai. No fault can, therefore, be attributed on the part of the respondent on this count.

9. As regards the claim of the appellant that the respondent is guilty of making false and baseless allegations of illicit relationship between him and his aunt, we find that this case was made out for the first time at the time of trial. In the petition the averment in this behalf is that in April, 1988 the respondent had quarrelled with Muktabai and after collecting some articles she went back to her parents' house telling the appellant to get married to his aunt. We may mention that the appellant has not said anything about the alleged incident of April 10, 1988. We are satisfied that the story put forth by the appellant for the first time in his deposition is false and imaginary. It appears that the main reason for the disputes between the couple is that Muktabai is unable to get along with the respondent. We find merit in the defence of the respondent that the present petition has been filed by the appellant at the behest of Muktabai.

10. Shri Thatte heavily relies upon police complaints. He says, as a result of one of the complaints, the appellant and his aunt were taken to Police Station and they were physically assaulted by the Police Constable. On careful scrutiny of the evidence of the appellant and Muktabai, it appears that due to continuous discord with Muktabai, the respondent was required to approach the police on one or two occasions. The said complaints are not produced on record. There is nothing to show that the complaints were based on false allegations. From the material on

record, it is also clear that police had not recorded any cognizable offence against the appellant or Muktabai. The learned Judge has discussed the evidence elaborately and has given cogent and convincing reasons for rejecting the claim of the appellant for divorce u/s 13(l)(ia). We are in complete agreement with the reasoning of the learned Judge.

11. Admittedly, the room where the parties are presently residing belongs to Muktabai. Therefore, there is no question of issuance of injunction against the respondent at the instance of the appellant. Further, admittedly, appellant and respondent are staying jointly with Sachin, we do not see any reason for passing any order in respect of Sachin's custody. We also do not see any justification for the claim for maintenance of Sachin.

12. For the reasons recorded above, the appeal must fail. The same is, therefore, dismissed. No order as to costs.

13. Since the appeal has been disposed of, no separate order is necessary on Civil Application No. 2680 of 1992 seeking interim reliefs for alimony and injunction which accordingly stands disposed of.

14. Issuance of certified copy of this judgment is expedited.