

(1990) 07 CAL CK 0029
In the Calcutta High Court
Case No : A.F.O.D. No.164 of 1983

Pramatha Kumar Maity

APPELLANT

Vs

Ashima Maity

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)

Citation : AIR 1991 Cal 123 : (1991) 1 CALLT 447 : (1991) 1 CHN 244 : 95 CWN 486 : (1991) 2 DMC 35

Hon'ble Judges : A.M. Bhattacharjee, J;A.K. Nayak, J

Bench : Division Bench

Advocate : Mr. Tarun Kumar Chatterjee and Mr. Nibaran Kumar Das, for the Appellant; Mr. Chandra Shekhar Das, for the Respondent

Judgement

A.M. Bhattacharjee, J.—The suit was rightly dismissed and the appeal therefore must follow suit or follow the suit.

2. The husband-appellant sued the wife-respondent for dissolution of marriage on the ground specified in Section 13(1)(iii) of the Hindu Marriage Act, 1955, namely, the respondent wife "has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of a such kind and to such an extent that the petitioner can not be reasonably expected to live with the respondent.

3. Sound health, in these days of pollution of air and water, adulteration of foodstuff and drugs and all that is a rare species. So is sound mind, as a result of all the stress and strain, anxiety and tension of the modern age. The legislature has not made unsoundness of mind or mental disorder, by itself, a matrimonial fault unless the unsoundness is incurable or the disorder is such as to disable the person to become a reasonably tolerable matrimonial partner.

4. We have no doubt that the petitioner-husband has failed to prove his case by any standard, whether the standard of preponderance of probability as laid down

by the Supreme Court in *Dr. N.G. Dastane Vs. Mrs. S. Dastane*, , or that of proof beyond reasonable doubt as laid by the Supreme Court in *Bipin Chander Jaisinghbhai Shah Vs. Prabhawati*, or in *Earnest John White Vs. Mrs. Kathleen Olive White and Others*, , none of which was, however, referred to in *Dastane's* case (*supra*).

5. The respondent wife has admitted that she suffered from some sort of mental disorder and was treated as an indoor patient in a Calcutta Hospital in 1976 for about a month in August-September and that she was totally cured. The appellant husband would, however, assert that the wife continued to suffer from severe mental disorder even thereafter and that he had to continue to get her treated by several doctors. The petitioner has asserted in the petition that the wife's mental disorder became so grave that she used to become violently aggressive and a source of danger to the safety of the lives and limbs of the petitioner, his parents and the other members of his family. In his deposition also the petitioner wanted to assert that the wife used to become so violent as to try to assault them with Bonti and other things.

6. The trial Court has disbelieved the case of the petitioner and in our view, for good reasons. The petitioner lives with his parents and the case is that the parents were also very often the targets of the wife's violence. But the petitioner could adduce no satisfactory reason as to why he could not examine his own parents who were expected to know all about the truth or otherwise of the petitioner's case. The statement of the petitioner that his father was "bed-ridden" has been squarely belied by his own witness, P.W. 2, who has said that the father of the petitioner "is of sound health". He has also stated that his mother, aged about 65, is "bodily unfit to attend Court". But even if true, then also why no attempt to have them examined on commission?

7. There are several weighty reasons, some of which weighed with the trial Court also, to lead us to conclude that it would not be safe for us to accept and rely on these evidence and to act thereon.

8. We have not been able to understand as to how, in a case where the husband sues the wife for divorce on the ground that her mental disorder is of such a nature as to endanger the safety and security of his parents also and the husband does not examine the parents in Court or on Commission for no satisfactory reason, the husband can reasonably resist the adverse presumption that his own parents are not in no mood to support the truth of his allegations. Then again, if it is the husband's case that even after the wife was discharged from the mental hospital in 1976, he had to continue to get her treated by doctors for such mental disorder and the doctors are named? but no steps have been taken to have the doctors as witnesses, we fail to understand as to why a similar adverse presumption shall not be drawn against the petitioner to the effect that the wife was not and did not require to be treated at all, as alleged.

9. We do not say that a case of unsoundness of mind or any other mental

disorder cannot at all be proved without medical evidence. But when a spouse seeking relief against the other spouse on the ground of mental disorder seeks to make out a case that the former had to get the latter treated continuously or intermittently by doctors for such mental disorder, and yet the former takes no step for examining and offers no explanation for not examining the doctors, then in such a case we would like to think that the Court is entitled to presume everything against the spouse alleging mental disorder of the other.

10. A Division Bench decision of this Court in Kartik Chandra Banerjee Vs. Sm. Manjurani Banerjee and Another, is sometimes referred to, though erroneously, as an authority for the blanket proposition that medical evidence of the doctors alleged to have treated the patient is not necessary. The decision, in our view, does not lay down anything to that effect, even remotely. In that case, the evidence relating to medical treatment of the wife respondent adduced by her father went unchallenged. Even the Medical Report in favour of the wife was already admitted in evidence, though improperly as the Doctor was not examined. But as the medical report, though improperly let in, was not controverted, the Division Bench refused to draw any adverse inference for the non-examination of the doctor who made the report.

11. The trial Court has noted in the deposition of the wife that her appearance, behaviour, conduct, reaction to the questions and the answers thereto for about more than an hour in the Court appeared to be absolutely free and normal and "that she did not show any sign to suggest that she is a patient suffering from mental derangement". That may not be decisive, but surely a very important factor to be taken into serious consideration. We do not, and we would not, say that in all cases, where reliefs are sought on the ground of insanity or mental disorder, medical evidence is a must. But where medical evidence is admittedly available and can be produced by the party alleging mental disorder of the other, then he runs all the risk of having his allegation disbelieved, if he does not take any step to produce the same without any satisfactory explanation.

12. Under the provisions of Section 13(1)(iii) of the Hindu Marriage Act, 1955, mental disorder of the respondent spouse, even if proved, cannot, by itself, warrant a decree for divorce. It must further be proved that it is of such a nature as the petitioning spouse cannot reasonably be expected to live with the respondent. The evidence adduced by the petitioner has failed to inspire our confidence and his failure to examine his own parents alleged to be the victims of and to have suffered from the respondent's mental disorder, his failure to produce the medical evidence even though available, his having two children in 1977 and in 1979 during the period of alleged mental disorder of the respondent, the trial Court's own observation about the free and normal conduct and behaviour of the respondent in Court, have all weighed with us heavily in rejecting the case of the petitioner.

13. Even if the evidence for and against the parties was evenly balanced from which we could hold in favour of as well as against the respondent wife, we

would have held in her favour because of our Constitutional mandate to secure Social Justice. Social Justice obviously means justice to the weaker pitted against the stronger. Admittedly the respondent wife is a village woman, without education, now solely dependent on her father who is also admittedly not at all well off financially. Admittedly, the petitioner is a moderately well placed Government Officer, who, however, did not care to arrange for the maintenance of the wife and her youngest child, until ordered by the Court and who had the temerity to declare in his deposition that he is "not willing" to take back his wife, But the poor helpless lady would still believe that "my husband had love for me. He still loves me. I also love him. I am always willing to go". The wife thus is the weaker party locked up in unequal fight, and, as stated by us in *State Bank of India v. Amal Kumar Sen* 1988 Lab IC 1585 : ((1988) 92 Cal WN 846) and reiterated in *Sudhangshu Mohan Chakra-borty v. Life Insurance Corporation of India* (1988) 92 Cal WN 102 if two views are possible, whether of the facts or of the law, the view in favour of the weaker party is, when-ever and wherever possible, to be accepted. But as already indicated, the evidence in this case is not of that nature or quality, but leans very much against the petitioner husband. His petition was, therefore, rightly dismissed by the trial Court and we have no reason not to affirm the same.

14. The appeal is accordingly dismissed with cost assessed at 100 G.M. and the judgment under appeal thus stands affirmed.

Ajit Kumar Nayak, J.

15. I agree.

16. Appeal dismissed.