
(2014) 07 BOM CK 0157
In the Bombay High Court
Case No : Family Court Appeal No. 70 of 2014

Rajesh Hariba Patil

APPELLANT

Vs

Sou. Ranjana Rajesh Patil

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 13(1), 13(1)(ia), 13(a)

Citation : (2014) 5 ALLMR 507 : (2014) 6 BomCR 641 : (2015) 1 DMC 148 :
(2014) 5 MhLj 415

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Manoj Patil, Advocate for the Appellant

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—Heard learned Counsel for the appellant, original petitioner.

2 This appeal is preferred by the appellant against the judgment and decree dated 16th January 2014 passed by the learned Judge, Family Court, Kolhapur in Petition No. 342 of 2014 preferred by the petitioner (appellant herein) for divorce u/s 13 of the Hindu Marriage Act. By the said judgment and order his petition came to be dismissed.

3 Heard learned Counsel for the appellant, original petitioner. We have perused the judgment and decree dated 16th January 2014 passed by the Family Court, Kolhapur and the pleadings and evidence led in this case. It is seen that the appellant has preferred the petition for divorce u/s 13(a) of the Hindu Marriage Act. There are various provisions u/s 13 of the Hindu Marriage Act for getting divorce. There are various clauses under which divorce can be sought and under which clause the petition is filed by the appellant is nowhere stated nor explained. The Family Court was of the opinion that, if the averments made in the petition are perused, it seems that the petitioner wants divorce on the ground of cruelty. Thereafter issues were framed namely (i) whether petitioner

proves that respondent treated him with cruelty? and (ii) what order?.

4 Learned Counsel for the appellant states that his petition for divorce was not only on the ground of cruelty, but also on the ground of desertion, and the ground relating to the desertion was not considered by the Family Court. He therefore submitted that the judgment and decree passed by the Family Court ought to be set aside. As stated earlier, the petition is only u/s 13 of the Hindu Marriage Act, and it is nowhere stated under which clause of Section 13 of the Hindu Marriage Act the Petition was filed. Moreover, when issues were framed, at the time of framing issues it was not pointed out on behalf of the appellant before the Trial Court that the ground of desertion was also raised and hence issues need to be framed in that respect. It is also seen that at no point of time during the trial it was pointed out to the Trial Court that the appellant is also pleading ground of desertion and hence issues need to be framed in relation to desertion. Moreover the order framing issues was not challenged before the higher forum raising the plea that it was incorrectly framed. It is in these circumstances the Family Court only considered the issue relating to cruelty while disposing of the petition.

5 As far as cruelty is concerned, it is stated in the petition that the marriage between the appellant and respondent took place on 11.6.2004 at Nandgaon District-Kolhapur as per Hindu rites and religion. Thereafter son by name Varad was born to the parties. It is the case of the appellant that after the birth of son Varad, the respondent, without any reasonable cause, started picking up quarrel with him and started harassing him. The respondent is beloved daughter and therefore used to visit her parental house frequently. After birth of Varad respondent became more arrogant and started mentally harassing him. The appellant has stated that the family members of the respondent came to the business place of the appellant and caused him mental harassment due to which it is difficult for him to carry on his business.

6 The learned Counsel for the appellant submitted that the respondent though duly served remained absent and therefore his evidence on cruelty remained unchallenged as the matter was ordered to proceed ex parte against the respondent. He submitted that in such case as there is no cross-examination to the appellant the case of the appellant that he was treated with cruelty by the respondent, ought to have been accepted by the Family Court. On perusal of the evidence led by the appellant, it is seen that there are only vague statements that respondent resided nicely for a short time and thereafter started picking up quarrels without sufficient reason and started harassing him. She also used to leave frequently go to the house of her parents. No details about date, no particulars regarding the acts of the respondent or words uttered by the respondent have been stated. Just general and absolutely vague statements have been made. Thus, there is nothing on record to prove the alleged cruelty.

7 It is further the case of the appellant that the family members of the respondent used to harass him at the place of his business and therefore it was

difficult for him to carry on his business. If such is the case that there was harassment to the appellant at his place of business, then he could have easily produced the evidence of the persons who were working at his business place. However, no such evidence has been led by the appellant by examining any witness. The evidence on this aspect is also absolutely vague as to date and material particulars.

8 The word "Cruelty" has not been defined in the Act, though it has been specifically used in Section 13(1)(ia) of the Hindu Marriage Act. We may make useful reference to a decision of the Supreme Court in the case of Shobha Rani Vs. Madhukar Reddi reported in (1998) 1 SCC 105 : AIR 1988 Pg. 121. In this decision, the Supreme Court had an occasion to examine the concept of "cruelty". In this case, the Supreme Court has interpreted the word "cruelty". The Supreme Court observed that "cruelty" is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

9 The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be preceded for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party any longer may amount to mental cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Only sustained unjustified and reprehensible conduct affecting physical and mental health of the other spouse, may lead to mental cruelty.

10 Clause (ia) of Section 13(1) of the Hindu Marriage Act requires that, to establish the cruelty, the offending spouse must have treated the petitioner with cruelty and the act must be grave and weighty such as to fall under the description of cruelty. Normal wear and tear of married life definitely would not amount to cruelty.

11 As stated above, the evidence of the appellant in relation to the cruelty is found to be absolutely vague. He has not stated any date or particulars as to how his wife treated him with cruelty. He has given only general statements that the respondent started raising quarrels and started harassing him and she used to go her parents home frequently and her relatives used to come to his business place and harass him. What were the actual acts of the respondent or her relatives is not stated. Moreover, the appellant has not examined any person to show that there was harassment at his place of business. Except this, there is no

material on record to show that the conduct of the respondent amount to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act.

12 It is the case of the appellant that the respondent left his house in the year 2007. Thereafter he issued a letter dated 7.10.2010. Reference of the same is made in the examination-in-chief. It is pertinent to note that it is only xerox copy and therefore though the reference relating to it was made in his evidence, it cannot be read in evidence. Even assuming for sake of arguments that it can be read in evidence, however, this document seems to be Inland letter and there is nothing on record to show that it was really issued to the respondent and she has received the same, because there is no postal stamp on it. Therefore this cannot be treated as document to show that the appellant had issued a letter to the respondent calling upon her to join his company for cohabitation and that she had left his house in the year 2007 and thus deserted him.

13 In view of above, we are of the opinion that the learned Judge, Family Court has rightly held that the appellant failed to prove that the respondent treated him with cruelty. Even as far as the ground relating to desertion is concerned, we find that the pleading is vague and there is no evidence to support the same.

14 In the circumstances, we find no merit in the Appeal, and Appeal is dismissed.