
(2014) 09 BOM CK 0158

In the Bombay High Court

Case No : Family Court Appeal Nos. 85 and 96 of 2007

Sangeeta Prashant Khopkar

APPELLANT

Vs

Prashant Mohan Khopkar

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Hindu Marriage Act, 1955 — Section 10(ii), 13(1)(ia), 25, 27, 9

Citation : (2014) 09 BOM CK 0158

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : R.S. Apte, Senior Advocate and S.S. Jinsiwala, Advocate for the Appellant; Ajay Samant and Piyush Shah, Advocate for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—Both these appeals are being decided by this common judgment as they arise from the common judgment dated 29-3-2007. F.C.A. No. 85 of 2007 has been preferred by the appellant wife challenging the decree for divorce passed by the Family Court in Petition No.A -32/2003 that had been filed by the respondent husband. F.C.A. No. 96 of 2007 arises out of dismissal of Petition No.A -812/2000 that had been preferred by the appellant wife for restitution of conjugal rights. In these proceedings, the wife has been referred to as the appellant and the husband has been referred to as the respondent.

2. The marriage between the parties took place on 17-12-1988. The appellant was working on a clerical post in a Bank while the respondent who had done his Ph. D. in chemistry, was running a Small Scale Industry. After their marriage, the parties were initially residing at Ville Parle. On 23-9-1989, a daughter was born to the couple. As the appellant's mother-in-law remained busy in her social activities, the appellant's mother used to look after said child. However, differences arose between the appellant and her mother-in-law. The appellant was hospitalized in June 1993 on account of blood pressure. After discharge, her mother-in-law did not allow her to stay with the respondent and hence, she was

required to reside separately. The respondent acquired a flat at Dahisar and shifted there in July, 1993. The appellant stayed there with the respondent for a month. On 9-9-1993, a son was born to the couple. The appellant had thereafter started residing at her mother's place and subsequently, in a residential accommodation belonging to her maternal aunt. Since July 1999, she was staying with her mother. Though she was ready to reside with her husband, either at Ville Parle or any other nearby place without disturbing the children's status, no arrangements were made by the respondent. Hence, ultimately, she filed Petition No. A-812 of 2000 under Section 9 of the Hindu Marriage Act, 1955 (for short the said Act) seeking restitution of conjugal rights.

3. The respondent contested aforesaid proceedings and denied various allegations made by the appellant. He stated that the appellant used to find fault with his mother and used to abuse her. He stated that the appellant had been referred for Psychiatric treatment. Though both of them stayed at Dahisar from May, 1993 till September 1993, the appellant did not return back after delivery of the child. He further stated that in December 1997, he had suffered from Chickenpox, but the appellant had not taken proper care of him. Though the respondent had called the appellant to stay with him at Vasai, she had refused to do so. He expressed his inability to provide for residential accommodation at Ville Parle. He, therefore, stated that it was the appellant who was refusing to cohabit with him.

4. The respondent on 3-12-2002 filed Petition No.A -32 of 2003 under provisions of Section 13(1)(ia) of the said Act for divorce on the ground of cruelty. According to him, the appellant used to humiliate him in presence of their children. She had also tried to sever ties with his parents. According to him, when he was suffering from Chickenpox in 1997, the appellant had failed to take proper care. On the contrary, the appellant sought back money that was spent by her during his illness. He further stated that the appellant used to get unnecessarily angry and on one occasion, had beaten the respondent as well as their daughter with a stick. She had also given threats of suicide and had lodged false complaints against the respondent. It was further stated that in the last week of October 2002, the appellant had called up at the respondent's office in Vasai and had abused the respondent and his staff. It was stated that the appellant and the respondent were residing separately since August, 1999. Therefore, prayer was made for grant of divorce under Section 13(1)(ia) of the said Act or in the alternative, for a decree of judicial separation under Section 10(ii) of the said Act.

5. The appellant filed her written statement and denied various allegations made by the respondent. It was stated that her in-laws were not very interested in taking care of their daughter and hence, the appellant's mother was required to look after her. She further stated that the respondent used to spend considerable time with his parents and only thereafter return home. As regards the incident of beating the respondent with a stick, it was stated that while putting up clothes

for drying with the help of the stick, the same fell from her hand and touched the respondent. She stated that in the interest of children and their education, she was residing at Ville Parle, while the respondent wanted to shift to Vasai. She, therefore, stated that there was no case made out for grant of divorce as prayed for by the respondent.

6. Both the aforesaid petitions came to be tried together and the parties led common evidence in support of their respective cases. While the appellant examined herself vide Exh. 33, the respondent examined himself vide Exh.36 and his father vide Exh.37. The learned Judge of the Family Court after considering the entire matter, by common judgment dated 29-3-2007 proceeded to dismiss the petition for restitution of conjugal rights preferred by the appellant and allowed the petition for divorce preferred by the respondent. The marriage between the parties was, therefore, dissolved as a consequence of said order. The respondent was directed to pay a sum of Rs.8000/- per month towards maintenance of the children, while their custody remained with the appellant. The aforesaid judgment has thus, been challenged by the appellant in these two appeals.

7. Shri R. S. Apte, learned Senior counsel along with Shri Sandip Jinsiwale appearing for the appellant submitted that the Family Court erred in passing a decree for divorce on the ground of cruelty. It was submitted that the respondent had failed to make out any case of cruelty being caused by the appellant as contemplated by provisions of Section 13(1)(ia) of the said Act. It was urged that at the highest, it could be said that the differences between the parties were a result of normal wear and tear of matrimonial life. It was submitted that the respondent had failed to examine his mother in support of various allegations made against the appellant. Relying upon the decision of the Supreme Court in the case of Gurbux Singh Vs. Harminder Kaur, , it was contended that isolated instances as urged by the respondent would not amount to cruelty to hold him entitled for grant of divorce. The learned Senior Counsel further urged that all allegations of cruelty stood condoned as the parties stayed together after the birth of their daughter till the birth of the son on 9-9-1993. In this regard, reliance was placed on the decision of the Supreme Court in the case of Dr. N.G. Dastane Vs. Mrs. S. Dastane, .

As regards the prayer for restitution of conjugal rights, it was submitted that the appellant had sufficiently pleaded and proved that she was ready and willing to reside with the respondent and hence, was entitled to relief in that regard. It was submitted that the learned Judge of the Family Court erred in not granting the relief of restitution of conjugal rights. Relying upon the decision of Supreme Court in the case of B.P. Achala Anand Vs. S. Appi Reddy and Another, , it was submitted that right of residence was part of the wife's right to maintenance. Reliance was also placed on the decision of the Supreme Court in the case of Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, to urge that grant of maintenance would encompass a provision for residence of the wife.

It was, therefore, submitted that the impugned judgment deserves to be set aside and both the appeals deserve to be allowed.

8. On the other hand, Shri A. N. Samant along with Shri Piyush Shah, learned Counsel appearing for the respondent submitted that the evidence on record clearly established the cruelty inflicted by the appellant on the respondent. The conduct of the appellant was such that the same caused mental agony to the respondent as well as parents. It was stated that the appellant had admitted various acts of cruelty in her letter dated 12-2-1997 (Exh. 34). It was further submitted that the case of the respondent that he was not having food at home for almost 9 months, while recovering from chickenpox was admitted by the appellant. In support of his submissions, the learned Counsel for the respondent relied upon the decision of the Supreme Court in the case of G.V.N. Kameswara Rao Vs. G. Jabilli, , A. Jayachandra Vs. Aneel Kaur, with regard to the allegations of cruelty. The learned Counsel also placed reliance on the decision of the Supreme Court in the case of V. Bhagat Vs. Mrs. D. Bhagat, . It was, therefore, submitted that the respondent had suffered a feeling of deep anguish resulting in mental cruelty and there being a long period of continuous separation, the marital tie had been rightly severed by the Family Court. In this regard, he relied upon the decision of the Supreme Court in Samar Ghosh Vs. Jaya Ghosh, . It was, therefore, submitted that the judgment under appeal did not call for any interference whatsoever in these appeals.

9. We have given our anxious consideration to the aforesaid submissions. We have also gone through the pleadings of the parties and the evidence led by them. In view thereof, the following points arise for determination.

POINTS:

[1] Whether the appellant has proved that she was entitled to grant of decree of restitution of conjugal rights under Section 9 of the said Act?

[2] Whether the respondent has proved that he is entitled for grant of divorce under Section 13(1)(ia) of the said Act on the ground of cruelty?

[3] Whether the judgment under appeal requires any interference?

10. AS TO POINT NO.1: With regard to the claim for restitution of conjugal of rights, it is the case of the appellant that after the birth of their daughter, Kirti on 23-9-1989, she was required to take care of the new born baby. Her mother-in-law was busy in her social activities and hence, she was required to take the help of her mother for looking after the child. According to her, on account of daily household work and differences with her mother-in-law, her blood pressure increased and she was required to be hospitalized. After being discharged in June, 1993, she was prevented from entering the matrimonial house by her mother-in-law. She was required to take police aid to enter the matrimonial house. Thereafter, the respondent's parents told the respondent to make separate arrangement for their stay. While the appellant sought accommodation

at Vile Parle, the respondent had acquired a flat at Dahisar which was not at all convenient. According to the appellant after the birth of second child, the respondent's mother did not permit her to stay with the respondent and hence, she was compelled to stay with her mother. She stayed there with her mother for almost a year and thereafter shifted to the flat of her maternal aunt at Vile Parle in January, 1995. Though the respondent initially paid the society's outgoings, he discontinued paying the same when the amount of outgoings was increased from Rs.2000/- p.m. to Rs.3000/- p.m.. Due to said outgoings not being paid, the appellant shifted to her mother's place and the respondent started staying at his parents place. Though the respondent arranged for a flat at Vasai, the appellant was not inclined to reside there as the schooling of the children would be affected. Since August, 1999, the parties were residing separately. According to the appellant, though she was interested in residing with the respondent, he did not care to arrange for any residential accommodation at Vile Parle. In this background, the appellant sought a decree for restitution of conjugal rights.

In her cross examination, she admitted that there were quarrels between herself and her mother-in-law. She stated that the letters at Exh.34 were written at the behest of her mother-in-law. She has stated that though they had shifted to Dahisar, she returned back for delivery of their second child and thereafter, did not return back. She has stated that she had arranged for residence near her mother's house at Vile Parle. She has admitted that after delivery in 1993, she did not go to Dahisar. She further admitted that the respondent had taken a flat on rent at Vasai for a period of 11 months in 1999.

11. The respondent in his affidavit vide Exh.36 stated that it was not financially possible for him to arrange for a residence in proximity of Vile Parle. He has stated that he had taken a flat on rent at Vasai, but the appellant was not ready to come and stay there. He has stated that he was forced to live alone at Vasai, while the appellant stayed at her mother's place and thereafter at her aunt's house. In his cross examination, the respondent stated that after marriage, the couple did not stay jointly with his parents. They resided in a separate flat, while his parents resided in another flat in the same building. He has stated that he shifted from said flat to Dahisar as the appellant used to quarrel with him frequently. He has stated that he was present at the time of delivery of the second child and had requested the appellant to come to the matrimonial house at Dahisar, but the same was not accepted by the appellant.

12. Though the respondent examined his father Mohan vide Exh.37, he was examined with regard to the allegations of cruelty and hence, reference to his deposition would be made at later stage. From the aforesaid evidence, it is clear that initially parties were staying at Flat No.B -3, while the respondent's parents were staying in Flat No.B -5 at Vile Parle. Due to various differences between the appellant and her mother-in-law, the respondent shifted to Dahisar, but the appellant stayed there only for a short period. After delivering the second child in September 1993, she started residing at her mother's place in Vile Parle and

thereafter at her aunt's place that was also located in the vicinity. According to the appellant, she was not interested in residing at Dahisar as according to her, the same would have affected the schooling of the children. Though it is the case of the appellant that she was not permitted to enter the matrimonial house after the birth of the second child and she was forced to take police help to enter the same, there is no evidence led by the appellant in that regard. The respondent has stated that initially outgoings of Rs.2000/- per month were being paid by him when the appellant and their children resided at the appellant's aunt's house. When the same was increased to Rs.3000/- per month the respondent stated that he was unable to bear aforesaid financial liability. He has stated that a flat at Vasai was also taken by him on lease. He was staying alone at Vasai.

From the aforesaid material on record, it cannot be said that on account of the conduct of the respondent, the appellant was forced to leave the matrimonial house and reside separately. While it was her insistence to reside at Vile Parle or a nearby place, the respondent stated that it was not financially possible for him to make such arrangement to enable the family to reside in said area. The respondent had initially acquired a flat at Dahisar and thereafter at Vasai. The appellant after the delivery of the second child did not return to Dahisar and started residing with her mother. Thereafter, she shifted to her aunt's place in the nearby area. This continued till about August 1999 after which present proceedings came to be filed. From the evidence on record, it can be gathered that the respondent had taken various efforts to arrange for a separate residence, but the same was not in Vile Parle or nearby area. On the other hand, it is the specific case of the appellant that she desired to stay at Vile Parle or in a nearby area. After delivery of the child, she on her own accord started residing with her mother. There is no evidence on record that the respondent refused to take the appellant to their matrimonial house either at Dahisar or at Vasai. The fact that the respondent also paid a sum of Rs. 2000/- per month towards outgoings of the society where the appellant was living for some time indicates that the respondent was willing to look after the needs of the appellant and their children. Only when the same was increased to Rs.3000/- per month, he expressed his inability to pay the said amount and called the appellant to reside at Dahisar and thereafter at Vasai. In this background, it cannot be said that the respondent could be faulted. On the contrary, the evidence on record reveals that the appellant continued to stay as per her desire initially at her mother's place and then at her aunt's place. She subsequently returned back to her mother's place.

In view of aforesaid, it cannot be said that the appellant had made out any case for being granted relief under Section 9 of the said Act. It cannot be said that the respondent had on his own volition withdrawn himself without any reasonable cause from the company of the appellant. There is no evidence to that effect on record. In view of aforesaid, point No.1 is answered in the negative and it is held that the appellant has failed to prove that she is entitled for a decree of restitution of conjugal rights.

13. AS TO POINT NO.2: For the purposes of seeking divorce on the ground of cruelty, it is the case of the respondent that the appellant used to unnecessarily quarrel with his parents and also humiliate him. He has stated that she was interested in severing ties with his parents. It is his specific case that in December 1997 when he was suffering from Chickenpox, the appellant did not take proper care, but abused him and claimed that his suffering was an act of divine retribution. According to him, on one occasion, he was hit by a stick by the appellant. The appellant had filed false complaints against the respondent and his parents. He has further stated that for a period of almost 9 months, he was not served with food at home and was required to have it outside. The threats given by her of committing suicide also caused him mental agony. In his cross examination, the respondent stated that for doing household work, his mother's domestic servant used to help the respondent. He has further stated that he was present at the time of delivery of the second child. There is no specific cross examination of the respondent as regards various allegations made by him with regard to the appellant's behaviour. Though various instances such as being hit by a stick, his suffering from Chickenpox, harassment by making false complaints, abusing the staff of the office and making of blank calls were stated on oath by the respondent, there is no specific cross examination on these statements.

14. The respondent had examined his father vide Exh.37 who stated that on 28-4-1999, the respondent had come home and had told his father that he had been hit by a stick by the appellant and a police complaint was also lodged. He has further stated that they started receiving blank calls, due to which a police complaint was lodged and their telephone was kept under surveillance. He has further stated that in October, 2002, the appellant had visited the office in Vasai and had abused the respondent and his staff members. In his cross examination he has stated that he got knowledge about the appellant abusing the staff members from said staff members. He has further stated that the respondent was having food at their place for almost 9 months.

15. In so far as the appellant is concerned, in her cross examination, she has admitted that when she suffered from blood pressure, she preferred to be examined by the family doctor of her parents. Said family doctor had referred her to a Psychiatrist, but she had not taken any treatment in that regard. She has admitted that the respondent was careful of all family affairs. She further admitted that after delivery of the second child, she did not go to Dahisar. She further admitted that the respondent suffered from Chickenpox in December 1997. She has further admitted that the respondent after recovering from said disease did not take food at home for about 9 months. She has further admitted that the rent had been increased by her aunt to Rs.3000/- per month. She has further admitted that she was called by the police authorities after the respondent's father had lodged the report about blank phone calls.

16. From the aforesaid material on record, it is clear that though there were

certain differences between the parties after the birth of the first child in the year 1989, the second child was born in September 1993. Though the allegations as regards cruelty for the period from 1989 to September 1993 are not of a very serious nature, the said allegations stood condoned in view of the fact that the parties stayed together and had their second child. The submission of the learned Senior Counsel in this regard that the alleged acts of cruelty during aforesaid period cannot be taken into account as said acts stood condoned is supported by the decision of the Supreme Court in the case of N. G. Dastane (Supra). Therefore, various allegations after the birth of the second child will have to be taken into account to determine whether the same constitute cruelty under provisions of Section 13(1)(ia) of the said Act.

17. After the birth of the second child on 9-9-1993, though it is the case of the appellant that the respondent's mother did not permit her to reside in the matrimonial house, said allegation will have to be considered along with the totality of circumstances brought on record. After delivery of said child, the appellant stayed with her mother for almost a year and thereafter at her maternal aunt's flat at Vile Parle. The appellant has admitted that the respondent on his own had started paying the Society's outgoings and had voluntarily contributed 50% of the costs of painting of said Flat. She has also admitted that the respondent used to reach the children in school in his car. It was only when the amount of outgoings increased to Rs. 3000/- per month that the respondent expressed his inability to bear said financial burden. According to the appellant, the respondent arranged for a flat at Vasai in August 1999. The appellant, however, refused to shift there on the ground that the location of said flat was not convenient. While the appellant insisted for arrangement being made at Vile Parle itself, the respondent made such arrangement at Vasai. Thus, on account of the adamant approach of the appellant, the respondent was deprived of the company of his wife and children. The evidence on record reveals that after the birth of the second child, the appellant had refused to stay with the respondent initially at Dahisar and subsequently, at Vasai. Thus, since September 1993, the appellant was deprived of matrimonial company of the appellant as well as the company of his children. The payment of society's outgoings by the respondent indicates that he had made attempts to secure the comfort of the appellant and his children. The admission of the appellant that he also used to reach the children to school indicates that he was desirous of having the company of his children, but on account of their separate residence, the same was not possible.

18. With regard to the incident dated 28-4-1999, the respondent has stated that the appellant had heard him talking to his daughter that after school hours, he would take her at his mother's place. The appellant, however, got angry and beat the respondent and their daughter with a stick. The respondent had thereafter lodged a complaint with Vile Parle Police Station bearing No.983 of 1999. In para 13 of the written statement, the appellant has pleaded that while putting the clothes up for drying, the stick in her hand fell and touched the

respondent. The appellant in her cross examination has, however, denied the suggestion given to her in that regard.

The fact that the respondent suffered from chickenpox in December 1997 is admitted by the appellant. She has, however, denied that she did not state that said disease was due to a curse. According to the respondent, after recovery, he was not given food at home and he was forced to have food outside. This fact is clearly admitted by the appellant in para 57 of her cross examination in which she stated that the period when the respondent had food outside was for about nine months. The respondent's father has also stated that the respondent used to have food at their house during said period. It is thus, clearly proved that though the appellant was aware that the respondent had suffered from Chickenpox, she did not take proper care of the respondent when he was recovering. The respondent was required to have food outside and some times at his parents place.

19. As regards making of blank calls, it is the case of the respondent that such calls were being made at his father's place, due to which he had lodged a police complaint and the telephone was kept under surveillance. The appellant, however, denied making any phone calls in that regard, but has stated that she was called by the police to the police station.

20. In this background, it would be necessary to examine whether a case of cruelty under Section 13(1)(ia) of the said Act has been made out. In V. Bhagat (supra), the Supreme Court in para 17 of said judgment has observed as under:

12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce".

21. Thus, considering the material on record, it is clear that the appellant was insistent of staying in Vile Parle itself even if the same had the result of staying away from the respondent. The fact that the respondent made various attempts to secure alternate accommodation at Dahisar and Vasai is not in dispute. It is further not in dispute that for some period of time, the respondent was paying

the society's outgoings when the appellant and the children were residing at Vile Parle. The appellant has further admitted that the respondent used to drop the children to school in his car. On account of the said adamant approach of the appellant, the respondent was deprived of her matrimonial company and the company of his children. Though the appellant sought to justify the decision to stay at Vile Parle on account of the convenience of the children, said factor could not have been given an overriding consideration so as to compromise with the matrimonial company of the respondent. It appears that the appellant was firm not to leave Vile Parle at any cost.

22. The other incidents as regards hitting the respondent with a stick, making of blank phone calls may not by themselves independently constitute cruelty. In fact, the allegation that the appellant was making blank phone calls at her in-law's place has not been sufficiently proved by the respondent. However, the fact of the respondent suffering from Chickenpox and the appellant not taking proper care even after his recovery is an aspect which would be of considerable relevance while considering the attitude of the appellant. The respondent after having suffered from Chickenpox was required to have outside food for a period of almost nine months. The appellant has not been able to explain as to why the respondent could not have food at home, but was required to have it outside. The agony and plight of the respondent during the process of recovery cannot be ignored. It is true that the Supreme Court in the case of Gurbax Singh (supra) relied upon by the learned Senior Counsel for the appellant has held that isolated incidents would not amount to cruelty. It has been further observed in para 16 of the judgment that the married life of the parties has to be assessed as a whole and the ill conduct must be for a fairly long period to indicate that the relationship has deteriorated to a great extent. In G.V.N. Kameshwar (supra), it was observed by the Supreme Court in para 12 of the judgment as under:

12. The Court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the Court should consider whether the conduct of the counter-petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is cruelty on the part of the counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances."

23. Thus, even ignoring the solitary incident of the respondent being hit on the head with a stick and ignoring the allegation as regards making of blank calls, the overall material on record indicates that the conduct of the appellant in depriving the respondent of her matrimonial company, her insistence to stay at Vile Parle, at any cost, failure to take proper care of the respondent when he was suffering from chickenpox and the period thereafter when viewed in the

background of the appellant being referred by her mother's family doctor to a Psychiatrist discloses the conduct of the appellant being such that it had become intolerable for the respondent to suffer any longer and live together with her. In *Samar Ghosh (supra)*, the Supreme Court while giving some illustrative instances with regard to mental cruelty has observed in para 74 (iv), (v) and (xiv):

"74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommodore or render miserable life of the spouse.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not sever the sanctity of marriage, on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

Thus, on careful scrutiny of the entire material on record, it is obvious that the appellant has been guilty of such behaviour that amounts to mental cruelty to the respondent. A case for grant of divorce under provisions of Section 13(1)(ia) of the said Act has, therefore, been clearly made out. Point No.2 is, therefore, answered in favour of the respondent.

24. AS TO POINT NO.3: The learned Judge of the Family Court has considered the entire evidence on record and has thereafter proceeded to hold that the appellant was not entitled for grant of relief of restitution of conjugal rights. The learned Judge found that a case of cruelty under Section 13(1)(ia) of the said Act had been made out by the respondent. We are satisfied that while doing so, all relevant and important factors has been taken into account. The evidence has been considered in the proper perspective. It may be noted that the learned Judge of the Family Court who had recorded the deposition of the parties has himself rendered the impugned judgment. Said learned Judge had ample opportunity to observe the demeanor of the parties while recording their evidence. This aspect of the matter also cannot be ignored. We, therefore, find that there is no reason whatsoever to take a different view than the one taken by the learned Judge of the Family Court. The impugned judgment, therefore, does not call for any interference whatsoever.

25. In so far as the decision in the case of *Mangatmal (supra)* and *B. P. Achala Anand (supra)* are concerned, it is well settled that the wife's right to residence

is also recognized as being a right to maintenance. In *B. P. Achala Anand (supra)*, it has been observed that the wife is entitled for separate residence if on account of the husband's conduct, she is required to live apart from him. However, on being divorced, said rights are available under provisions of Sections 25 and 27 of the said Act. In the present case, the decree of divorce granted by the Family Court is being maintained in these appeals. Hence, it would be open for the appellant to exercise her rights as regards residence by invoking provisions of Section 25 of the said Act if so advised.

26. At the conclusion of hearing, the learned Counsel for the respondent on instructions submitted that in so far as the daughter, Kirti, is concerned, she was in the United States of America and was independently earning her livelihood. The respondent stated that in view of said factor, he was not inclined to bear the expenses of his daughter's marriage. He, however, stated that he was willing to provide a sum of Rs.2,00,000/- within a span of two years to facilitate the education of his son. The learned Counsel for the respondent on instructions submitted that said amount could be deposited in two installments. As the decree for divorce is being confirmed, we are inclined to accept the aforesaid undertaking given by the respondent in Court. In view thereof, we direct the respondent to pay a sum of Rs. 2,00,000/- to his son Onkar who must now be about 21 years of age. The initial amount of Rs.1,00,000/- shall be paid by the end of December 2014, while the remaining amount of Rs.1,00,000/- shall be paid by the end of December, 2015. Aforesaid amount shall be paid by the respondent to his son Onkar towards his education expenses. As observed above, the rights of the appellant to take appropriate steps under provisions of Section 25 of the said Act are kept intact.

27. In view of our aforesaid findings:

(i) FCA No. 85/2007 and FCA No. 96/2007 are dismissed with no order as to costs.

(ii) The directions contained in Para 26 of the judgment shall form part of the decree and shall be binding on the respondent as an undertaking given to this Court. The decree passed by the Family Court is modified to that extent only.

(iii) The parties to bear their respective costs.