
(1992) 12 BOM CK 0028
In the Bombay High Court
Case No : Family Court Appeal No. 12 of 1991

Sou. Sanjeevani Anil Wadnere	Vs	APPELLANT
Anil Murlidhar Wadnere		RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Hindu Marriage (Amendment) Act, 1956 — Section 13(1)

Citation : (1993) 2 BomCR 608 : (1993) 2 DMC 623 : (1993) MhLj 1563

Hon'ble Judges : S.W. Puranik, J;D.J. Moharir, J

Bench : Division Bench

Advocate : G.B. Terdalkar, for the Appellant; Prafulla Shah, for the Respondent

Final Decision : Dismissed

Judgement

D.J. Moharir, J.—This is an appeal by the original respondent-wife taking exception to the judgment and decree passed against her, granting divorce to the petitioner-husband u/s 13 of the Hindu Marriage Act.

2. The appellant and the respondent herein would be usefully referred to hereafter as respectively the respondent and the petitioner. The petitioner who is a resident of Pune and Sanjeevani, the respondent who hails from Kalwa, District Thane came to be married on 29-6-1986. It was an arranged marriage. Out of the wedlock a child, the daughter by name Shalaka was born to them on 15-9-1987. Sanjeevani lived in the marital home till January, 1989. According to the petitioner, only a very short period was spent by them happily as husband and wife. For, soon after the marriage the respondent started picking up quarrels with him over triflings. He alleged that it was at her instance that he set up a separate establishment for himself and Sanjeevani in the Karve Nagar locality of Pune, leaving his parental home at Parvatigaon. Even the setting up of a separate establishment did not satisfy the respondent-wife. She kept picking up quarrels and making false complaints against his parents.

3. The respondent had been suffering from fits since her childhood. At the time

of settlement of the marriage, this fact was concealed from the petitioner and his parents. The petitioner had been thus deceived into giving his consent for marriage with the respondent. However, as a gentleman, having accepted the respondent as his wife, he bore patiently with her. He arranged for competent medical treatment for the wife. However, the medical opinion was that Sanjeevani would continue to suffer from the epileptic fits all through her life and would have to be kept constantly under treatment. This disease afflicted condition of Sanjeevani always kept the petitioner on the edge of anxiety, more so because she was not in a position to take care of even the infant Shalaka.

4. In spite of this, as the petitioner further alleged, the respondent on the 29th of January, 1989 attempted to run away from his house with the assistance of her parents. When the petitioner objected to this, he was assaulted. The respondent's parents, however, themselves lodged a false complaint against him, his brother, sister and mother also. This complaint to the police resulted in extreme mental torture to the petitioner. He had in fact come to be defamed in the society.

5. On 30-8-1989 the petitioner served the respondent with a notice to which she made a false reply on 13-10-1989. Even so the petitioner sent a second notice to her calling upon her to return to his home, but the offer was turned down bluntly. It is in these circumstances that the petitioner, when he was unsuccessful in his efforts to bring back the wife who had deserted him, was constrained to file a petition for a decree of divorce.

6. Resisting this claim, the respondent-wife Sanjeevani submitted that the ill-treatment, to compel her to bring large sums of money and other presents from her parental home, started almost immediately after the marriage and when she went to stay in the marital home she was subjected to mental as well as physical torture to attain this objective. It was entirely false for the petitioner to allege that a separate establishment at Karve Nagar was set up by him at her insistence. Not disputing the fact that she suffered from fits, the wife however squarely denied that the fact was concealed from the petitioner and his parents at the time of settling the marriage. She asserted that a very clear idea in this behalf had been given and yet the petitioner and his parents had consented to her marriage with the petitioner. The truth further was that the petitioner did not care for a proper treatment to her. The medical treatment to her was offered to be provided with the condition precedent that her father should take out a policy of insurance of Rs. 2,00,000/- on her life. This aroused misgiving in the mind of the respondent and her parents. The demand was therefore not accepted by her father. This only resulted in aggravating the situation. The petitioner further made demand for Rs. 50,000/- for making ornaments for the respondent. To this also her father declined, impressing upon the petitioner and his parents that at the time of the marriage he had already given Rs. 25,000/- in cash and 50 grams of gold. These demands having been thus turned down, the respondent submitted that she came to be turned out of the house only with her wearing

apparel. That was how she was compelled to go and take shelter under the parental roof. However, later the petitioner and his brother-in-law both came to her parental home at Kalwa, District Thane. Both of them pleaded with her father that he should forget and forgive all that had happened in the past and send Sanjeevani back to Pune. This was at the time of the Diwali festival and upon assurance of the petitioner that she would not be any more treated with cruelty, he sent her and she also agreed to go back to Pune. According to the respondent, this however, turned to be an empty promise. The ill-treatment was resumed and when her father came to meet her, he was actually manhandled and driven out and along with him, the respondent herself was thrown out of the marital home. It was under this circumstance of the assault on him that her father had lodged a complaint with the police which had led to a criminal prosecution u/s 498-A of the Indian Penal Code. The notices sent by the petitioner had been duly replied. The respondent apprehended that she would be subjected to the same course of ill-treatment and torture in the marital home, to secure the objective of squeezing her parents into giving cash and presents. This apprehension was real and genuine and she was therefore justified in not staying in the marital home. She also, in that circumstances, made an application for grant of monthly maintenance allowance against the petitioner. Under no circumstances could the petitioner therefore be found entitled to a decree of divorce and the petition deserved to be dismissed without costs. The Trial court framed two main issues on these pleadings of the parties. The first one was whether the petitioner-husband was subjected to cruelty by the respondent-wife and the second one was whether the respondent-wife was proved to have been suffering from a disease (hysteria) and whether the said fact had come to be suppressed by her as well as per parents. Recording his finding in the affirmative on both the issues, the Trial Court rejected the respondent-wife's contention that she had been in the past subjected to and apprehended continuance in future also, ill-treatment at the hands of the petitioner-husband. There being no legal bar to granting a decree for divorce, the Trial Court allowed the petition and granted a decree. Aggrieved thereby, the respondent-wife preferred this appeal.

7. At the hearing of this appeal, learned Counsel Shri Terdalkar for the appellant submitted that the judgment and decree both deserved to be quashed and set aside for the reason that the ground of cruelty practised upon the petitioner-husband by the respondent-wife, to enable him to claim a decree for divorce u/s 13(1)(ib) of the Hindu Marriage Act was not at all proved and secondly that the decree for divorce was granted on the ground u/s 13(1)(iii) of the Act when one was not even prayed for by the petitioner. His next submission is that even if there is some stray reference to be found to the pleas about the respondent-wife suffering from epileptic fits, the finding in the affirmative in that behalf did not suffice to entitle him to a decree u/s 13(1)(iii) because the requirement of the said section went much beyond proving the mere existence of this condition of some unsoundness of the mind or mental disorder in respect of which also the learned lower Court appeared to have erred into a confusion. The stringent

requirements of section 13(1)(iii) of the Act had all the same not been thus established and the lower Court clearly fell into an error in holding that the said ground was and had come to be proved also. In our opinion, these contentions have to be, for the reasons that follow, found as substantial enough to allow this appeal and to quash and set aside the judgment and decree passed by the lower Court.

8. Dealing therefore with the ground of cruelty to the petitioner at the hands of the respondent-wife what he has alleged in paragraph 2 of the petition is that, after an initial period of happy cohabitation, the respondent-wife started picking quarrels with him on triflings; that she indulged in making false complaints against his parents when he returned home from work, an exhausted man. Apart from the fact that there is no independent evidence of the wife's indulgence in such quarrels, it also stands to be appreciated from the evidence on record that within a few months after the marriage, the petitioner started living separately from his parents, along with his wife in some accommodation obtained in the Karve Nagar locality of Pune. It is also not in dispute that the petitioner's grandmother was then the only person who was living with this couple in the Karve Nagar residence. Therefore, in the first place, any occasion for a direct conflict between the respondent-wife and the petitioner's parents as such was, presumably a very short lived one. Secondly, none of the parents of the petitioner has also entered the witness box. No instances were brought out in the cross-examination of the respondent Sanjeevani which would establish this fact. Then thirdly though the petitioner alleges that the accommodation in the Karve Nagar was obtained because of the insistence on the part of the respondent-wife to live separately from the petitioners parents, no such admission could be obtained in her cross-examination. In her evidence, the respondent-wife has squarely denied that the fact of living separately from the parents was a sequences to any quarrelsome conduct on her part. On the other hand, in one of the letters which the respondent-wife had written to her parents, it is fairly enough indicated that it was a case of differences and disputes between the petitioner and his father which actually resulted in the son becoming separate out of frustration. It is in the letter Exh. 48 dated 1-6-1987 that she has informed her father that it was at the insistence of her in-laws that she was pressed into persuading the husband to become separate from the parents. All this as the evidence of any cruelty would, in law, hardly suffice to accept the same as a fact duly proved. We may also mention that it was not even suggested to the respondents Sanjeevani in the course of her cross-examination that it was because of her insistence that the petitioner had become separate from the parents. In the petition the pleading is that the respondent used to quarrel with him - and NOT with his parents. It cannot be even understood then as to how the petitioner's becoming separate from his parents would stop the wife from being quarrelsome with him.

9. The other aspect of the alleged cruelty by the respondent-wife is related to her mental disorder, her affliction with epilepsy which is an issue to be considered

independently and separately at a later stage. However, the petitioner's case was that because of the epileptic fits from which she admittedly suffered, she was unable to look after the infant Shalaka which was born on 15-9-1987. The respondent-wife has been admittedly living with her parents at Kalwa from January, 1989. Shalaka was therefore only an infant and it is quite accepted that whenever she would get the epileptic fits, she would not be able to look after the child. That inability caused by reason of the affliction, resulting in, the petitioner being probably required to look after the infant Shalaka in the duration of such fits, cannot, in our opinion, constitute an act of cruelty towards the petitioner, indulged in by the wife. Apart from this there is no evidence of any other instance of cruelty -- though it was alleged to have been both physical and mental -- which has been brought on record to justify the petitioner's claim for a decree of divorce u/s 13(1)(b) of the Act.

10. Before proceeding to consider the validity of the decree for divorce as passed -- on the ground provided u/s 13(1)(iii) of the Act which was upheld by the trial Court, it becomes necessary for us to state what precisely the said provision is. Section 13(1)(iii) reads as follows :

"Any marriage solemnized, whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party -- (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

11. The petitioner's case is that the respondent-wife was suffering from epileptic fits since her childhood; that the fact of this disease was suppressed from the petitioner both by the respondent and her parents before the settlement of the marriage which was solemnized on 29-6-1986. The petitioner did depose before the Court that he was not apprised of the fact of the epileptic fits from which Sanjeevani has been suffering, before the marriage was settled. Quite to the contrary and equally assertive is the evidence not only of the respondent-wife Sanjeevani herself but also of her father Motilal Wadnerkar--that a clear idea about this suffering of Sanjeevani had been given to the petitioner and his parents and they had consented to accept Sanjeevani as the bride in spite of being made so aware. This is therefore clearly a case of oath against oath. What however weighs in favour of the respondent-wife's assertion is even the pleadings in para 3 of the petition that he stated that he had all the same come to accept the respondent-wife as she was and had endeavoured to carry on living with her. This pleading has also to be considered along with the deposition that for more than three years, i.e. until the 30th of August, 1989 when the petitioner served the respondent with a notice, no grouse was apparently made about this mental affliction of Sanjeevani, either to her or to her parents. There is absolutely no evidence that the petitioner ever gave expression to the fact of the alleged deception practised on him in the matter of obtaining his consent to

marry the respondent. Further more, the evidence of the respondent's father Motilal is supported by his letter dated 1-9-1986 addressed to the petitioner's father. This letter gives a clear support to the assertion that the petitioner and his parents had been apprised of the epileptic from which she was suffering, that she was medically examined and treated by Dr. Dixit and Dr. Divate of Pune and all papers concerning treatment and advice, etc., has been handed over to the petitioner and his parents. It is in the face of this letter which the petitioner does not dispute he has received, that his allegation now that he was kept in dark about this affliction -- admittedly a long standing one also -- by Sanjeevani and her parents has to be viewed. Some efforts were therefore made to place reliance upon the writing dated 29-6-1987 which according to the petitioner, was voluntarily given by the respondent-wife. This writing was in the nature of a letter by Sanjeevani to her father Motilal Wadnerkar. It mentions that Sanjeevani had asked her father that as advised by the Doctors, the fact that she was suffering from epileptic fits should be conveyed to the petitioner. The letter further reads that Motilal had himself not done so nor had he allowed Sanjeevani herself to so inform the petitioner and she was warned to keep her mouth shut upon this fact. We are afraid that this writing, when very carefully read, must unmistakably indicate that it has been obtained from, procured and extracted under pressure. Sanjeevani has asserted so. The petitioner has at the same time maintained a stoic silence as to the circumstances under which this letter could have been addressed by the daughter to the father. This letter being of the respondent-wife's authorship and as alleged, executed by her of her own volition is patently incongruent with the very large number, in fact a surfeit of letters which are on record as ones written by her to her father and speaking volumes about the ill-treatment meted out to her in the marital home. As late as February, 1988 she continues to complain to her father about such ill-treatment and therefore this writing dated 29-6-1987 can hardly carry any evidentiary value to advance the case of the petitioner either on the ground of cruelty or her sufferance of any mental disorder.

12. As we stated earlier, the requirements of section 13(1)(iii) of the Act are much more than a mere proof of the unsoundness of the mind or a mental disorder. We may also observe that the petitioner has been unsure of what exactly he wants to complain and allege against the respondent-wife with regard to this provision of law--whether it is a case of hysteria which he alleges against her or whether it is an acute unsoundness of mind or a mental disorder. For these words and expression have come to be used by the petitioner at different stages in the course of this proceeding. At the stage of this appeal, however, learned Counsel Shri Shah does not dispute that it is only on the basis of a case of mental disorder in respect of which a grievance is made and on the foundation of which relief is sought by the petitioner. However, the mental disorder has also to be of a specified category as required by section 13(1)(iii). The mental disorder has to be of such a kind and to such an extent as to make it reasonably impossible for the petitioner to continue to live with the respondent-wife. There

have to be basic pleading in this behalf according to us. The petition, as we find, does not allege that there is a mental disorder of such a kind and to such an extent as makes the continued cohabitation impossible any more. As has been pointed out by learned Counsel Shri Terdalkar for the appellant, the petitioner must in fact be found to have restricted his claim of a decree for divorce to the ground of cruelty u/s 13(1)(ib). In his very examination-in-chief, at the end of para 2 of his deposition, the petitioner states

"I have filed this petition for divorce on the ground that I suffered physical and mental cruelty from the respondent"

13. Let us consider what the petitioner's evidence in this behalf is. He states that during the attack of fits, the respondent-wife used to become unconscious, that she used to have this attack even four times in a day and used to remain unconscious for 2-3 hours during such attacks. On cross-examination however he admitted that this as the extent and degree of the mental disorder, namely, epilepsy, was not stated and alleged by him in his petition. He admits:

"I did not mention in my petition that the respondent used to be unconscious for 2/4 hours during the period of attack and that she received attacks of fits for four times a day."

He also admitted that the respondent's parents had not apprised him of the fact that the respondent was suffering from epileptic fits. We have already adverted to this contention of the petitioner but would also like to add that the possibility of the petitioner having known about this defect in the respondent before the marriage was performed is much more than his being ignorant of it. As we have observed, the letter dated 1-9-1986 from the respondent's father to the father of the petitioner provided the first indication of the petitioner being pre-informed. The second circumstance is that the respondent has a cousin by name Sagar and this Sagar has been married to the sister of the petitioner. That marriage had taken place long before the marriage between the parties herein and therefore it is more than presumable that the petitioner's sister was, through her husband Sagar, aware of this mental affliction of the respondent and had also conveyed the fact in that behalf to the petitioner-brother and the parents. We also think that the kind of the mental disorder and the extent of it being such as rendered it impossible to continue cohabitation is also not brought out in the medical evidence led by the petitioner. In the first instance, the petitioner has led the evidence of Dr. Divate (Exh. 32) and Dr. Purohit (Exh. 35) who were and had been already treating the respondent Sanjeevani before she was married to the petitioner. Both the witnesses stated that they started treating the respondent from October, 1986 but as is to be noted, it is in the letter dated 1-9-1986 of the respondent's father Motilal Wadnerkar, addressed to the petitioner's father Murlidhar-Wadnere and which was produced by the petitioner himself that a reference to the consultation and treatment by Dr. Dixit and Dr. Divate comes to be made. Though the letter reads that the treatment from these two doctors had been given to Sanjeevani much before her marriage. Now Dr. Divate states that

she was suffering from epilepsy and fits and he says that the respondent's disease of epilepsy was of a different type. What was the type of epilepsy i.e., what kind of epilepsy it was, is not stated by him. Nor does he however state that it was a case of epilepsy of that kind which would render cohabitation reasonably not possible. Further more, coming to the question of the extent of the said mental disorder, it is the petitioner's own evidence that the medical advice indicated a continuous and long use of treatment to the respondent. According to Dr. Divate, this disease may have been controlled by long treatment. More particularly he states "After my treatment the frequency of attacks were reduced and the severity was also reduced." Dr. Purohit described the case of the respondent as one of Idiopathic epilepsy. According to him, the same can be controlled by giving a long treatment. He further stated that the patient would be required to taken medicines throughout the life and finally he stated that he had referred Sanjeevani's case to Dr. Divate as an expert Neuro Physician and that the certificate (Exh. 36) issued by him was upon the finding given by Dr. Divate. The certificate (Exh. 36) is to the effect that Sanjeevani's is a case of Idiopathic epilepsy for which drug treatment is necessary throughout her life probably, as most of the cases of this disease are not curable but can only be controlled by drugs. It is, therefore, clear that this is not a case of uncontrollable disease. In the first instance it can be controlled by treatment whether of drugs or other medicines Dr. Divate's evidence also shows that the respondent-patient did respond to the treatment given by him and the frequency of the attack as also the severity thereof both came to be actually reduced. Consistently with this the petitioner also admitted that he had come to know that Sanjeevani, after she went back to the parental home, had attended a college at Panvel for a Diploma in Education, all the way from Kalwa, District Thane. He also admitted that at the date of his evidence in October, 1990, the respondent was, to his knowledge, doing some job also. All these facts, therefore, very clearly show that the respondent was not suffering from any such mental disorder which was of such a kind and was to such an extent as to make it reasonably not possible for the petitioner to continue to live with her. This is specifically apart from our observation earlier that actually the petitioner has not sought a decree for divorce on the ground u/s 13(1)(iii) but only u/s 13(1)(ib) of the Act.

14. Even so and unfortunately indeed, the learned Judge of the Trial Court came to grant a decree even u/s 13(1)(iii) of the Act when one was not so claimed and assuming that it was so claimed, when it was very clearly not established in that the kind of the mental disorder and the degree of it was not proved to be such as to render cohabitation any more possible. In that view of the matter we, therefore, find that the decree for divorce, as granted to the petitioner, cannot be sustained and has to be set aside.

15. The appeal is accordingly allowed. The judgment and decree passed by the Trial Court is hereby quashed and set aside. The petition shall stand dismissed with costs throughout.