WWW.LAWTREND.IN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FAMILY COURT APPEAL NO. 70 OF 2016

Shri Shankar S/o Haridasji Gajbhiye,
Aged about 37 Years, Occ.: Service,
R/o Pawanputra Nagar, Dighori,
Behind P.M.B.S. College, Nagpur : APPLICANT

...**VERSUS**...

Sau. Rina W/o Shankar Gajbhiye,
C/o Shri Pandhari Zambandhu,
Aged about 33 Years, Occ. Household,
R/o Bhankheda, Near Library & Ekbal
S.T.D. Kabrasthan Road, Nagpur – 440 017 : RESPONDENT

=-

Shri D.R.Khandare, Advocate for the applicant.
Shri N.M. Kolhe, Advocate for the respondent.

=-

CORAM : A.S.CHANDURKAR & PUSHPA V. GANEDIWALA, JJ.

DATE : 10th FEBRUARY, 2021.

JUDGMENT (Per : Pushpa V. Ganediwala, J.)

The challenge in this appeal is to the judgment and decree dated 21/01/2015 passed by the Judge, Family Court No.2, Nagpur in H.M.P. No. A-215/2012, whereby the petition of the husband, for decree of divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, came to be dismissed.

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

2. The marriage between the appellant/husband and the respondent/wife was solemnised on 15/06/2003 at Nagpur as per the Buddhist rites and rituals. Out of the said wedlock, the couple is blessed with one son and one daughter. The daughter is in the custody of appellant/husband, while the son is with the respondent/wife. The appellant/husband sought divorce on the ground of cruelty. The facts with regard to cruelty, as pleaded in his petition, are as under :

i. Respondent/wife was not doing any household work properly. She used to quarrel with the appellant/husband and his family members without any reason.

ii. She used to visit her parental home without his permission, and used to stay there for 15-30 days.

iii. She was addicted to chewing tobacco and therefore she had developed a cyst in her stomach. The appellant husband had to incur huge medical expenses for her treatment.

iv. She was insisting for separate residence from the family of the appellant/husband, and therefore, a house was purchased at Dighori, Nagpur. Despite this, the respondent/wife could not change her behavior and she continued to visit her parental house.

v. She used to do household work in midnight. She was not preparing tiffin box at proper time.

vi. Lastly, on 17/01/2012, she left the company of the appellant/husband, as she was not interested to cohabit with him.

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

3. Appellant/husband further states that in order to resume the cohabitation, on 13.02.2012, he issued a legal notice to the respondent/wife. However, she neither replied the said notice, nor showed her inclination to resume cohabitation, and hence he was constrained to file a divorce petition on the ground of cruelty.

4. The respondent/wife, in her written statement, denied all the adverse allegations of cruelty pleaded by the appellant/husband. In her specific pleading, the respondent/wife pleaded about some instances of mental and physical harassment meted out to her at the hands of the appellant/husband and her mother-in-law. She stated that her mother-in-law was quarreling with her, and was doubting her character. She also made allegations with regard to demand of two wheeler from her parents by the appellant/husband, and on that count, he gave beating to her. She also pleaded one incident of police complaint by her, and the settlement between the parties before the Mahila Cell at Panchpaoli Police Station, and that the appellant/husband had given assurance of good treatment to her.

5. The respondent/wife further alleged that in the year 2008, even though the appellant/husband was suffering from the disease H.I.V., she did not leave his company. However, as she was

WWW.LAWTREND.IN
::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

receiving continuous ill-treatment at the hands of her in-laws, she was constrained to leave the company of the appellant/husband.

6. The learned trial Court framed necessary issues and recorded oral and documentary evidence as adduced by the parties. The appellant/husband examined himself and two more witnesses i.e his mother and brother, while respondent/wife examined herself only.

7. After hearing both the parties, the learned trial Court dismissed the petition for divorce, as in the opinion of the trial Court, the appellant/husband could not prove the cruelty at the hands of the respondent/wife as contemplated in law. This judgment is impugned in this appeal.

8. We have heard Shri D.R.Khandare, learned counsel for the appellant/husband, and Shri N.M.Kolhe, learned counsel for the respondent-wife.

9. Shri Khandare, learned counsel for the appellant/husband, submitted that the learned Family Court has not considered the pleadings and the evidence on record, in its correct perspective. According to him, the Family Court has failed to consider the ill-treatment subjected to him by the respondent/wife, and the false allegations against the appellant/husband and his family members

WWW.LAWTREND.IN
::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

amounts to mental cruelty. He further submitted that the learned Family Court has ignored the bad habits of the respondent/wife, and also not considered that she was not doing household work properly, and used to quarrel with the appellant/husband and his family members. Lastly, he urged to allow the appeal in the interest of justice.

10. Per contra, Shri Kolhe, learned counsel for the respondent/wife, supported the judgment and decree of the trial Court, and submitted that the learned trial Court, while dismissing the petition, has properly appreciated the evidence on record and that the appellant/husband could not make out a case to interfere with the well reasoned judgment of the Court below.

11. We have considered the submissions put forth on either sides and perused the record.

12. The following point arose for consideration of this Court:

> *"Is the appellant/husband is entitled for grant of decree of divorce on the ground of cruelty ?".*

13. At the outset, the appellant husband has sought divorce on the ground of mental cruelty. Before adverting to examine the evidence on record to assess as to whether the appellant husband could make out a case of mental cruelty, it would be advantageous

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

to refer to one of the landmark judgments of the Hon'ble Apex Court in the case of ***Samar Ghosh vs. Jaya Ghosh*** reported in ***(2007) 4 SCC 511*** wherein their Lordships have enumerated some instances of mental cruelty. The relevant portion in para no. 101 in the said judgment is reproduced below:

> *"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior 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:*
>
> *(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
>
> *(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*
>
> *(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, discommode or render miserable life of the spouse.*
>
> *(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.*
>
> *(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

14. A careful perusal of the pleadings and the evidence in support as adduced by the appellant/husband, would at once reveal that the allegations with regard to cruelty as set out by the appellant/husband, are nothing but the normal wear and tear in married life. The couple lived together for around 9 years and the appellant husband could not bring on record specific instances of mental harassment to enable this Court to adjudicate the case of mental cruelty in favour of the appellant/husband. The allegations that she was not doing household work, quarreling with his family members without any reason, visiting her parental home without his permission, not preparing his tiffin etc., in the considered view of this Court, are not sufficient to form any opinion that the appellant/husband is undergoing acute mental pain, agony, suffering, disappointment and frustration and therefore it is not possible for him to live in the company of the respondent/wife. All the allegations levelled by the appellant/husband are general and omnibus in nature. The major allegation amongst them is with regard to her habit of chewing tobacco/kharra, which alone is not sufficient to grant a decree of divorce. On the contrary, the appellant/husband has admitted that in the year 2008, he was detected with HIV positive, and the respondent/wife stayed with the appellant/husband till 2010. The instances of physical and

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

mental harassment, as pleaded and proved by the respondent/wife, is on the better footing than the appellant/husband.

15. It is the specific allegations of appellant/husband that since the respondent/wife was having a habit of chewing tobacco, he was required to spend lot of money for her medical treatment. However, the learned trial Court has rightly observed that he failed to bring on record the medical papers and bills in support of this pleading.

16. The Division Bench of this Court in the case of ***Sanjana Sandip Pednekar Vrs. Sandip Sitaram Pednekar*** reported in ***2014(3) Mh.L.J 781***, with regard to cruelty, has observed that the married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. It is further observed that 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 no longer may amount to mental cruelty and 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.

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::

WWW.LAWTREND.IN

17. Apart from this, it is rightly held by the learned trial Court that the pleadings of the appellant/husband are not so grave and weighty so as to dissolve the marriage. The learned trial Court has rightly observed that the parties have two children, and if the marriage is dissolved, the children would suffer a great loss, and their welfare will affect, and in the best interest of daughter Bhumika and son Akash, the marital tie shall remain intact.

18. In the given facts, we are of the opinion that no case is made out by the appellant/husband to disturb the well reasoned findings of the learned trial Court. The appeal thus being devoid of merits deserves to be dismissed and is accordingly dismissed. The parties to bear their own costs.

JUDGE **JUDGE**

sknair

WWW.LAWTREND.IN

::: Uploaded on - 12/02/2021 ::: Downloaded on - 18/02/2021 18:08:56 :::