Uday v. Rupali , 2023 PLRonline 0133, (2023-4)212 PLR 778 (Bom.) (SN)

(ID#444601)

HIGH COURT OF BOMBAY

Before: Justice R.D. Dhanuka and Justice M.M. Sathaye.

UDAY – Appellant,

Versus

RUPALI – Respondent.

Family Court Appeal No. 36 of 2021,

(i) Streedhan – Whether the wife receives gold ornaments from her parents or her in-laws, the gold ornaments received in marriage by wife becomes her streedhan – Husband has mortgaged the wife's streedhan (gold ornaments) for raising loans multiple times – It is only just and proper that the Trial Court has directed the Appellant/Husband to return the streedhan to the Respondent/wife after making necessary repayment to the bank. [Para 34]

(ii) Hindu Marriage Act, 1955 S. 13(1)(ia) – Cruelty – A partner in matrimonial relationship who goes to the extent of filing police complaints against mother (with the Anti Corruption Bureau), friend, well wishers, investigating officer who was investigating the case, Prosecutor or Advocate of his own wife, is a kind of person who is difficult to deal with and certainly causing mental harassment – Allegations and accusations are leveled by a party (husband in this case) against the spouse (wife) in newspaper, itself has an effect of lowering her reputation in the eyes of her peers and colleagues – Overall conduct of the husband, amounts to mental cruelty – Find no fault with the decree of divorce granted on the ground of cruelty. *Raj Talreja v. Kavita Talreja* (2017) 14 SCC 194 and *K. Shrinivas Rao v. D.A. Deepa* (2013) 5 SCC 226, relied. [Para 31, 32, 33]

(iii) Hindu Marriage Act, 1955 S. 13(1)(ia) – Cruelty – Cruelty can be held as proved depending on the conduct complained of, which if found grave and weighty sufficient to come to conclusion that the spouse cannot be reasonably expected to live with the partner – Conduct complained of must be of such type and degree as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it is impossible for the parties to live together without mental agony, distress and torture. Physical violence is not the absolute essentiality to constitute cruelty, but a consistent course of conduct inflicting mental agony is sufficient to constitute cruelty – There must exist a situation which makes it impossible for the parties to continue with marital relationship. [Para 25]

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M.M. Sathaye, J. – *(24.03.2023)* – This Appeal is filed by Appellant/husband challenging the Judgment and Decree dated 07th June, 2021 passed by Family Court No. 7, Mumbai in Petition No. A-2223 of 2012 filed by Respondent/wife in the Family Court at Mumbai, thereby dissolving marriage between the parties u/s. 13(1)(ia) of the Hindu Marriage Act, 1955 and further directing the husband to return streedhan of wife, which is mortgaged with the DNS bank, Gangapur Road, Nasik, within specific time.

2. The Appellant/husband also filed Family Court Appeal No. 68 of 2021, challenging Judgment and Decree dated 07.06.2021 passed by Family Court No. 7 Mumbai dismissing his Petition No. A-3047 of 2016 for restitution of conjugal rights under Section 9 the Hindu Marriage Act, 1955. It was heard by this Court on 13.07.2022, when a statement was made on behalf of the present Appellant that he does not want to seek restitution of conjugal rights and therefore, Family Court Appeal No. 68 of 2021 was dismissed.

3. The Appellant/Husband had filed I.A. No. 1878 of 2020 and I.A. No. 20330 of 2022, praying for permission to lead additional evidence and remand of the matter to the Trial Court. By Order dated 13.01.2023, this Court, after hearing both sides, directed that such documents which are produced along with Applications which were forming part of the Trial Court record, prior to impugned Judgment and Decree dated 07.06.2021, will be considered, subject to their evidentiary value and rest of the documents, subsequent to 07.06.2021, will not be considered. With this Order in force we have proceeded to hear the Appeal finally with consent of parties, since both sides have produced compilation of Trial Court record.

4. It is important to note that even when the Appellant/Husband does not want restitution of conjugal rights, he has chosen to file and prosecute this Appeal challenging the Decree of Divorce.

CASE:

5. Brief facts of the case, necessary for disposal of this Appeal are as below.

6. On 26.09.2012, the Respondent/Wife filed a petition for dissolution of marriage on the ground of cruelty. It is the contention of Respondent/wife that on 12th December 2008, marriage took place between the parties at Nasik as per Hindu rites and rituals. At the time of marriage, the Appellant/husband was in service at YES Bank. The wife's parents gave 15 Tolas of gold ornaments and bared 75% of marriage expenses. After marriage, the Respondent-wife started cohabitation with the Appellant-husband at the matrimonial house, located at Sonali Apartment, Vise Mala, College Road, at Nashik. It is contended that since beginning, the behaviour of the Appellant-husband was not proper and he always showed disliking for the wife. The husband used to return late to home and had a habit of drinking liquor. The husband was careless, would drink and abuse her daily.

7. It is contended that the Appellant/husband used to suspect the character of the wife and often quarrel with her. It is contended that the Appellant/husband was very rude, used filthy

language and was not interested in keeping any relations with her. It is contended that after drinking alcohol the Husband used to be wild and aggressive and one day broke a mirror in the house in a feat of rage. This really frightened the Wife. The wife waited in the hope that the Appellant's behaviour will improve, but in vain. Since the Respondent/wife had already appeared for exam and cleared physical tests, she then joined police academy for training.

8. On 14th April, 2011, the husband, under the influence of liquor visited the academy where the wife was taking training and created scene using filthy language. It is contended that after completing training, Respondent/wife assumed her duties at Borivali Police Station, Mumbai. After coming to Mumbai, the Appellant started taking more doubts on wife's character and continued with his harassing behaviour. The Appellant mortgaged the Respondent's gold ornaments received from her parents (streedhan) and borrowed loans. The Husband used to demand money from the wife. She contended that due to his harassment, she had to lodge a police complaint under Section 498-A of the IPC. It is further contended that the husband used to threaten her as well as her mother, who also had to lodge a complaint against him. In the circumstances, it had become impossible to reside with the husband and therefore, the Petition for divorce is filed.

9. Admittedly, there are no children born out of the said wedlock. The Appellant-husband filed a Written Statement and an additional Written Statement opposing the divorce. It is the case of the husband that only due to interference of his mother-in-law, his wife had filed false complaint against him. He contended that wife has not come to Court with a clean hands and has created story of cruelty only with an intention to get the Divorce. He contended that the wife has mislead the Court. Wife herself had filed false complaint against him and his parents, in which his parents are already discharged. He contended that till the time of joining police service, they were living happy married life. However, after attending police force, the wife has changed her behavior.

10. It is contended that by the Appellant that wife has in fact secured the job due to encouragement and support given by him. He contended that neither ground of cruelty nor specific incidences of cruelty are actually made out. He contended that he had a job in private sector working with Bank and he had targets given by the company and as such he used to be late in returning from office. He contended that he is a social and occasional drinker and the allegations about cruelty are false. He contended that his wife and her parents are pressuring him to give divorce only with a view to harass him. The wife and her mother had filed police cases against him. It is contended that his mother-in-law is also in the police service as clerk and his wife and her mother have misused their posts in police services and had filed false criminal complaints against him. On these grounds, the Appellant/husband resisted the claim of divorce.

11. The wife's petition for divorce and the husband's petition for restitution of conjugal rights, were heard together and common evidence was lead in the petition for divorce. However, since the Appeal of the husband in respect of dismissal of his petition for restitution of conjugal rights is already dismissed, there is no need to go into the rival claims of the parties, so far as the case of restitution of conjugal rights is concerned.

EVIDENCE:

12. The Respondent/wife examined herself in support of her case, who was cross-examined. The mother of Respondent/wife Smt. Anjali Jayprakash Targe was examined in support of her daughter, who was also cross examined. The Appellant/husband examined himself in support of his case, who was cross-examined. Parties have placed on record voluminous documentary evidence in the form of exhibited documents, which are specifically described in paragraph 17, 18 and 23 of the impugned Judgment. Relevant documents will be referred to at appropriate places, in the reasons that will follow.

SUBMISSIONS:

13. Learned counsel for the Appellant/husband has advanced various arguments which are summarised below. It is argued that the Trial Court has traveled beyond pleadings. It is further argued that cardinal principles of Evidence Act are not followed. It is argued that Appellant/husband has not been convicted in any of the criminal cases filed by Respondent/wife, her relatives or well wishers. It is argued that the Appellant is an MBA pass-out and his career has been destroyed because of action of Respondent/wife. It is further argued that the Family Court closed the evidence of husband when he was in a Jail. It is argued that Trial Court has considered substantial evidence adduced by the Respondent/wife, which is beyond the scope of pleading.

14. It is contended that since the Respondent/wife and her mother are serving with police department, they were in a position to lodge false complaints. It is contended that the Trial Court has not permitted the Appellant's Advocate to submit arguments. It is also argued that the Trial Court has wrongly relied upon the SMS sent to the mother of the Respondent/wife without following provisions of the Indian Evidence Act, 1872. It is contended on behalf of the husband that 15 tolas of gold ornaments are actually given to the wife by the husband's family and not her family and therefore, there is no question of returning gold ornaments.

15. It is contended that the gold ornaments which are mortgaged by the Appellant are his own family's ornaments. It is contended that the Trial Court was not legally justified in relying upon the SMS produced by Respondent/wife at Exhibit 66, without considering the provisions of Section 65-B of the Indian Evidence Act, 1872 in proper perspective manner. It is argued that the Appellant/husband was harassed by the police machinery, against which he approached the State Human Right Commission. However, there also the police machinery managed the Human Right Commission and secured an order in their favour. It is contended that not only wife but her mother as well as her Advocates also filed complaints against the Appellant taking advantage of the Respondent's police services.

16. Per contra, the learned Counsel for the Respondent/wife has supported the impugned Judgment and Decree granting Divorce. It is contended that the evidence on record and documents produced by both the sides are properly considered by the Family Court. It is contended that the Evidence was considered in totality and clear case of cruelty is made out. The behavior of the husband, in the facts and circumstances of this case, is nothing

short of mental torture and harassment which amounted to cruelty. It is further argued that the attitude of the Appellant/husband can be easily understood, in as much as he has clearly stated before this Court in the other Appeal that he does not want to cohabit with Respondent/wife, however, he is opposing the decree of Divorce, which means that he only wants to keep harassing the wife and not let her live peaceful life.

17. It is contended that the parties have not cohabited with each other since April 2011 and the marriage has been broken irretrievably. It is contended that there are no chances of any reconciliation and after considering all these aspects, the learned Judge of the Family Court has rightly granted decree of Divorce. It is contended that the argument of husband giving gold ornaments to Respondent/wife, is ridiculous in as much as it is a matter of common knowledge that when a daughter is married, her parents give gold ornaments as per their financial capacity and the same is always her streedhan. It is contended that the Appellant/husband has not only harassed the Respondent/wife mentally, but has also taken away her streedhan and has mortgaged it to raise loans. On these grounds, the Respondent/wife has opposed the Appeal.

18. On considering rival submissions, following points arise for our consideration:

REASONS & CONCLUSIONS

19. We have carefully considered the rival submissions and have perused the record.

Point Nos. 1 & 2:

20. Learned counsel for the Appellant has advanced some really spacious arguments, such as Appellant’s advocate was not permitted to argue and the evidence was recorded when Appellant was in jail. At the outset, it is to be noted that record shows that an Order was passed by Trial Court discarding the affidavit of evidence filed by the Husband, on the ground that the husband had failed to remain present for cross examination. This order was challenged by the husband in this Court by filing Writ Petition No. 1460 of 2020. After hearing both sides, by Order dated 12.02.2020, the evidence of the husband was permitted by this Court. Thereafter the evidence of the Appellant/husband was de-expunged and Appellant Husband entered the witness box and was cross examined. Perusal of record further reveals that both wife and her mother has been extensively cross examined by the Appellant’s Advocate Roshani Tandale in the Trial Court. It is material to note that Learned Trial Judge has not only considered the case in detail but both sides have filed written arguments, including Appellant’s notes of arguments at Exh. 318, which are on record. Therefore, there is no merit in the argument of the Appellant that he was not permitted to make his arguments. This Court is satisfied that the Appellant was given sufficient opportunity to defend the case.

21. After going through the pleadings of the Respondent wife, especially conjoint reading of para 4 to 18 of the Petition, case of cruelty has been clearly pleaded in concluding para 19 and the Learned Trial Judge has not considered anything beyond the pleadings.

Point Nos. 4 to 7:

22. These points are basically related to issues arising between the parties. We have perused the impugned Judgment, by which decree for Divorce is granted. It is admitted by the Appellant Husband in his cross examination that mother of the Respondent/wife has gifted him 1 gold chain and finger ring at the time of marriage and has also given 1 mangalsutra, 1 necklace with earrings, 2 bangles and 1 chain to Rupali i.e. Respondent/wife. In view of this admission, there is no merit in the argument of the Appellant/husband that this streedhan claimed by Respondent/wife is given by parents of the husband.

23. About the incident on 07.09.2009, the Appellant/husband has admitted in cross-examination that Respondent/wife had admitted him in the hospital on injury to his hand and he has not lodged any report about meeting with so called accident, as claimed by him for the insurance benefit and the call records produced at Exh. 262 showing that wife tried to contact him for a long time, are true and correct. The Appellant/husband has also admitted in clear terms that the gold ornaments of the Respondent/wife are in the bank for raising loans, which are still lying with the Bank as security.

24. It is seen from the record of the trial court that the Appellant/husband had filed criminal complaints not only against the mother of Respondent/wife but also against friend and lawyer of the Respondent/wife including the present lawyer of the Respondent, who is representing the wife in the Appeal before us. It is also seen that the Respondent/husband has published news article in Daily Newspaper, “Divya Marathi” trying to defame Appellant/wife.

25. There cannot be uniform standard that can be applied to each and every case, but each case will have to be decided on its own facts. Cruelty can be held as proved depending on the conduct complained of, which if found grave and weighty sufficient to come to conclusion that the spouse cannot be reasonably expected to live with the partner. Conduct complained of must be of such type and degree as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it is impossible for the parties to live together without mental agony, distress and torture. Physical violence is not the absolute essentiality to constitute cruelty, but a consistent course of conduct inflicting mental agony is sufficient to constitute cruelty. There must exist a situation which makes it impossible for the parties to continue with marital relationship.

26. The two incidences specifically averred by the parties against each other are those of 07.09.2009 when pursuant to a quarrel between the parties, right forearm of the Appellant/husband got injured and he was required to be taken to hospital. The second incidence is of 13.04.2011 when the Appellant/husband had visited police academy where Respondent/wife was taking training, where according to the wife, the husband, under the influence of liquor, created a scene using filthy language. The husband’s version of this incidence is that he had gone there to meet his wife with food and gifts. The document at Exhibit 264 is a written apology executed by Appellant/husband where he apologized promising that he will not do so again.

27. We find it difficult to believe that the Appellant husband would execute such document

when he was not at all at fault and had gone to meet his wife only to handover gifts and food. So also about the incidence of 07.09.2009, the Appellant/husband has stated in Written Statement that after returning from office, the husband asked the wife why she had called his boss and in the quarrel that ensued, the wife pushed him. However, in the statement given before the Mahila Seva Kendra by the Appellant/husband, he has stated that there is a simple dispute between him and his wife, due to which she got annoyed and hit his hand on the cupboard and it caused injury to his forearm.

28. The Appellant/husband has denied in his evidence that the wife called him several times. Despite this denial, admitted call records at Exhibit 262 shows that wife in fact had called the husband till 10.08 p.m. when he was not at home. In respect of the same incidence, one more material fact has come before the Court that Appellant/husband has claimed medical bills of his short hospitalization after the incidence, from Oriental Insurance Company. In document at Exh. 261, he submitted that he had met with an accident on two wheeler. The aforesaid facts clearly shows that the Appellant has changed his version continuously depending on the forum before which he is giving statements. In that view of the matter, Husband's evidence is not believable.

29. It has further come on record that the Appellant/husband used to call his mother-in-law using his employer's office phone i.e. YES Bank. Due to which, the Respondent's mother has lodged a complaint with the Authority of YES Bank, and the Bank had issued memo to the Appellant/husband. This memo has come on record at Exhibit 267.

30. In this case, the Appellant/husband has lodged police complaints against not only Respondent's mother, but also against investigating officer who was investigating the case, as also against Assistant Public Prosecutor, who was incidentally relative of Respondent/wife and also against the Advocate, who was representing the Respondent/wife. The complaint filed against Respondent's mother, by the Appellant/husband was with Anti Corruption Bureau. The documentary evidence is full of police papers of cross complaints.

31. In our considered view, a partner in matrimonial relationship who goes to the extent of filing police complaints against mother, friend, well wishers, Prosecutor or Advocate of his own wife, is a kind of person who is difficult to deal with and certainly causing mental harassment.

32. Original copy of newspaper Dainik Divya Marathi dated 13.07.2014 is at Exh. 279, in which alleged defamatory news about Respondent/Wife was published at the instance of Appellant/husband. Whether the actual news is defamatory or not is irrelevant for the present purpose. The fact that allegations and accusations are leveled by a party (husband in this case) against the spouse (wife) in newspaper, itself has an effect of lowering her reputation in the eyes of her peers and colleagues. Embarrassment is a bitter bonus ! Learned counsel for the Respondent/wife has submitted that because of news published by the Appellant/husband, the reputation of the Respondent/wife got damaged and she was embarrassed before her peers, colleagues and co-workers. Judgments of Hon'ble Supreme Court in the matter of Raj Talreja vs. Kavita Talreja MANU/SC/0493/2017 : (2017) 14 SCC

194 and K. Shrinivas Rao vs. D.A. Deepa MANU/SC/0180/2013 : (2013) 5 SCC 226, both arising out of matrimonial disputes, are relied upon in support of this case. We fully agree with the submission. The proposition of law laid down in the said cases apply to the fact of this case.

33. In the overall facts and circumstances of this case, we find that owing to the bitterness that parties have already gathered for each other, it is not possible to reconcile the situation and the bond has been broken irretrievably. The overall conduct of the Appellant/husband, as narrated above, in our considered view, amounts to mental cruelty. Therefore, we find no fault with the decree of divorce granted by the Trial Court to the Respondent/Wife on the ground of cruelty.

34. So far as the aspect of streedhan is concerned, the learned Trial Judge has rightly held that whether the wife receives gold ornaments from her parents or her in-laws, the gold ornaments received in marriage by wife becomes her streedhan. It has come on record that the Appellant/husband has mortgaged the wife's streedhan (gold ornaments) raising loans multiple times and therefore, it is only just and proper that the Trial Court has directed the Appellant/Husband to return the streedhan to the Respondent/wife after making necessary repayment to DNS Bank, Gangapur Road, Nasik. We find no fault in the said direction. Impugned Judgment and Decree needs no interference.

Point No. 3:

35. So far as the argument of the Appellant that 'the printouts of alleged several SMS sent by his client to the mother of the wife (Exh. 65 & 66) could not have been considered by the Trial Judge without compliance with section 65B of the Evidence Act' is concerned, in our view, even if the said SMS relied upon by the Trial Judge (as appearing in para 30 of the Judgment) is ignored, still, the other material on record as explained herein above, is sufficient to come to the conclusion that mental cruelty is meted out to Respondent/wife at the hands of the Appellant/husband. In that view of the matter, we have no hesitation but to confirm the decree, as passed by the Trial Court.

CASE LAW RELIED:

36. Learned Counsel for the Appellant has relied upon following Judgments in support of his case.

(i) National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad (2011) 12 SCC 695

(ii) A. Shanmugam vs. Ariya Kshatriya Rajakula: (2012) 6 SCC 430

(iii) Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473

37. So far as the case law of National Textile vs. Naresh Kumar (supra) is concerned, it was a matter arising out of Bombay Rent Act. Case law in the matter of A. Shanmugam vs. Arya (supra) was a matter arising out of Specific Relief Act. Both these case laws are relied upon in support of the proposition that 'the Court cannot travel beyond the pleadings'. Since, this

Court has found on facts, that there are sufficient pleadings about cruelty and the Learned Trial Judge has not considered anything beyond the pleadings, the aforesaid case laws do not further the case of the Appellant.

38. So far as the case law of Anvar P.V. vs. P.K. Basheer (supra) is concerned, it was a matter arising out of Representation of Peoples Act and in the context of dispute arising out of election, the provisions of Section 65-B of the Evidence Act was under consideration. We have already held that there is sufficient other material on record to prove cruelty, even without considering the reliance on the so called several SMS sent by the Appellant/husband to the Respondent's mother. In that view of the matter, the said case law also does not further the case of the Appellant. No other arguments are advanced.

39. In the result of aforesaid facts and circumstances, we pass the following order

ORDER

1. Family Court Appeal No. 36 of 2021 filed by Husband is dismissed. The impugned Judgment and Decree dissolving marriage, is confirmed. Parties to bear their own costs.

2. Since the Appeal itself is heard and disposed of, I.A. No. 10384 of 2022 (filed by wife praying for hearing of the Appeal finally at admission stage) and I.A. No. 2027 of 2021 (filed by Husband for interim stay) do not survive and the same are disposed of.