SUPREME COURT OF INDIA

Sujata Uday Patil

Vs.

Uday Madhukar Patil

C.A.No.5779 of 2006

(G.P. Mathur and A.K. Mathur JJ.)

13.12.2006

JUDGMENT:

G.P. MATHUR, J.

1. Leave granted.

2. These appeals, by the special leave, have been preferred against the judgment and decree dated 9.3.2004 of Bombay High Court (Aurangabad Bench) by which the second appeals preferred by the appellant herein were dismissed and the decree of divorce passed by the learned District Judge, Jalgaon, on 12.11.2002 was affirmed.

3. The marriage of the appellant and the respondent was performed on 1.3.1994 and a son Charul @ Chaitanya was born out of the wedlock on 6.2.1995. In the year 1999 the respondent (husband) filed a petition for a decree of divorce against the appellant (wife) under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 on the ground that the appellant had treated him with cruelty and had also deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition. The petition was contested by the appellant on various grounds. The Joint Civil Judge (Senior Division) passed a decree for judicial separation on 10.12.2001. The appellant and respondent both preferred appeals against the said decree and the learned District Judge, Jalgaon, by the judgment and decree dated 12.11.2002, dismissed the appeal filed by the appellant and allowed the appeal filed by the respondent and dissolved the marriage of the parties by a decree of divorce. He further directed that the respondent shall pay permanent alimony @ Rs.700/- per month to the appellant and @ Rs.500/- per month to the son Charul @ Chaitanya. The second appeals preferred by the appellant against the decree passed by the learned District Judge were dismissed by the High Court on 9.3.2004.

4. The trial court held that the appellant behaved in a cruel manner and did not cohabit with the husband; that the husband failed to prove that the wife deserted him without any reasonable excuse and that the appellant was ill-treated by the respondent and his parents. On these findings the trial court came to a conclusion that the respondent was not entitled for a decree of divorce but had made out a case for judicial separation and a decree was accordingly passed. The learned District Judge, after a detailed discussion of oral and documentary evidence on record, held that the wife had

treated the husband with cruelty; that she had deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition and that there was no legal impediment in granting the decree for divorce. On these findings decree of divorce was granted.

5. The High Court in second appeal, after a careful consideration of the submissions made by the learned counsel for the parties and the material available on record, has recorded the following findings: - "After giving my thoughtful consideration the submissions made by the counsel for the parties and also having gone through the evidence recorded at the trial and findings recorded by the courts below and reasons assigned therefore, I am of the opinion that it was a case where the wife was guilty of deserting the husband without sufficient cause and the desertion was certainly with the intention to put an end to the matrimonial relations. The trial court as well as appellate court have rightly found that the wife was guilty of conduct amounting to cruelty. Here as rightly submitted by Mr. Dixit learned counsel for the respondent, the act of cruelty was pertinent and grave on account of police complaints lodged against the appellant and his father and that too during the period when the marriage of respondents brother was settled. It was in that background that the wife voluntarily left the matrimonial home and desertion on her part stood confirmed by the fact that she lived separately for over two years and did not make any efforts to come back to matrimonial home for cohabitation. The wife having failed to establish the alleged acts of cruelty on the part of the husband, it is needless to say that her leaving the matrimonial home and cause separation was without sufficient cause. ....
As against that, one cannot lose sight of the fact that wife, even after having lodged complaint against the husband in police station, left the matrimonial home happily without there being any remorse or repentance and that too carrying all her belongings with her and admittedly she did not return though a period of two years lapsed and the husband issued notice seeking divorce. Therefore, the appellate court was right in observing in his judgment that there was no condonation of cruelty on the part of the husband and that there was no reconciliation between the parties and that the husband is not taking undue advantage of his own wrong."

Holding as above the High Court dismissed the second appeals filed by the appellant and affirmed the decree of divorce passed by the learned District Judge.

6. Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') lays down the grounds on which a marriage may be dissolved by a decree of divorce. This sub-section has several clauses and under clause (i-a) cruelty and under clause (i-b) desertion for a continuous period of not less than two years immediately preceding the presentation of the petition, are grounds for granting a decree of divorce. The following observation made by this Court in Reynolds Rajamani vs. Union of India AIR 1982 SC 1261, which is a case under Section 10 of the Divorce Act, throw considerable light on the approach which should be adopted in dealing with a provision relating to divorce: - "The history of all matrimonial legislation will show that at the outset, conservative attitude influenced the grounds on which separation or divorce could be granted. Over the decades a more liberal attitude has been adopted, fostered by a recognition of the need for individual happiness of the adult parties directly involved. But although the grounds for divorce have been liberalized, they nevertheless continue to form an exception to the general principles favouring the continuation of the marital tie. In our opinion, when a legislative provision specifies the grounds on which divorce may be granted they constitute the only conditions on which the Court has jurisdiction to grant divorce. If grounds need to be added to those already specifically set forth in the legislation, that is the business of the Legislature and not of the Courts. It is another

matter that in construing the language in which the grounds are incorporated the courts should give a liberal construction to it. Indeed we think that the courts must give the fullest amplitude of meaning to such a provision. But, it must be meaning which the language of the section is capable of holding."

Therefore, a liberal approach has to be adopted in dealing with various clauses of sub-section (1) of Section 13 of the Act and full meaning should be given to the words used by the legislature.

7. The word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.

8. We have carefully considered the findings recorded by the learned District Judge and also by the High Court and in our opinion they are fully born out from the material on record and cannot be faulted with on any ground. Therefore, the decree for divorce has to be maintained.

9. There is another aspect of the case which has a serious bearing on the outcome of the litigation. It is averred in the counter affidavit filed by the respondent that after the decree of divorce had been granted by the learned District Judge on 12.11.2002 he married one Manisha Patil on 11.1.2003 and a daughter Sejal Uday Patil was born out of the said wedlock. In the rejoinder affidavit filed by the appellant it is averred that immediately after the judgment was delivered by the learned District Judge, an application for certified copy of the judgment was given and thereafter a notice by registered post was sent to the respondent on 11.1.2003 that she was taking steps to file a second appeal in the High Court and this notice was served upon the respondent on 14.1.2003. The second appeals were filed in the High Court on 21.1.2003 and it was thereafter that the respondent married Manish Patil on 25.1.2003. It may be mentioned here that at the relevant time Section 28 (4) of the Hindu Marriage Act provided a limitation of 30 days for filing an appeal against all decrees made by the court in any proceeding under the Act. This provision has been amended by Marriage Laws (Amendment) Act, 2003 on 23.12.2003 and now the period of limitation for filing an appeal is 90 days. Therefore, when the respondent entered into wedlock with Manisha Patil, the period of limitation for filing the appeal against the decree of divorce granted by the learned District Judge had expired and no order staying the decree had been obtained by the appellant. We may clarify here that it should not be understood that this Court is expressing any opinion regarding the validity or otherwise of the second appeals which were filed by the appellant before the High Court. However, the fact remains that the respondent has married again and he has a child from the second wedlock.

10. Matrimonial disputes have to be decided by courts in a pragmatic manner keeping in view the ground realities. For this purpose a host of factors have to be taken into consideration and the most important being whether the marriage can be saved and the husband and wife can live together happily and maintain a proper atmosphere at home for the upbringing of their offsprings. This the court has to decide in the fact and circumstances of each case and it is not possible to lay down any fixed standards or even guidelines.

11. In the case in hand it is an established fact that the respondent has married again and has a child from the second wife. In such circumstances even if the decree for divorce granted by the learned District Judge which has been affirmed by the High Court is set aside, as prayed by the appellant herein, no useful purpose would be served. The appellant cannot possibly live with the husband in such a scenario nor it will be conducive to the upbringing of her son Charul @ Chaitanya. The learned District Judge has mentioned in the judgment that he made serious efforts for reconciliation and talked to the parties in arriving at an amicable solution but the respondent was reluctant to take back the appellant on account of strained relationship and at the same time the appellant, who refused to give divorce to the respondent, was not firm as to whether their union would bring about happy reunion. He has further mentioned that he suggested to the parties to take some unanimous decision keeping in mind the future of their son Charul @ Chaitanya but they failed to come to any such decision. The case was adjourned several times in this Court also to enable the parties to arrive at a settlement but it did not bring about any fruitful result.

12. The appellant had filed an application in this Court claiming Rs.6,000/- towards maintenance. A reply has been filed by the respondent and paragraph 4 thereof reads as under: - "4. It is submitted that the petitioner in her application has pointed out that the respondent is holding

agricultural land gut No. 34 admeasuring 24 are, gut No. 380/2 admeasuring 96 are and a residential house admeasuring 45/12.5 feet situated at Shevge, Tehsil- Pachora, District Jalgaon. It is submitted that the said properties are joint family properties and same are not the independent properties of the respondent. However, with consent of father and brother towards full and final settlement I am ready to give all the three aforesaid properties to the petitioner and son Charul in lieu of the maintenance subject to withdrawal of all the proceedings and orders obtained by the petitioner against respondent in various courts below."

In para 5 of the reply it is averred that the learned District Judge has directed the respondent to pay Rs.700/- per month to the appellant and Rs.500/- per month to the son Charul @ Chaitanya as maintenance as per the provisions contained in Section 25 of the Act. In special civil suit No. 88 of 2000 filed under the Hindu Adoption and Maintenance Act the trial court has directed the respondent to pay Rs.1,000/- per month as maintenance for son Charul @ Chaitanya in addition to the aforesaid amount. Apart from above an ex-parte order has also been passed in proceedings under Section 125 of Criminal Procedure Code wherein the respondent had been directed to pay Rs.1,000/- per month to the appellant and Rs.800/- per month to the son Charul @ Chaitanya. It is also averred that a criminal case has also been instituted by the appellant against the respondent under Section 494 of Indian Penal Code.

13. We are of the opinion that the offer made by the respondent regarding giving of some immovable properties to the appellant and her son Charul @ Chaitanya in lieu of maintenance may not be workable and may create complications, specially in view of the fact that the respondent has asserted the said properties to be the joint family properties and there is no such enforceable

document on record by which the consent of the father and other brothers may be clearly and unequivocally accepted. We, therefore, consider it proper that the respondent should pay a lump sum amount to the appellant, interest income whereof may be enough for her maintenance and also that of her son Charul @ Chaitanya. It has come on record that the appellant is living with her father and she is working as a teacher in some school where she is getting Rs.2,000/- per month. The respondent is working as a Junior Engineer in Municipal Corporation of the city of Jalgaon. Though he has produced a salary certificate wherein his basic salary is shown to be Rs.2,360/- per month and gross salary as Rs.8,423/- but the same has been seriously challenged by the appellant on the ground that the respondent has not opted for the grade which is payable in accordance with the recommendations of Fifth Pay Commission and is deliberately drawing salary in a lower grade. However, we do not want to enter into this controversy. In our opinion, payment of a lump sum amount of rupees eight lakhs by the respondent to the appellant would meet the ends of justice.

14. In view of the discussion made above the appeals are disposed of in following terms: -

(i) The decree of divorce passed by the learned District Judge on 12.11.2002 is affirmed.

(ii) The respondent is directed to pay a lump sum amount of rupees eight lakhs to the appellant as maintenance for herself and her son Charul @ Chaitanya. The respondent is granted three months time to pay rupees four lakhs and the balance in the next three months and thus the entire amount should be paid within six months.

(iii) The proceedings initiated by the appellant or by her son against the respondent under (a) The Hindu Adoptions and Maintenance Act, (b) Section 125 of Code of Criminal Procedure and (c) criminal case under Section 494 IPC shall remain suspended for a period of three months and if the amount is paid as indicated earlier, for a further period of three months.

(iv) After the entire amount of rupees eight lakhs has been paid by the respondent to the appellant, the proceedings of the cases instituted under Section 125 Cr.P.C. and Section 494 IPC shall stand quashed and the proceedings under Section 18 of the Hindu Adoptions and Maintenance Act shall be abated. (v) If the sum of rupees eight lakhs is not paid by the respondent to the appellant as indicated above, it will be open to the appellant to execute the decree and recover the said amount from the respondent in accordance with law.