

SUPREME COURT OF INDIA

Ramchander

Vs.

Ananta

C.A.No.3483 of 2011

(Vikramajit Sen and C. Nagappan JJ.)

24.02.2015

JUDGMENT

C. NAGAPPAN, J.

1. The appellant-husband in this civil appeal has assailed the judgment dated 24.11.2008 passed by the High Court of Calcutta Circuit Bench at Port Blair in F.A. No.003 of 2008, wherein the Division Bench of the High Court set aside the decree of divorce dated 14.7.2008 granted by the District Judge, A & N Islands, to the appellant herein, in Matrimonial Suit No.27 of 2005.

2. Shorn of unnecessary details the facts in brief which give rise to the appeal herein are as follows: The appellant-husband is an engineer and the respondent-wife is a draftsman, both working in the office of Andaman Public Works Department and their marriage took place on 2nd March 1994 and a son was born in the wedlock on 24.1.1996. It is an admitted fact that the respondent-wife had filed a complaint under Section 498-A IPC against the husband and it was subsequently withdrawn by her. It is also admitted fact that during their cohabitation the couple had changed their residence thrice. In 1997, the respondent-wife left the matrimonial home and started to live with her parents and upon legal notice sent by her husband she returned back to the matrimonial home. Then again in March 2003, the wife left the matrimonial home to live with her parents and has not come back since.

3. The appellant-husband filed a suit for divorce on the ground of cruelty and desertion under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955. He has alleged that immediately after marriage the relationship between the spouses was not cordial and the wife did not want to live with husband's family and wanted to live separately. She insulted and abused the husband calling him 'dhobi' and the minor child as 'dhobi's son' and because of her rude behaviour with

landlord and neighbours they had to change the residence thrice. The wife refused to perform any household work and did not take proper care of their minor child and the husband had to bring food from outside and ultimately in the month of March 2003, she left the matrimonial home and did not return, leading to the filing of the divorce petition by the husband.

4. The respondent-wife contested the suit by filing her written statement alleging that since her father was working as 'chowkidar', her husband's family was ill-disposed towards her and they used to taunt her for not bringing enough dowry. She has specifically denied the allegations in the plaint and asserted that she had never behaved improperly and she took good care of her child. She also leveled an allegation of extra marital affair against her husband with a woman who was working under him. According to her whenever she confronted him in this respect the husband would shout and abuse her.

5. The appellant-husband besides examining himself as PW1, examined the minor child as PW2 and the servant as PW3 on his side. The respondent-wife examined herself and her mother as DW1 and DW5 respectively and further examined three persons working in municipal council as DWs 2 to 4 on her side.

6. The trial court on a consideration of oral and documentary evidence held that the plaintiff-husband proved the ground of cruelty and desertion and granted the decree of divorce as prayed for. Challenging the same the defendant-wife preferred the appeal and the High Court on an elaborate consideration held that the trial court was not justified in decreeing the suit by dissolving the marriage between the spouses and allowed the appeal. Aggrieved by the same the husband has preferred the present appeal.

7. The learned counsel for the appellant-husband submitted that the High Court failed to consider and appreciate the cumulative instances of mental cruelty as pleaded and proved but considered every instance separately and held that each by itself would not entitle the husband to a decree for divorce and said approach is erroneous and contrary to law. It is his further submission that the High Court erred in not placing reliance on the child's testimony and fell into a grave error in reversing the well considered judgment of the trial court. It is also submitted that mental cruelty was clearly established and in any event the marriage has broken down irretrievably and on that score alone the decree for divorce should have been passed. In support of the submissions the learned counsel relied on the following decisions : (1) Parveen Mehta Vs. Inderjit Mehta (2002) 5 SCC 706; (2) A. Jayachandra Vs. Aneel Kaur (2005) 2 SCC 22; (3) Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511; and (4) K.Srinivas Rao Vs. D.A. Deepa (2013) 5 SCC 226).

8. The learned counsel for the respondent-wife contended that the High Court examined the instances of mental cruelty pleaded in this case on the parameters laid down by this Court in the decision in Samar Ghosh case (Supra), and concluded that the ground of mental cruelty has not been established by the plaintiff-husband. It is further submitted that the wife was compelled to live separately on account of the conduct of the husband. The further submission was that the impugned judgment does not suffer from any legal infirmity warranting interference.

9. The appellant-husband and the respondent-wife are educated and working in the office of the Andaman Public Works Department. They got married on 2.3.1994 and son was born to them on 24.1.1996. The appellant-husband filed the suit on 18.7.2005 seeking for divorce on the grounds of cruelty and desertion.

10. The expression 'cruelty' has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (supra), this Court set out illustrative cases where inference of 'mental cruelty' can be drawn and they are only illustrative and not exhaustive.

11. The plaintiff-husband alleged that after their marriage the defendant- wife did not like to live in the joint family and that led to shifting to separate residence and even there due to quarrels, the wife had with the respective landlords and neighbours, there was frequent shifting of residence. According to the defendant-wife the shifting was necessitated once because the husband desired so and on two other occasions due to increase in rent demanded by the landlord and absence of sufficient quantity of water to the rented premises. Neither the family members of the plaintiff nor the landlords and neighbours of the tenanted premises were examined, and as rightly held by the courts below, there is no evidence adduced by the plaintiff to substantiate this allegation.

12. The next instance alleged by the plaintiff-husband is that the defendant-wife used to abuse him as 'Dhobi' and the son as 'Dhobi's son' and such utterances had adverse effect on them. PW1, plaintiff and PW2, the son have stated so in their testimonies. Of course the defendant-wife has specifically denied the said allegation. PW2, the child, when examined in September, 2007 in the court was 11 years old and was studying in 6th class. On the date of alleged desertion in 2003 he was only about 7 years old. Prior to 2003 he was an infant and it is unlikely he would remember in detail his early life. Even if the version of the child that the mother used to call him Dhobi's son is accepted, such scolding is the common reaction to discipline him and it denotes lack of culture on the part of the mother.

13. It is further alleged that the defendant-wife was reluctant to do any household work and was not cooking food for the plaintiff and the child which necessitated the bringing of food from outside, amounting to mental cruelty. Being working mother, she could not spare enough time to be with the child resulting in the feeling of not being cared for. In this context it is relevant to point out that the child was residing with his father since alleged separation in 2003. The expression of the child is due to attitudinal problem and it can be addressed to. The trial court placed much reliance on the testimony of the child and the High Court termed it as misplaced. The learned counsel for the appellant found fault with the High Court in not placing reliance on the child testimony. We are not able to appreciate this contention. In the facts of the case we are of the considered view that the High Court has rightly done so.

14. The next instance is the allegation made by the wife in the case filed by her under Section 498-A of IPC against the husband. Admittedly the case was withdrawn by the wife and she continued to live with the husband. In fact the High Court has observed in the impugned judgment that though the date of filing of the criminal complaint is not mentioned in the plaint, from the sequence of narration of events therein it appears to have been filed prior to the birth of the child. The aberration on the part of the wife has been condoned by the husband by resuming cohabitation and they continued to live together till the date of alleged separation in 2003.

15. The last instance of cruelty alleged by the husband is the allegation made by the wife that he has been involved in an extra marital affair with the daily rated mazdoor lady working under him. It is true that the defendant-wife has named the said lady with whom her husband allegedly was having an affair. The plaintiff-husband though admitted that the said lady was working under him, has specifically denied the said allegation. The courts below have concurrently found that the wife has not substantiated the said allegation. Mere failure to prove such

allegation would not entitle the husband to a decree of divorce as rightly held by the High Court. The conduct of the wife that had been complained of appears to be not so grave and weighty that it can be treated to be more serious than ordinary wear and tear of married life.

16. What remains to be considered is the ground of desertion alleged by the plaintiff-husband, it is averred that the defendant-wife left the company of the plaintiff in March, 2003 and date is not mentioned. The child was only 7 years old in 2003 and his testimony in this regard will not advance the case of the plaintiff. DWs 2 to 4 have testified that they had seen the plaintiff and the defendant together as spouses even during 2005. It is pointed out that there is no denial against such contention in cross examination. It is relevant to point out that DW2 is working in Marine Department and DW3 and DW4 are working in the Municipal Council and there is no reason for them to falsely depose against the plaintiff. The trial court has not indicated with any clarity in its judgment as to how the testimonies of the above witnesses were not found reliable by it. The High Court on going through their testimonies has concluded that it does not find their evidence unworthy of credence. We are in agreement with the said view expressed by the High Court. Resultantly the ground of desertion alleged is also not established.

17. We also find no merit in the contention of the learned counsel for the appellant that the marriage between the plaintiff and defendant has irretrievably broken down.

18. In the result there is no merit in the appeal and the same is dismissed. No costs.