

Nandesh Kumar Vs Mamatha R.

Court: Karnataka High Court

Date of Decision: Feb. 20, 2015

Acts Referred: Hindu Marriage Act, 1955 - Section 10, 13(1)(ia), 24

Hon'ble Judges: N. Kumar and B. Veerappa, JJ.

Bench: Division Bench

Advocate: Ramesh Kumar for B.V. Pinto, Advocate, for the Appellant; Raghavendra Kattimani, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

B. Veerappa, J.

Though the matter is listed for orders regarding condonation of delay in filing the appeal, the matter is heard on merits and

disposed off

2. The unsuccessful husband/appellant has filed the above appeal against the judgment and decree dated 30th June, 2014 passed in MC No.

1499/2012 by the Principal Judge, Family Court, Bangalore.

3. The appellant/husband who was the petitioner before the Family Court had filed M.C. No. 1499/2012 on 19.4.2012 under the provisions of

Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short hereinafter referred to as "the Act") for dissolution of his marriage with the

respondent contending that the appellant married the respondent on 19.9.2010 at Sri Manjunatha Swamy Temple, Dharmasthala, Dakshina

Kannada as per the Hindu rites and customs. The respondent is his maternal uncle's daughter. Their marriage was an arranged marriage and their

marriage life was initially smooth and out of their wedlock, a son was born on 2.8.2011 who was named as Varun @ Basavaaju. Further he has

stated that he was employed in the Middle East as Quality Controller. After the marriage, they lived at Nagarabhavi, Bengaluru and gradually the

respondent started to abuse and harass him in filthy language and was demanding more money from him as she intended to lead a luxurious life.

The appellant was looking after the welfare of the respondent and his son by regularly sending money but inspite of the same, the respondent was

always telling the appellant that she is not willing to lead life with the petitioner and she is not interested. Therefore, he filed the petition.

4. The respondent/wife filed objections on 1.11.2013 denying the petition averments while admitting the marriage. She has specifically stated that

from the day one of the marriage, the appellant was harassing and ill-treating her demanding dowry of Rs. 10,000/- to Rs. 20,000/- every now and

then used to assault her; he was addicted to alcohol every day and used to drink and come; abuse and assault her; the appellant and his parents

after ill-treating her with utmost cruelty, threw her out of her matrimonial home on 18.6.2011 demanding her to bring Rs. 5,000/- cash by way of

dowry and all her gold ornaments and clothes were taken away by him. Several panchayaths were held by her parents and requested the appellant

to take back the respondent and his child, but the appellant refused to take back unless his demand was fulfilled. She has further stated that the

appellant, who has thrown her and his child out of the matrimonial home, has moved to foreign country by name Abudabi, UAE, and is working in

the capacity of Welding/Piping Inspector earning more than Rs. 2 lakhs per month and he has not sent a single pie to her and to her son, who is

aged about 1 year and 8 months and as such, they require not less than Rs. 25,000/- per month etc., and hence, prayed for dismissal of the

petition.

5. Based on the pleadings, the trial Court framed the following issues:

1. Whether the petitioner has made out a ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955?

2. What order to be passed on IA for interim maintenance filed by the respondent?

6. In order to establish his case, the appellant himself examined as P.W.1 and marked the documents Exs.P.1 to 10. The respondent herself

examined as R.W.1 and marked documents as Ex. R.1.

7. The Family Court after considering the entire material on record has come to the conclusion that the appellant has not made out a ground of

cruelty under the provisions of Section 13(1)(ia) of the Act and accordingly awarded a sum of Rs. 25,000/- per month to the respondent and her

minor child by allowing the I.A. filed under Section 24 of the Act. Hence, the present appeal by the appellant.

8. We have heard the learned Counsel for the parties to the lis.

9. The learned Counsel Sri Ramesh Kumar appearing for Sri B.V. Pinto on behalf of the appellant contended that the impugned judgment and

decree passed by the Family Court is illegal and unsustainable; the Family Court without application has erred in granting interim maintenance

which is liable to be set aside; the appellant has made out a good ground for divorce but the same has not been considered by the Family Court.

Therefore, he sought for allowing of the appeal.

10. Sri Raghavendra Kattimani, learned Counsel appearing for the respondent sought to justify the impugned judgment and decree.

11. Therefore, the point that arises for consideration is as under:

(i) Whether the finding of the Court below that the petitioner has not made out a ground of cruelty under Section 13(1)(ia) of the Hindu Marriage

Act, 1955 calls for interference?

(ii) Whether the award of interim maintenance is just and proper?

POINT No. (i)

12. The material on record discloses that there is no dispute with regard to the marriage of the appellant with the respondent on 19.9.2010 at Sri

Manjunatha Swamy Temple, Dharmasthala, Dakshina Kannada and out of their wedlock, a child was also born on 22.8.2011 by name Varun @

Basavaraju and it is the case of the appellant that the respondent is ill-treating him and started to abuse and harass him in filthy language and was

demanding more money from him in order to lead luxurious life and on other grounds, he filed a petition under the provisions of Section 13(1)(ia)

of the Act.

13. The provisions of Section 13(1)(ia) of the Act read as follows:

13. Divorce.--(1) 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----

(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty;

14. The Hon"ble Supreme Court in the case of Naveen Kohli Vs. Neelu Kohli, while considering the provisions of Section 13(1)(ia) of the Act,

has held as under:

66. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner-spouse

cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The

conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained

of amounts to cruelty in the matrimonial law. Conduct has to be considered as noted above, in the background of several factors such as social

status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give

exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the

relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live

together without mental agony, torture or distress, to entitle the complaining-spouse to secure divorce. Physical violence is not absolutely essential

to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the

meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant

disturbance of mental peace of the other party

67. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human

beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However,

insignificant or trifling such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain

pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate

it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct,

which may cause annoyance to the other, may not amount to cruelty Mere trivial irritations, quarrels between spouses, which happen in day-to-day

married life, may also not amount to cruelty Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be

words, gestures or by mere silence, violent or non-violent.

68. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable

extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to

have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and

as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and

hypersensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal

wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to

Matrimonial Court.

15. Admittedly in the present case, the respondent, who is the wife showing willingness to reside with the husband has specifically stated before the

Family Court that, the appellant himself has thrown her and his child out of the matrimonial home mercilessly and moved to foreign country.

Therefore, the appellant cannot take advantage of his own wrong and file a petition under the provisions of Section 13(1)(ia) of the Act. The

marriage is a mutual adjustment and reconciliation. Therefore, the appellant has not made out any prima facie case to grant decree of divorce under

the provisions of Section 13(1)(ia) of the Act. Thus the appeal is liable to be dismissed.

16. In view of the law declared by the Hon"ble Supreme Court and, the pleadings and averments made on behalf of the appellant, no case is made

out by the appellant for granting divorce under the provisions of Section 13(1)(ia) of the Act.

POINT No. (ii)

17. The respondent/wife in order to prove the income of the appellant/her husband on 17.12.2013 has produced some documents regarding the

employment of the appellant viz., certificate of ABS Company which states that since 18.9.2011 the appellant is working in the capacity of

Welding/Piping Inspector drawing monthly salary of AED. 8,000/- and monthly accommodation allowance of AED. 4,900/- and is provided with

company transportation. Thus the salary of the appellant would be equal to Rs. 1,28,000/- (8,000 AED x Rs. 16/- INR). Accordingly, the Family

Court has proceeded to grant an interim order on the basis of the application filed by the respondent on 4.12.2013 under the provisions of Section

24 of the Act and as the respondent has stated that she is staying in a rented house at Nagarbhavi with her two years four months child paying rent

of Rs. 8,000/- per month, and she is not able to work because of the age of her child and that as her child would be getting admitted to LKG.,

admission expenses would come to Rs. 50,000/- and she is not having any income etc.

18. Considering the entire material on record and relying on the dictum of the Hon"ble Supreme Court in the case Neeta Rakesh Jain Vs. Rakesh

Jeetmal Jain, with regard to grant of maintenance, the impugned judgment and decree passed by the Family Court in directing the appellant to pay

a sum of Rs. 25,000/- per month to the respondent and her minor child from the date of petition and also declaring that the respondent and her

child are entitled to future maintenance at the rate of Rs. 25,000/- per month is just and proper and the same is in accordance with law. Hence, the

appeal is dismissed.