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AIR 2015 SUPREME COURT 2504
SUPREME COURT
 (From : Madras)

VIKRAMAJIT SEN, J. and ABHAY MANOHAR SAPRE, J.

Civil Appeal Nos. 5511-5512 of 2014 **D/-4-4-2015**

Vinod Kumar Subbiah v. Saraswathi Palaniappan

(A) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Cruelty - Spouse abusing other as being born from a prostitute cannot be termed as 'wear and tear' of family life - Petition for divorce on ground of cruelty cannot be dismissed on that ground. (Para7)

(B) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Cruelty - Husband was in foreign country and didn't know laws and procedure in India - Therefore, summoning police by wife on false or flimsy grounds - Cannot be termed as 'wear and tear' of family life. (Para7)

(C) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Cruelty - Making it impossible for any close relatives to visit or reside in matrimonial home - Would indubitably result in cruelty to other spouse. (Para7)

(D) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Petition for divorce - Ground of cruelty - Appellant pleaded instances of mental cruelty which he proved in evidence and documents - Various allegations of cruelty were made out and number of incidents were mentioned therein - Further evidence submitted during course of Trial to substantiate these allegations, which was in keeping with O.VI, R. 2 of CPC - Trial Court examined evidence at great length and came to reasoned conclusion that actions of respondent amounted to cruelty - High Court not justified to set aside conclusions arrived at by Trial Court without giving substantiated reasons. (Para7)

Vikas Mehta, for Petitioner; Shadan Farasat, for Respondent.

Judgement

1. VIKRAMAJIT SEN, J.:- These Appeals assail the Judgment of the learned single Judge of the High Court of Judicature at Madras, Bench at Madurai, delivered on 13.3.2013, setting aside the Judgment dated 25.8.2011 of the Trial Court. The Impugned Judgment dismissed the divorce petition filed by the Appellant.

2. The Appellant and the Respondent were married on 28.6.2004 and moved to the U.S. on 9.7.2004. They visited Chennai in October, 2005 and June, 2006. During the latter visit, the Respondent was three months pregnant and left for her parental home in Madurai on 10.6.2006 where she gave birth to a male child on 5.12.2006. The Appellant subsequently filed for divorce under Section 13(1)(ia) of the Hindu Marriage Act on 30.4.2007.

3. The case put forward by the Appellant is that the Respondent was verbally abusive; she would insult his family; she would threaten to lodge false police complaints; and she would threaten to commit suicide placing the blame on the Appellant and his family. After she left for her parental home in June, 2006, the Appellant attempted to bring her back to her matrimonial home but she refused. The Appellant claims that he has been put through intolerable mental agony and can no longer continue to be married to the Respondent.

4. The Respondent denied these allegations and claimed that she and the Appellant lived happily in the U.S., and she only went to her parental home in June, 2006 for her child to be born there. She has pleaded that she returned to Chennai with her child from March to April, 2007, that the divorce petition was completely unexpected and was the result of a misunderstanding between her family and that of the Appellant. She subsequently filed a petition seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, praying that the Appellant be directed to take her back to her conjugal home, which she pleaded is in the U.S. She alleged that

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her husband is living a wayward life, that her father-in-law misbehaved with her, and that her parents-in-law were negligent with her infant child and asked her to leave the house when she questioned them about this. She also filed a maintenance petition seeking Rs. 2 lakhs per month as maintenance.

5. The Trial Court heard all three petitions together and examined the evidence submitted by the parties at length. The Appellant has deposed that when his sister came to the U.S., she initially stayed with him and

the Respondent. However, the Respondent did not like having her in the house, so she locked the Respondent and his sister out of the house, was abusive towards them and told them that they belonged to a "prostitute family". Eventually the Appellant's sister was constrained to stay at a Lodge. The Respondent claimed that the dispute was because her sister-in-law tried to make her join her diamond business, which she did not want to do. The Trial Court found no truth in the argument of the Respondent, in light of the fact that she has no background or knowledge of the diamond business. Furthermore, the Appellant has deposed that when his brother came to the U.S. to study, he also initially stayed at the Appellant's house. However, it is in evidence that the Respondent called the Appellant at work alleging that his brother was knocking on her door, thus implying that he was behaving in an untoward manner. She abused the Appellant and his family in the presence of his brother and threatened to file a police complaint. The Appellant has deposed that he was forced to make his brother stay elsewhere. In a subsequent event, the Appellant informed the Respondent that his parents would be coming to the U.S. The Respondent was verbally and physically abusive, and called the police alleging domestic violence. The Appellant was given a warning by the Police. The Respondent claimed that the incident took place because the Appellant was having an affair with a woman named Solai. She claimed that he took her to Solai's house that evening and then wanted to go back at night, which is why she called the police. The Trial Court has justifiably highlighted that summoning the police was serious because the Appellant was in a foreign country and didn't know the laws and procedure. Further, the allegation that he was having an affair was not accepted, as it was unbelievable that the Respondent had previously not told anyone about Solai and further that it never came up during the attempted compromise between the families of the two parties. The Respondent claimed that after having the child, she came to live with the Appellant, which the Appellant denied. The Respondent also alleged that while she was living with the Appellant's family, his parents took the child who was only three months old away for six hours. By the time they brought him back, he was unconscious due to starvation. When the Respondent questioned them about this, they asked her to leave the house with the child, even though it was late in the night. The Trial Court found this allegation entirely unbelievable. Her allegation that the father of the Appellant started misbehaving with her and went to the extent of pulling her hands was also found to be false. The Trial Court also took into consideration the voice mails and emails from the Respondent to the Appellant, which were not treated as the main evidence but as evidence intended to substantiate the oral evidence. It was held that the evidence and the submissions of the Respondent indicate that she was unwilling to live in the Appellant's house in Chennai, and that she wanted him to leave his family in India and live in the U.S. with her. It is pertinent to note that the Appellant had lost his job in the U.S. and was unemployed and consequently had to set up residence in Chennai. In light of these circumstances, it was found that the Respondent is not entitled to conjugal rights. An order of dissolution of marriage was passed and maintenance was fixed at Rs. 25,000 per month.

6. The High Court, however, held that

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the Appellant's allegations in his divorce petition were no more than "the ordinary wear and tear" that takes place in a marriage. It observed that the Appellant did not give details of the events of abuse by the Respondent towards his family or the cruelty that was meted out to him in the U.S. in his main petition or his subsequent counter-affidavits. It was only after filing the petition that the Appellant had produced copies of the abusive voicemails and emails he received from the Respondent. The High Court noted that the Trial Court did not need to strictly adhere to hard and fast rules while entertaining evidence, but nevertheless held that the Trial Court had acted in haste in allowing the Appellant's allegations. The High Court found that the Trial Court, instead of considering whether the Appellant had established cruelty by adducing evidence, took certain answers from the Respondent's Chief examination and cross-examination out of context and held that a case of cruelty was made out. The High Court stated that in a **matrimonial** relationship, parties must be prepared to subject themselves to the normal wear and tear of life, and that the situation at hand was no more than that. The divorce petition was thus dismissed and the petition for restitution of conjugal rights was allowed.

7. We have carefully considered the matter, and find that we are unable to uphold the conclusions of the High Court. The Appellant had duly pleaded instances of mental cruelty which he proved in evidence and documents. An examination of the divorce petition makes it abundantly clear that various allegations of cruelty were made out and a number of incidents were mentioned therein. Further evidence was submitted during the course of the Trial to substantiate these allegations, which is in keeping with Order VI, Rule 2 of the CPC. Furthermore, we find that the Trial Court examined the evidence at great length and came to the reasoned conclusion that the actions of the Respondent amounted to cruelty. If a spouse abuses the other as being born from a prostitute, this cannot be termed as "wear and tear" of family life. Summoning the police on false or flimsy grounds cannot also be similarly viewed. Making it impossible for any close relatives to visit or reside in the **matrimonial** home would also indubitably result in cruelty to the other spouse. After a cursory discussion of the evidence which the Trial Court had discussed threadbare, the High Court was not justified to set aside the conclusions arrived at by the Trial Court without giving substantiated reasons.

8. We thus allow these Appeals and set aside the Impugned Order, but desist from imposing costs. The Trial Court's decision granting dissolution of the marriage between the parties is hereby restored.

9. We allow the Respondent's Application for disbursement of the amount deposited by the Appellant towards her legal expenses in pursuance of the Order dated 4.7.2013.

Appeal Allowed.
