

JUDGMENT

R.S. Mohite, J.

1. This appeal has been filed by the appellant Mrs. Meena Dinesh Parmar (hereinafter referred to as "wife") against the respondent Dinesh Hastimal Parmar (hereinafter referred to as "husband") seeking to quash and set aside the Judgment and order passed by the Judge, Family Court, Pune on 26.2.2001 In Petition No. A-354 of 2000 and Petition No. E/810/1998. Petition No. A/354/2000 is a petition filed by the husband for grant of divorce on the ground of cruelty and desertion under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955. The Petition No. E-810/1998 was filed by the wife claiming maintenance under Section 125 of the Code of Criminal Procedure, 1973. By the impugned Judgment and order the Judge, Family Court granted dissolution of marriage by decree of divorce on both the grounds and granted Rs. 500/- per month as maintenance to a son Bhushan who was born out of the marriage, while rejecting the claim of the wife for grant of maintenance.

2. The case of the husband as made out in his petition filed in the Family Court was as under:

a) That, both the parties belonging to Hindu community had entered into an arranged marriage on 24.2.1995. The marriage was performed as per the Hindu Vedic rites. At the time of marriage the husband was a bachelor and the wife was a spinster.

b) After the marriage the newly wedded couple started residing in a family residence of the husband at Bhandup. A few days after the marriage the wife started picking up quarrels with the husband and other family members on trifling matters. She started insisting for separate accommodation. According to the husband even before the marriage, he had asked his wife as to whether she was ready to stay in a joint family and she had agreed to do so. The husband reminded her of this consent given by her but the wife continued to insist that they should move to a separate accommodation. The husband moved to a separate accommodation. The husband tried to persuade her not to be adamant but the wife responded by denying him physical contact, thus, causing him mental and physical torture. The husband further found that his wife was not carrying out household duties. She used to sit in a corner in the room and was not helping other family members in carrying out other household duties.

c) That the parents of the wife used to reside at Yogita Building, Daulat Nagar, Borivali (E). The wife used to frequent her parents' house. She had a maternal uncle staying at Pune. This maternal uncle was a divorcee and the petitioner's wife used to visit her maternal uncle also. The husband was required to go and search for her and he used to find her at her parents' home.

d) That, on 15.5.1996, the husband sent his wife to her parents' house at Borivali for delivery as she was then seven months pregnant. However, to the dismay of the husband and his family, his wife went to the house of her maternal uncle at Pune for delivery instead of staying at her parents' house at Borivali. She went to the house of her maternal uncle without informing the husband. In spite of such action by his wife, upon master Bhushan being born at Pune, the husband and his family members had gone to see the newly born baby at Pune. At Pune, the husband asked the wife to return with him to the matrimonial home at Bhandup but the wife refused to do so. Her maternal uncle Babulal Dhoke also refused to send her to Mumbai along with the husband. Quarrel took place between the wife and her maternal uncle on one hand and the husband and his family members on the other and the wife clearly told her husband that she will never return to her matrimonial home and she will live with her maternal uncle at Pune. She also told the husband that she wanted a divorce from him.

e) Since the husband found that his wife was completely adamant about having a separate accommodation, in the month of April, 1997, in order to save his matrimonial life, he purchased a separate premises. Thereafter, husband and his family members went to Pune on several dates to persuade the wife to return but she refused to do so. On 3 to 4 occasions maternal uncle even assaulted the husband and tried to drive him out of the house.

f) On the occasion of the first birth day of the child, master Bhushan, husband had gone to Pune with some sweets, clothes and presents. However, the wife and her maternal uncle refused to accept the presents and threw the same towards the husband. Husband then collected the same and kept them in a corner of the room. However, the wife sent back sweets, clothes and presents to the husband by courier on the very next day.

g) On 26.9.1997 the husband filed a petition in the Family Court at Pune for restitution of Conjugal rights.

h) As a counter move to the said petition, wife filed police complaint against the husband and his family members at Pune (Ramoshi Gate) Police Station and the husband and his family members were required to go to the police station at least three times and due to the harassment caused to them and likelihood of harassment they also applied for anticipatory bail which was granted to the husband and his family members by the court.

i) On 1.6.1998 wife then filed a maintenance application in the Family Court at Pune. In her application, she contended that due to harassment caused by her husband and his family members she had to leave for her parental home when she was pregnant. But as the harassment continued, her parents sent her to the house of her maternal uncle at Pune. In spite of her delivery on 29.7.1996 she continued to be neglected by her husband. That, because of continued harassment and the sending of a false notice by her husband she had to file criminal case in Khadki Police Station at Pune. She claimed maintenance at the rate of Rs. 500/- p.m. for herself and Rs. 500/- for her son. She also filed Civil Misc. Application in the High Court of Mumbai for transfer of the husband's petition for restitution of conjugal rights. Seeing that there was no hope of her return, the husband withdrew his petition for restitution of conjugal rights by filing an application dated 5.11.1998 in the family Court at Bandra. The wife also filed a private complaint under Section 498A of the Indian Penal Code at Pune Court. As a result of these proceedings it has become clear that his wife was not interested in living with him.

j) In the circumstances, on 10.11.1998, the husband filed a petition for grant of divorce on the ground of desertion and cruelty.

3. On 8.10.2000, the wife filed her written statement. In the written statement she denied the allegations made by the husband. She also came out with a positive case that her parents had given 33 tolas of gold ornaments and 4-K.G. of silver ornaments to her on the demand made by her husband. That her parents had spent four to five lacs at the time of the marriage. That, after the marriage the husband and his family members had asked money from time to time from her parents and therefore, her parents were constrained to sell their flat for fulfilling the demand of her husband and her family members. She was harassed and ill-treated by the petitioner and his family members. Her husband tried to compel her to give a divorce in writing on stamp paper. Her parents were not in a position to fulfil such exorbitant and continuous demands because they were not financially sound. That, she was never provided with medical aid during her pregnancy and therefore, she became weak. That, as a result of such harassment she had to return to her parents house at Borivali. Since her husband and his family members continued to harass her, her parents sent her to Pune for her safety. At Pune she delivered her child and since she was very weak she was admitted in Meera Hospital where she took treatment for 2.1/2 months. That, her

husband neither performed his duty as her husband or as father of the child nor had he visited her after her delivery. That, her husband was making false allegations against her for adultery. That, her maternal uncle was a respectable person in society and was just like her father to her. He had brought up her just like a daughter. That, these allegations made by her husband against her and her maternal uncle amounted to cruelty to her and her maternal uncle. She denied that she had made any demand for a separate residence and denied that she had caused any mental and physical torture by denying physical relations to her husband.

4. At the trial the husband examined himself as P.W.No. 1, his brother Dr. Naresh Parmar as P.W.2 and one Kantilal Ranka who claims to be the employer of the husband as P.W.3. The wife examined herself as R.W.1, her mother Bhavaribai Surana as R.W.2, her other uncle Devraj Dhoka as R.W.3 Both the sides produced documentary evidence. Upon considering all the evidence on record, the Family Court, Pune passed the impugned judgment and order which is the subject matter of challenge in this appeal. It may be stated here that since no stay to the decree of divorce was granted pending this appeal, the husband married again and has by now two children from his second marriage.

5. We have heard both the sides exhaustively. We have also perused the entire evidence on record. We made serious attempts to see that the parties to be brought together but our efforts have failed. It is the admitted position before us that the parties have been staying separately since 15.5.1996 i.e. for a period of more than 6 years and 8 months. Since all attempts of reconciliation failed, we have looked into the evidence in order to decide the matter on merits. We find from the evidence of the husband that the main reason given by him as to why his wife was unhappy was that she was seeking a separate accommodation and desired to stay away from the joint family. He has stated that his wife denied physical relations with him and caused him physical and mental torture. That, after she left her matrimonial home on 15.5.1996, though she initially went to her parental house at Borivali within two days he came to know that she had gone to her maternal uncle's house at Pune. He deposed that he had gone to the house of her maternal uncle and had been abused by him. His wife had informed him that she wanted to stay at Pune. That, in April, 1997 he had made arrangement for a separate residence at Bhandup and had intimated about it to the parents of his wife but in spite of this she did not return. We have noted that the wife took the contention that she was willing to stay in a joint family. If this be so, then one of the main reasons for acrimony between the parties would not exist and there was no reason for her not to return to her husband. We find that she has contended that she was harassed and ill-treated by the petitioner and his family members. Her contentions in this regard are vague. There is no date mentioned in respect of any particular incident of harassment. So also particulars of harassments are also not given. She had stated that she was never provided with any medical aid during her pregnancy. Apart from her bare statement, there is nothing on record to substantiate this contention. It is noted that she had gone to her parents place at Borivali for delivery however, within two days she left for her uncle's place at Pune. In the police enquiry her own father had given a statement that his consent and permission was not taken for leaving his house at Borivali. We find no justification in the contention of the wife for staying at Pune with her maternal uncle, even though her husband had purchased a separate place for their exclusive residence. Such an act on her part of staying at Pune along with her newly born son does amount to both cruelty as well as desertion and no fault can be found in the impugned judgment and order granting divorce on the ground of cruelty and desertion.

6. So far as question of maintenance is concerned, in view of our aforesaid finding, maintenance cannot be granted to the wife. In so far as the child is concerned, we find that an amount of Rs. 500/- which is awarded is too meagre looking to the present requirements of a growing child. The evidence indicates that the husband had sufficient money to purchase his own flat. He cannot be said to be a person of no means. No doubt, he contended that he had borrowed

monies from his friends to purchase the new flat but he candidly admitted that he had not taken any such contention about borrowing of monies from his friends in his petition nor had he led any evidence in this regard. Taking an over all view of the matter, we feel that ends of justice will be met if an amount of Rs. 3000/- per month is granted as maintenance to the child. The husband will have an option of making lumpsum payment of Rs. 5,00,000/- towards the maintenance of his son and if he makes such lumpsum payment in full, then his liability to pay maintenance at the rate of Rs. 3000/- per month will cease from the date of full payment. He will also have an option to make a lumpsum payment of Rs. 2,50,000/- at the first instance and if he does so then the maintenance payable to the son will stand reduced to Rs. 1500/- per month from the date of such payment. The maintenance amount/amount in lieu of maintenance as aforesaid would be payable to the son till the son attains the age of majority. In the circumstances, the appeal is partly allowed with costs in the aforesaid terms.