IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 32 OF 2002

Mrs.Sanjivani Bharat Sasane
Age – 42 years,
Occupation – Household,
Residing at Gitanjali, 23 Ashoknagar,
Pune – 411 007. …Appellant

Vs.

1) Mr.Bharat Dashrath Sasane
Age – 44 years,
Occupation – Business,
Residing at 49, Ashoknagar,
Pune – 411 007.
2) M/s.Sankalpan Shelters,
A partnership firm, registered .. Respondents
under Indian Partnership Act, 1932
having its office at :
107/108, City Mall, Ganeshkind Road, Pune.

Through its partners :
a) Vinodkumar jaichandlal Mittal
b) Mukesh Yeole
c) Ravindra Jagtap.
(Addresses : as above)
Mr.Amol Deshpande for the Appellant.
Mrs.Usha Purohit for the Respondent No. 1.
Mr.Sidharth Ronghe for Respondent No. 2.

CORAM: S. A. BOBDE &
S. J. KATHAWALLA, JJ.

DATE : NOVEMBER 18, 2009.

ORAL JUDGMENT (Per S.A. Bobde, J.) :

This is an Appeal filed against the order of the Family Court I, Pune, dated 22nd February, 2002 allowing the Petition filed by the Respondent husband for divorce under section 13 (1) (ia) of the Hindu Marriage Act, 1956, on the ground of cruelty. The Respondent husband approached the Family Court under the aforesaid provision for divorce on the ground of cruelty based mainly on account of the behaviour of the

Appellant which included threats and attempts to commit suicide on various occasions and for gross misbehaviour with him.

2. The Family Court after considering the evidence came to the conclusion that the Appellant had treated the Respondent husband with cruelty and the Respondent was therefore entitled to decree of divorce. At the outset, it may be noted that the Family Court in paragraph 17 has stated that several attempts were made by the Appellant to stall the hearing of the case by not offering herself for crossexamination and that she made all attempts to prolong the matter. When the Court tried to prevent such attempts, she even moved a transfer petition.
Apparently, in the past too, such transfer petitions had been moved by the Appellant in respect of the earlier Presiding Officer,which was rejected. When we expressed a desire to interview the parties. The Respondent husband alone appeared before us and the Learned Counsel appearing for the Appellant stated that he has instructions to say that the Appellant is away at Rishikesh.
The learned counsel for the Respondent stated that the Respondent husband had seen the Appellant in Pune the previous day, i.e. on 17th November, 2009, and is willing to file an affidavit. We did not consider it necessary to go into this controversy and prolong the hearing of this case.

3. The learned Family Court has decided the matter purely on merits. The learned Family court after considering the evidence on record came to the conclusion that the Appellant has repeatedly threatened suicide and in fact made it embarrassing and dangerous for the husband to cohabit with her peacefully. In fact, the Appellant in her written statement stated that she wanted “Kaydeshir Farkat” i.e. judicial separation. It is clear that the Appellant does not wish to cohabit with the Respondent.

4. Coming to the findings, the Family Court accepted the Respondent’s case that the Appellant is unable to get along with any person in the Respondent’s family. The learned Trial Court has referred to the entire evidence of the Respondent wherein he has deposed about the attempts made by the Appellant to commit suicide and about her quarrelsome nature. Undoubtedly, the Appellant herself has admitted in paragraph 3 of her Written Statement that on 4th February, 1994 she attempted to commit suicide by jumping into the Mula River. In paragraph 14, she has clearly admitted that on that day, she climbed the bridge in order to jump, but was saved by passersby. Further in paragraph 6 of the Written Statement, she has admitted that in October, 1991 she consumed insecticide and as a result was admitted to the Model Colony Hospital. She further admitted in paragraph 16 that she poured Kerosene on herself with the intention to commit suicide, but she stopped short of setting herself alight for the future of the daughter.

5. In Naveen Kohli v. Neetu Kohli [(2006) 4 SCC 558], the Hon'ble Apex Court held that cruelty may be mental or physical and intentional or unintentional. The Court broadly defined 'mental cruelty' to be such conduct, which inflicts upon the other party such pain and suffering as would make it not possible for that party to live with the other. We have no hesitation in coming to the conclusion that the behaviour of the appellant in persistantly threatening and attempting suicide would constitute mental cruelty in law so as to become a ground for divorce. The threat of personal violence or attempt to commit suicide is a recognized instance of cruelty [Dastane v. Dastane (AIR 1975 SC 1534]. Under the circumstances, it is not possible for a couple to peacefully carry on a married life, if one partner repeatedly threatens to commit suicide in public and within the home in this manner. In our view the Trial Court is therefore correct in its finding that the repeated attempts on the part of the Appellant to commit suicide constitutes mental cruelty.

6. We find that the Judgment of the learned Family Court also takes into account evidence of one Dr. Vidyadhar J. Watve (P.W.No.3), who is a Psychiatrist and one Dr. Subhash Kale, who gave evidence about the mental disorder, i.e. 'adjustment disorder' and of depression, which the Appellant suffers from. The learned counsel for the Appellant submitted that the ill treatment by the inlaws, led to the attempts to commit suicide, and therefore, since the fault lay with the Respondent's family he was barred from pleading 'cruelty'. It is not possible to accept this submission in the present case, since it appears that the attempts to commit suicide continued even after the couple moved to a new place and began to live separately from the family of the Respondent husband. The Trial Court has observed in paragraph 20, that in these circumstances, the Respondent has stated that sometimes, he may have behaved in a manner which appears cruel to the Appellant, but this was only to prevent her from committing suicide or to prevent her from causing any bodily injury to herself. There are instances where the Respondent had to physically prevent the Appellant from committing suicide, such as when she attempted to consume insecticide in the bathroom, in October 1991. In fact, the learned Trial Judge has observed that even during the Trial, the behaviour of the Appellant was not normal and she often seemed to lose her mental equilibrium.

7. Learned Counsel for the Appellant also brought forth the contention that by indulging in physical relations with the

Appellant after the alleged acts of cruelty, the Respondent had condoned these acts and was hence barred from a divorce decree by section 23 (1)(b) of the Hindu Marriage Act, 1956. We find that there is no merit in the argument. 'Condonation' means forgiveness for the offence and restoration of the offending spouse to the status quo ante [Dastane v. Dastane (supra)]. However, condonation is meaningless unless there is some change in the person who seeks forgiveness or who has been forgiven. As rightly pointed out in Puthalath Chatu v. Nambukkudi Jayasree (AIR 1990 Ker 306), condonation rests on some assurance to the offended spouse, of retracement of the offending spouse, from the wrong path hitherto followed. In the present matter, even if the Respondent did have physical relations after the alleged acts of cruelty, there was no change in the attitude and behaviour of the Appellant, who continued even thereafter to threaten and attempt to commit suicide. This argument is hence rejected.

8. The parties have been living separately for a period of approximately 8 years before the filing of Petition and as the matter stands now, the passage of time is about 17 years since they last resided together. The attempts at reconciliation, prior to commencement of divorce proceedings in the Trial Court failed and there does not appear to be a chance of any reconciliation at present, having regard to the facts and circumstances of the case. We have considered the entire evidence of the parties and the arguments advanced by the by the Learned Advocate for the parties and we find that the conclusion of the Trial Court regarding cruelty faced by the Respondent is not liable to be interfered with.

9. The learned counsel for the Appellant submitted that the Appellant has been awarded maintenance of Rs.3,000/and that their daughter was initially awarded a maintenance of Rs.2,000/, but that has been increased to Rs.5,000/.
The Appellant submits that the maintenance payable to the Appellant should also be increased. Ms. Purohit, the learned counsel for the Respondent No. 1 states that the Respondent has also deposited Rs.5 lakhs towards the marriage expenses of the daughter. We leave the question of enhancement of maintenance to be agitated before the Family Court by adopting proper proceedings.

10. The learned counsel for the Appellant also made an attempt to argue the question of succession by the daughter of the property belonging to the Respondents, however, these proceedings are not appropriate for any decision on this issue.

11. In the result, the Appeal is dismissed. However, there will be no order as to costs.

12. This being the view which we have taken, we do not consider it necessary to decide the Civil Application Stamp No.26752 of 2008 and it is hence disposed of. The Civil Application No.329 of 2008 for injunction is also disposed of.Order Accordingly.

(S. A. BOBDE, J.)
(S. J. KATHAWALLA, J.)