

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 5325 of 2019

With

**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/FIRST APPEAL NO. 5325 of 2019**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	



Versus



Appearance:

MR. NARENDRA JAIN, ADVOCATE FOR ADITYA R GUNDECHA(8869) for the Appellant(s) No. 1

MR APURVA A DAVE(3777) for the Appellant(s) No. 1

MR. R.D.KINARIWALA(6146) for the Defendant(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 30/09/2024

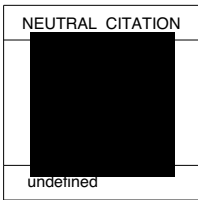
CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1 This appeal has been filed by the appellant - husband on being aggrieved by the judgement and decree dated 12.06.2019, passed by the Family Court No.3, Surat. By the aforesaid judgement and decree, the Family Suit No. 350 of 2014 filed by the appellant - husband, under Section 13(1)(i-a) of the Hindu Marriage Act, has been dismissed.

2 Facts in brief are as under:

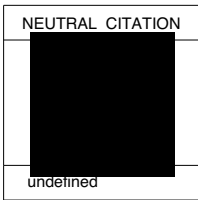
2.1 The appellant and the respondent got married on 11.07.2008 at Kolkata. It was the case of the appellant that a daughter [REDACTED] was born out of the wedlock on 05.03.2012.

2.2 According to the appellant, the couple went to the United States of America, and thereafter to Canada. It is the case of the appellant that the respondent - wife was



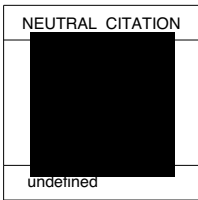
habitual to live a high standard life which the appellant was incapable of fulfilling.

2.3 The case of the appellant further was that since the in-laws were at Surat, he was pressurized into coming back to Surat and engage in a business of a transport agency arranged by his father-in-law. There was a continuous interference in the family matters at the instance of his in-laws and this resulted in cruelty at the hands of wife, and therefore, he sought divorce. Having withdrawn from the transport agency, the appellant started his textile business. In the plaint filed by the appellant, it was the case of the appellant that the respondent used vulgar language against his parents. That she would always reside at her parental house. She would not permit the appellant to interact with his daughter. Extensive pleading has been made in the plaint to suggest that the family members of the respondent - wife would threaten his family members and servants. A bungalow was bought next to her parental home by the




wife's father which was the result of interference at their end making his matrimonial life difficult.

2.4 The defendant - respondent wife appeared before the Family Court and filed her written statement at Exh.9 denying the contentions. It was her case that after the marriage they went to the United States of America. She was shocked to find that the husband had a habit to gamble. On flimsy and trivial issues, he would beat her. As a result of this, her father persuaded both to come back to Surat. He was requested to involve himself in the business of her father which he did. Subsequently, he started his own business. When the husband demanded the money for purchase of a new bungalow, her father was constrained to lend money so that she could save her marriage. She was being harassed by her in-laws as a result of the birth of a girl child. The parties led oral evidences. Apart from the appellant examining himself at Exh.13, two witnesses were examined on his behalf, namely, one Vijaya Hirendrasinh and one Sonam Piyush

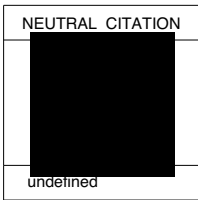


Bapna at Exh.26. Documentary evidence was also produced.

2.5 The respondent - wife  examined herself at Exh.30 and the witnesses Gautamchand and one Nipun Khilesara examined themselves at Exh.42 and 44 on behalf of the wife. On appreciation of the evidence, the Family Court found that there was no evidence on record to prove that the respondent - wife had given the appellant mental cruelty. The suit was accordingly dismissed.

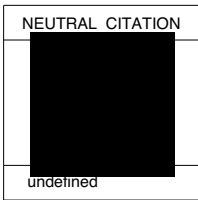
3 Mr.Narendra Jain, learned counsel appearing for the appellant - husband, would make the following submissions:

3.1 He would submit that it is an undisputed proposition that the parties have been living separately since April 2013 and all attempts to reconcile have failed. Both the sides agree that there is no possibility of the husband and the wife being able to live together. He would, therefore,



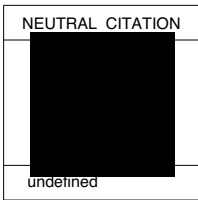
submit that this was a case of an irretrievable breakdown of marriage and this Court, therefore, should modify the decree and grant divorce to the parties.

3.2 Mr.Jain, learned counsel, would rely on a decision in the case of ***Shri Rakesh Raman vs. Smt. Kavita.***, reported in ***223 SCC Online Sc 497***. He would rely on paragraph 12 to submit that if there is a defacto breakdown of marriage, the decree of divorce should be granted under the Hindu Marriage Act. He would further submit that the learned Family Judge has completely ignored the uncontroverted portion of the deposition of the husband. He would read the husband's testimony to support the case that the behaviour of the wife caused mental strain. That it was an established fact that the family of the respondent - wife would interfere in the day-to-day affairs and the respondent-wife would avoid attending social occasions in the husband's family whereas she would always prefer to stay at her matrimonial home.



3.3 Mr.Jain, learned counsel, would further submit that mere relying on some portion of the cross-examination of the husband, it was improper for the Family Court not to accept his version. He would further submit that the Family Court Judge misread the conduct of the husband. The action of the appellant shifting to Surat rather than going to Kolkata was misconstrued. The fact that the appellant preferred to agree to shift to a city where his in-laws were residing would show the amenability of the husband and not otherwise.

3.4 Mr.Jain, learned counsel, would submit that the Trial Court failed to consider the evidence when there was no evidence to show that the bungalow that was occupied by the appellant was bought from the funds of the father-in-law. He would submit that there is a civil suit pending and the Court has not granted any injunction to the wife. There is no evidence to support the assertion that the bungalow was purchased using the money that was brought by the wife. The learned Judge has believed the

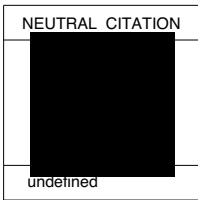


version of the wife and her witnesses when in fact it was a case that having lived separately for a long period and in absence of co-habitation, there was a complete breakdown of marriage.

3.5 Mr.Jain, learned counsel, would rely on a decision in the case of ***Sivasankaran Vs. Saanthimeenal.***, reported in ***(2021) SCC Online SC 702.***, to submit that subsequent continuing act of staying separate would also amount to cruelty. That proceedings had been filed even against him, which made it apparent that a case was made out for the parties to obtain divorce.

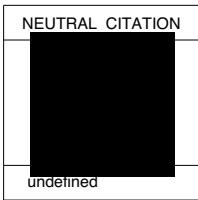
4 Mr.R.D.Kinariwala, learned counsel appearing for the respondent - wife would submit as under:

4.1 He would submit that merely because there has been an irretrievable breakdown of marriage in the perception of the appellant, the same would not make the appellant's case better. He would submit that on appreciation of evidence of the parties before the Family



Court, the Family Court has rightly come to a conclusion that no case for divorce on the ground of cruelty is made out. There is no evidence to suggest that merely because the wife's parents are living in the same city and because of the husband's association with the business of his father-in-law has resulted in interference in the family matters so as to foist a case of cruelty against the respondent-wife, just to avoid maintaining her and her daughter aged 12. In fact, it is a case where the husband has failed to carry out his matrimonial obligation. However, the fault cannot be found with the Trial Court in dismissing the suit.

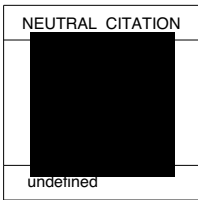
4.2 Mr.Kinariwala, learned counsel, would rely on a decision in the case of ***Gurbux Singh Vs. Harminder Kaur.***, reported in ***(2010) 14 SCC 301***, to submit that a few isolated instances over certain periods would not amount to cruelty and the marriage cannot be dissolved on such instances. The onus is on the person that a particular conduct has resulted in cruelty. The appellant



has failed to do so, and therefore, the Trial Court has committed no error in dismissing the family suit.

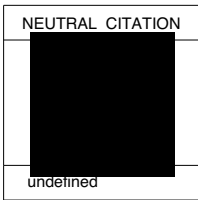
5 Having considered the submissions made by the learned counsels appearing for the respective parties, we may first have a look at the plaint filed by the appellant – husband seeking divorce on the ground of cruelty.

5.1 The plaint is an extensive narrative of the life that unfolded post the appellant's marriage. It is the case of the appellant that their marriage was solemnized on 11.07.2008. Post the marriage, according to the plaintiff, the wife proceeded to her matrimonial home on the very first day to return late in the afternoon. That she was accustomed to extremely luxurious lifestyle, and therefore, would not settle with the parents of the appellant and in her behaviour during telephonic conversations, she would not be polite. The wife, on minor issues would quarrel with him as she had a hyper sensitive tendency. The plaint would further indicate that post the marriage, the couple left for Canada, stayed



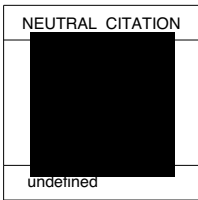
there for sometime and then went to the United States. Having found that it was not possible to settle abroad, on an invitation from his father-in-law to join the business at Surat, the appellant, together with his wife came to Surat and was engaged in transport agency. It is his case that he had to windup this business as there was continuous interference from the father-in-law. He had to separate his own business which he did.

5.2 The case of the plaintiff-appellant in the plaint further narrates that the respondent would not attend any social functions, nor accompany the in-laws and him on any family trips. On the issue of residence which the appellant was occupying, averments indicated that there was a dispute between him and his in-laws on the ownership of the bungalow. Allegations in the plaint indicate that in the year 2013 while he was once out of town, the in-laws had broken upon into the bungalow to take away certain documents. Complaint under Sec.498-A had been filed against the family where his parents had



also obtained bail. All these, therefore, were instances which resulted in mental cruelty resulting in irretrievable breakdown of marriage.

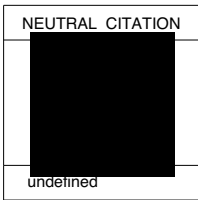
5.3 The appellant has been examined and also cross-examined. Perusal of the examination-in-chief would indicate that it is in form of an affidavit and is a prototype of plaint filed before the Trial Court. In his cross-examination, it has come on record that he was in the business of transport agency. The plaintiff has examined one Vijaya Hirendrasinh at Exh.24. He happens to be the father of the appellant. Reading his deposition would indicate that initially the son was in Canada, however, he was persuaded to come to Surat so that he could occupy house next to his in-laws. The house was taken on rent where the wife refused to accompany him on the ground that she would rather prefer to stay with her parents. The wife would never interact with him, the father-in-law, nor with the sister of the husband. She would refuse to carry out household chores, she refused to accompany the



family when on a religious trip to Palitana. The daughter-in-law would avoid coming to Kolkata with the grand child. Attempts to mediate were proved fruitless.

5.4 Perusal of the cross-examination of the appellant's father would indicate that there was an admission that the appellant-his son was helped by the father-in-law for setting up his business and residence. A mention is made of a complaint filed against him under Sec.498-A of the Indian Penal Code. The appellant has examined his sister Sonam at Exh.16. She has also narrated on the same lines as her father in favour of the appellant-brother. Nothing substantial has come out in the cross-examination of these witnesses to suggest that the respondent-wife was meeting out cruelty to the appellant.

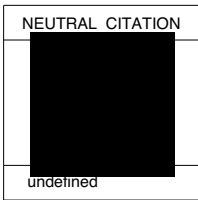
5.5 Gautamchand, father of the respondent has been examined as a witness on behalf of the respondent-wife and so also one Nipun Khilesara, an independent witness who knew the family. Reading of the evidence of Nipun Khilesara would indicate that he has submitted that the



appellant had an aggressive temperament and would lose his temper and fight with the wife at small incidences. Several attempts were made to resolve the issue. In his cross-examination, there is nothing substantial to bring out a case that would destroy the case of the wife.

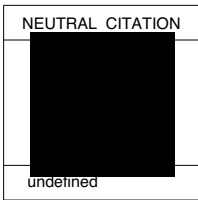
5.6 Based on these set of evidences, when we examine the order of the Trial Court, we find that merely because of difference of opinion post marriage, essentially on the aspect of wife's insistence to stay at Surat and the involvement of the father-in-law, initially in setting up the appellants business seems to have been a thorn in the matrimonial life of the parties. Nothing extraordinary which shocks the conscience of this Court, inasmuch as, to suggest that the respondent had been cruel to the appellant-husband has been brought out before the Trial Court.

5.7 Perusal of the order of the Trial Court would indicate that the Trial Court has discussed the concept of "cruelty" in light of the decisions of the Hon'ble Supreme



Court and found that the instances are not so serious so as to warrant an inference that the behaviour of the respondent be termed as “cruel”. Merely because for the welfare of the family if the father of the respondent had at some stage in the life of son-in-law tried to contribute to the growth of his son-in-law to see that the family remains viable and the marriage survives, in absence of any evidence to the contrary, it cannot be said that this would amount to interference in the family life of the couple so as to brand it as ‘Cruelty’.

5.8 In the case of **Gurbux Singh (supra)**, after considering the decision in the case of **Samar Ghosh vs. Jaya Ghosh.**, reported in **(2007) 4 SCC 511**, the Court has held that no uniform standard can be laid down for guidance. There is no reason to suggest on the basis of evidence produced before them that there was a sustained unjustifiable conduct and behaviour of the respondent or the conduct was so reprehensible or indifferent so as to suggest a total departure from normal



standard of conjugal kindness. Viewing the marriage life as a whole, the incidents are not ones which can be termed as a conduct tantamounting to cruelty on the part of the respondent. As far as the arguments regarding irretrievable breakdown of marriage is concerned, that is not a ground which is available to us to view in the scope of the appeal before us. We are bound to judge the issue as is set out before the Family Court and in exercise of our powers as an Appellate Court and on the assessment of evidence, we find that the Trial Court has not committed any error.

6 For the foregoing reasons, the first appeal is dismissed.

In view of dismissal of the main appeal, the civil application will not survive and stands disposed of, accordingly.

(BIREN VAISHNAV, J)

(NISHA M. THAKORE, J)

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