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VINOD KUMAR SUBBIAH

v.

SARASWATHI PALANIAPPAN

(Civil Appeal Nos.5511-5512 of 2014)

B

APRIL 24, 2015

**[VIKRAMAJIT SEN AND ABHAY MANOHAR SAPRE, JJ.]**

C *Hindu Marriage Act, 1955 – s. 13(1)(ia) – Dissolution of*  
*marriage – Mental cruelty – Divorce petition filed by hus-*  
*band alleging cruelty by wife – Subsequently, wife filing for*  
*restitution of conjugal rights u/s. 9 and also sought mainte-*  
*nance – Trial court holding that wife was not entitled to res-*  
D *titution of conjugal rights, ordered for dissolution of marriage*  
*and fixed maintenance at Rs. 25,000/- pm – However, High*  
*Court dismissed the petition for divorce holding that the al-*  
*legations amounted to the normal “wear and tear” in life and*  
*allowed petition for restitution of conjugal rights – On appeal,*  
E *held: Abusing the spouse as being born from a prostitute,*  
*summoning the police on false or flimsy grounds and mak-*  
*ing it impossible for any close relatives to visit or reside in*  
*the matrimonial home cannot be termed as “wear and tear”*  
*of family life but would result in cruelty to the other spouse*  
F *– Husband duly pleaded instances of mental cruelty which*  
*he proved in evidence and documents – Trial court exam-*  
*ined the same and came to the reasoned conclusion that*  
*the actions of the wife amounted to cruelty – Thus, the High*  
*Court was not justified in setting aside the conclusions ar-*  
G *rived at by the trial court without giving substantiated rea-*  
*sons – Order passed by the High Court set aside and that of*  
*the trial court restored.*

H CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.  
5511-5512 of 2014

From the Judgment and Order dated 13.03.2013 of the Madurai Bench of Madras High Court in C.M.A. (MD) No. 210 & 211 of 2012. A

Indu Malhotra, Eesha Mohpatra, Vikas Mehta for the Appellant. B

Shadan Farasat for the Respondent.

The judgment of the Court was delivered by

**VIKRAMAJIT SEN, J.** 1. 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. C D

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. E F

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. G H

A        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  
B 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  
C the Appellant be directed to take her back to her conjugal home,  
which she pleaded is in the U.S. She alleged that 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  
D 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.,  
E 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  
F 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,  
G 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

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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

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A 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  
B 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  
C maintenance was fixed at Rs. 25,000 per month.

6. The High Court, however, held that 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  
D 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  
E 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  
F 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  
G 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.

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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.