

**IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH  
DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE S G PANDIT**

**AND**

**THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL**

**MISCELLANEOUS FIRST APPEAL NO.103166 OF 2022**

**BETWEEN:**

...APPELLANT

(BY SRI. PRRUTHVI K.S., ADVOCATE).

**AND:**

SHIVAKUMAR  
HIREMATH

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SHIVAKUMAR  
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of Karnataka, Dharwad  
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...RESPONDENTS

(RESPONDENT SERVED)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION 28(1) OF THE HINDU MARRIAGE ACT, 1955, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED: 07/07/2022 PASSED BY THE COURT OF THE ADDL. SENIOR CIVIL JUDGE, KARWAR IN M.C.NO.16/2020, BY ALLOWING THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21.06.2023, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, **VIJAYKUMAR A. PATIL, J.**, PRONOUNCED THE FOLLOWING:

### **JUDGMENT**

This appeal is filed under Section 28(1) of Hindu Marriage Act, 1955 (for short, '**the Act**') against the judgment dated 07.07.2022 passed by the Addl. Senior Civil Judge, Karwar in MC.No.16/2020 by which the petition filed by the appellant-wife seeking dissolution of marriage on the ground of cruelty was dismissed.

2. Brief facts giving raise to filing of this appeal are that the marriage between the appellant and respondent was solemnized on 25.07.2017 at Karwar as per the customs of their community. It is averred that after the marriage, the appellant went to matrimonial home and stayed with the respondent 3-4 months. After the said period, the respondent started

quarreling with the appellant for demand of dowry; the respondent used to come to the house at night hours by consuming alcohol, used to start quarrelling with the appellant everyday. It is further averred that the respondent used to put cloth in the mouth of the appellant, assaulted her, pulled her hair and forced the appellant for sexual intercourse. When the appellant informed the respondent about her pregnancy, he was not happy with the said news and he was more worried as to whether the appellant would give birth to a male or female child. It is also averred that during the pregnancy, the appellant used to do all the household work without the help of anybody and after the delivery, the respondent did not take any responsibility nor taken care of the appellant and new born child. It is pleaded that the respondent used to quarrel with the appellant everyday and caused mental harassment to her. On

07.08.2018 the appellant gave birth to a female child at District General Hospital, Karwar and the respondent did not take any responsibility towards the appellant and the child. The respondent has stopped showing love and affection towards the appellant & child and asked the appellant to stay with her parents and it was informed that if the appellant wants to join the respondent, she has to leave the female child with her parents and then she can join the matrimonial home.

3. It is pleaded that the cradle ceremony was conducted in her parents house and the baby is named as Anvi. After the ceremony, the parents of the appellant dropped the appellant and the child to the matrimonial home. The respondent could not change his attitude, he continued to harass the appellant. It is further pleaded that the appellant continued to live in the house of in-laws, without there being any help

for household work she continued to do all the work, even then the respondent-husband used to harass the appellant by scolding her, abusing her on silly things, he has not shown any love or affection towards new born daughter. He used to harass the appellant in front of the others. The respondent husband never interacted with the appellant, has caused mental cruelty to her and he did not bring any household articles, medicine to the child. It is also pleaded that the respondent used to leave the house without informing the appellant, he used to spend most of the time outside the house and he used to come very late in the night in a drunken state and if the appellant questioned his conduct, the respondent used to abuse and scold the appellant in filthy language.

4. It is averred that whenever the parents of the appellant visited the matrimonial home, the respondent shown disrespect and behaved badly. On

23.05.2019, on the date when the vaccination was required to be given to baby and when the appellant insisted for providing vaccination, the respondent has started quarreling with the appellant and refused to give vaccination to the baby. It is further averred that due to the behaviour of the respondent, the appellant has decided to go and stay with her parents at Karwar as she could not tolerate his behaviour. In the first week of August 2019, the elders and well-wishers tried to settle the dispute between the appellant and respondent, however the respondent refused to live with the appellant. Hence, the appellant sought for dissolution of marriage on the ground of cruelty.

5. The respondent has entered appearance and filed statement of objections by denying the allegations of cruelty. It is averred that there is no dispute with regard to marriage and birth of the child. It is further averred that the respondent has no

objection to lead married life with appellant and for the best reasons known to the appellant, she went to her parents house without any reason; the appellant is adamant in nature, used to quarrel for petty reasons and she was in the habit of insulting the respondent and his family members and there was no harassment from the respondent as alleged in the petition. It is also averred that without informing the respondent or his family members, the appellant has left the matrimonial home by deserting the respondent. Hence, the respondent has filed a petition in MC.No.280/2019 under Section 9 of the Act for restitution of conjugal rights. The family Court Hubballi, has allowed the said petition, despite the same, the appellant has not joined the matrimonial home and hence, sought for dismissal of the petition.

6. The family Court, after framing the issues, recorded the evidence. The appellant has examined

herself as PW-1 and exhibited the documents as Exs.P-1 to P-3; the respondent has not adduced evidence. The family Court has dismissed the petition of the appellant. Being aggrieved by the same, the present appeal is filed in the above factual matrix.

7. The parties to the proceedings does not dispute the solemnization of marriage and birth of the child. The allegations of cruelty are pleaded and the same are reiterated in the evidence of PW-1 - appellant, which are as under:

- a. That after three months of the marriage, the respondent and his mother started quarrelling with the appellant for demand of dowry everyday.
- b. Respondent-husband used to come to the house at late hours by consuming alcohol and used to quarrel with the appellant.

- c. Respondent put cloth in the mouth of the appellant, pulled her hair and insisted for bringing dowry from her parents.
- d. Respondent used to insist for forceful sex everyday and if she refused, the respondent used to assault the appellant brutally.
- e. The respondent was not happy when he heard that the appellant is pregnant and he was worrying whether the appellant would give birth to male or female child and insisted that the appellant should give birth to a male child only.
- f. During the stage of pregnancy, despite her health conditions, neither the respondent nor his family members have helped to do the household work, despite knowing her ill-health.
- g. The respondent has not taken any responsibility after delivery of child by the appellant and was unhappy that she has given birth to a female

child. He has insisted that the female baby should be left in the in-laws house.

- h. On 31.03.2019 when the parents of the appellant dropped the appellant to matrimonial home after cradle ceremony, the respondent and his family members started harassing more. The respondent insisted the appellant to leave the house and make her stay in her parents house.

8. The above referred allegations of cruelty are specifically pleaded and same are reiterated in the evidence of PW-1. During the cross-examination of PW-1, nothing has been elicited by the respondent. The respondent has filed his affidavit in lieu of examination-in-chief and got marked Exs.R-1 to R-11 but he was not secured for cross-examination, hence, the family Court has discarded his evidence. The counsel for the respondent-husband has also retired

from the case and thereafter, the respondent has not been defended his case before the family Court.

9. The family Court has recorded the finding that despite the judgment in M.C.No.280/2019, the appellant has failed to join the company of the respondent and proceeded to dismiss the petition filed by the appellant under Section 13(1)(ia) of the Act without adverting to the allegations of cruelty by the appellant.

10. On careful scrutiny of the pleadings and evidence on record, it is evident that the appellant-wife has made specific assertion of cruelty referred supra. Those specific assertions of cruelty are adduced in the form of evidence before the family Court. Despite the cross-examination of PW-1, nothing was elicited by the respondent and the respondent has failed to adduce the evidence, which clearly

establishes that the allegations are true and the same are not controverted by the respondent by adducing proper evidence before the family Court.

11. In this context, it will be useful to refer the decision of Hon'ble Supreme Court in the case of ***Muddasani Venkata Narsaiah (Dead) Through Legal Representatives vs. Muddasani Sarojana***<sup>1</sup>, wherein paragraph No.15 reads as under:

*"15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW.1 and PW-2 have not been cross examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal. v. Debnath Bhagat* AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account*

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<sup>1</sup> (2016) 12 SCC 288

*has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 P & H 440."*

*(Emphasis supplied)*

12. The Hon'ble Supreme Court in the case of ***Vidhyadhar vs. Manikrao and another***<sup>2</sup> held at paragraph No.17 as under:

*17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr. . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and*

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<sup>2</sup> (1999) 3 SCC 573

*Ors. , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.*

13. Keeping in mind the above settled legal position, in the instant case, the respondent-husband has failed to adduce evidence; in the absence of any contra evidence of respondent, the statement of witness on record to be taken as true, which has not been disputed by the respondent.

14. The family Court has committed an error in recording the finding that despite the judgment in M.C.No.280/2019, the appellant has failed to join matrimonial home. The family Court has not considered the case of the appellant on its merits for dissolution of marriage on the ground of cruelty. The family Court has committed an error in recording the finding that the appellant has approached this Court in MFA No.101311/2020 challenging the order passed in

M.C.No.280/2019, hence, considering the petition for dissolution of marriage does not arise and the petition is not maintainable under law. The aforesaid finding is erroneous for the reason that the respondent has filed petition under Section 9 of the Act for restitution of conjugal rights and the said petition was disposed of placing the appellant *ex parte*. In our considered view, the family Court erred in not considering the matter on its merits as the appellant has specifically pleaded the grounds of cruelty and the same are proved in evidence. The allegations of cruelty pleaded and proved are not controverted by the respondent.

15. The allegations of cruelty referred supra are of serious in nature and consistent from the inception of marriage till the appellant started living with her parents. In our considered view, the appellant has proved the grounds of cruelty to dissolve the marriage.

16. For the aforementioned reasons, the appeal is **allowed** and the impugned judgment and decree dated 07.07.2022 passed by the Addl. Senior Civil Judge, Karwar in M.C.No.16/2020 is set-aside and the marriage between the parties is dissolved by decree of divorce on the ground of cruelty as prescribed under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Naa/BSR