

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**FAMILY COURT APPEAL No. 344/2014
WITH
CROSS OBJECTION NO.15/2012**

Sau. Sarika W/o. Sachin Palsokar,
aged 32 years, Occ. : Household,
R/o. C/o. Vasantrao Pimpalkar,
102, Sai-Prasad Apartments, Revti
Nagar, Besa, Nagpur.

APPELLANT

....VERSUS....

Sachin S/o. Suresh Palsokar,
aged 36 years, Occ. : Service,
R/o. Sahajivan flats – 2, in front of
LAD College, Shivaji Nagar, Nagpur.

RESPONDENT

Mrs. T.D. Khade, counsel for the appellant.
Shri A.V. Khare, counsel for the respondent.

**CORAM :SMT.VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.**

DATE : 15TH SEPTEMBER, 2016.

ORAL JUDGMENT (PER : SMT.VASANTI A. NAIK, J.)

By this Family Court Appeal, the appellant challenges the judgment of the Family Court, Nagpur dated 20.12.2011 allowing a petition filed by the respondent for a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. In the First Appeal filed by the appellant, the respondent has filed a Cross Objection for seeking the custody of the minor child as the Family Court has held that the custody of the minor child, would remain with the appellant.

2. Few facts giving rise to this Family Court Appeal and the Cross Objection are stated thus :-

The appellant-wife (hereinafter referred to as 'the wife' for the sake of convenience) and the respondent-husband (hereinafter referred to as 'the husband') were married at Nagpur as per the Hindu rites and custom on 20.02.2009. A son by name Anvesh was born from the wedlock on 13.10.2009. The husband and the wife belong to highly educated middle class families and the wife was made aware before the solemnization of the marriage that she would be required to stay in the matrimonial home along with the parents of the husband. After the marriage, the wife started residing in the matrimonial home at Nagpur. The husband had taken the wife to Kerala after the marriage was solemnized and from the inception of the marriage, the husband found that the wife was behaving strangely. It is stated by the husband in the Hindu Marriage Petition filed by him for a decree of divorce that the wife continued to behave badly with the husband and his parents though they tried to keep her happy. It is pleaded that the wife used to lose her temper on petty matters and used to shout on the parents of the husband. It is pleaded that the wife always threatened the husband and his parents that she would commit suicide. It is pleaded that the wife insisted that the husband should reside separately in a nuclear family. It is pleaded

that the husband suffered mental trauma due to the quarrelsome, rude and insulting behaviour of the wife. It is pleaded that the wife did not contribute in the household work. It is pleaded that the father of the husband wrote a letter on 28.06.2009 to the father of the wife about her whimsical behaviour. It is stated that the father of the wife acknowledged the goodness of the husband and his parents and promised to advise his daughter. It is pleaded that Anvesh was a slow learner and required great care and attention. It is stated that after the birth of Anvesh there was no change in the behaviour of the wife and she constantly threatened the husband to leave the matrimonial home and commit suicide. It is pleaded that the wife also threatened the husband that she would throw and harm Anvesh. It is pleaded that the wife needed medical treatment from a Psychiatrist but, she was not ready to take treatment. It is pleaded that on 24.05.2010, the wife left the matrimonial house along with Anvesh, with an assurance that she would take medical treatment and join the company of the husband but, she did not do so. It is pleaded that on the same day, the wife swallowed tablets and called the police, her parents and Smt. Mrunal Dani, and all of them advised her to behave properly and to take medical treatment. It is pleaded that as the police had visited the matrimonial house, the mother of the husband suffered a heart attack. It is pleaded that on 17.06.2010, when the husband and the wife were returning from the hospital of Dr. Bhole where Anvesh was being treated,

the wife started behaving erratically. It is pleaded that the child was kept on the floor of the house and the wife went near the well, stood on the brick-skirt of the well and threatened that she would commit suicide if the husband does not behave as per her wishes. It is pleaded that the wife threatened the husband to throw the son in the well and asked the husband to take both of them to the matrimonial home. It is pleaded that the parents of the wife brought her into the house with great efforts. It is pleaded that the husband apprehended that the wife would go to any extent to harass the husband and his parents and may also harm Anvesh to implicate the husband or his family members in a false criminal case. While seeking the decree of divorce on the aforesaid allegations, the husband also sought the custody of Anvesh, who was aged about 2-3 years at the relevant time.

3. The wife filed the written statement and denied the claim of the husband. The wife denied all the adverse allegations levelled by the husband against her. The wife pleaded that the husband had differences with the wife on trivial issues. It is pleaded that due to the short temper of the parents of the husband, it was difficult for her to stay in the matrimonial home, along with them. The wife pleaded that she was required to return to her parental home in view of the ill-treatment meted out by the parents of the husband to her. It is pleaded that the father of

the husband wrote a note in his own handwriting and compelled the wife and her father to sign the same. It is pleaded that the wife was forcibly asked to sign on the documents that recited that she would behave properly with the husband and his family members after she returned to the matrimonial home. It is pleaded that due to the threat of the husband and his parents, the wife and her father had signed on a document that recited that the wife would behave well with her husband and his parents, after she returned to the matrimonial home. It is pleaded that the family life of the husband and the wife became miserable only because of the interference of the parents of the husband. It is pleaded that the parents of the husband tortured her mentally and assaulted her. The wife pleaded that the husband used to beat her and the father of the husband also tried to assault her. It is pleaded that when the husband and his father tried to beat her, she was required to call the police. It is pleaded that the wife tried her level best to behave well with the husband and his family members but they had high expectations. The wife denied that the husband was entitled to the custody of the minor child at the tender age of 2-3 years. The wife sought for the dismissal of the petition filed by the husband.

4. On the aforesaid pleadings of the parties, the Family Court framed the issues. The husband examined himself and also examined his

father and Dr. Nilkanth Nimdeokar. The wife examined herself and closed the evidence on her side. On an appreciation of the evidence on record, the Family Court, by the judgment dated 20.12.2011, decreed the petition filed by the husband for divorce under Section 13(1)(i-a) of the Hindu Marriage Act and directed that the custody of Anvesh shall remain with the wife. Being aggrieved with the part of the judgment granting a decree of divorce in favour of the husband, the wife has filed this Family Court Appeal. The husband has filed the cross-objection, seeking the custody of Anvesh, as according to the judgment of the Family Court, the custody of Anvesh was to remain with the wife.

5. Mrs. Khade, the learned counsel for the wife, submitted that the Family Court was not justified in granting a decree of divorce in favour of the husband. It is stated that the wife behaved well with the husband and her in-laws but, they did not treat her well. It is submitted that the husband has failed in proving that the wife used to frequently quarrel with the husband and threaten the husband and his parents that she would commit suicide. It is submitted that the wife desired to live in the matrimonial home and, therefore, she had signed the document that recited that she would behave properly with the husband and his parents, if she was permitted to reside in the matrimonial home. It is stated that the said document was signed by the wife and her father under pressure

and, hence, the same could not have been relied on by the Family Court for holding that the wife was not behaving well with the husband and her in-laws. It is stated that on a number of occasions, the husband and his parents had threatened to beat the wife and, therefore, she was constrained to call the police. It is stated that the Family Court has not appreciated the evidence of the parties in the right perspective while holding that the wife had treated the husband with cruelty and he was entitled to a decree of divorce under Section 13(1)(i-a) of the Act. It is stated that the Family Court has rightly directed that the custody of Anvesh should remain with the wife as Anvesh needs the care, love and affection of a mother, at the tender age. It is stated that since Anvesh was aged about two years and since the custody of a minor child below five years should ordinarily be with the mother, the Family Court had rightly granted the custody of Anvesh, to the wife. It is submitted that the husband works with the H.D.F.C. as a senior officer and, hence, he would not be able to take proper care of Anvesh, who is now seven years of age.

6. Shri Khare, the learned counsel for the husband, supported the judgment and decree of the Family Court for divorce under Section 13(1)(i-a) of the Act. It is stated that the Family Court has rightly relied on the admissions of the wife in the cross-examination to grant a decree

of divorce after holding that the wife had treated the husband with cruelty. It is stated that though the wife had levelled serious allegations against the husband and his parents in the written statement, she had admitted in her cross-examination that the parents of the husband had not demanded any dowry and her mother-in-law used to cook the food in the morning and she used to cook the food in the evening. It is stated that the mother of the husband was a working woman and she used to be out of the house for work from 10.30 a.m. till 4.30 p.m. It is stated that the Family Court has rightly held that reckless allegations were levelled by the wife against the husband and his family members. It is stated that the wife had admitted that when her mother-in-law had only asked her as to why she had cooked the vegetable (curry) in the evening when sufficient vegetable that was cooked in the morning was available, she became angry and had slept empty stomach and also did not have her lunch on the next day. It is stated that the wife had admitted that in the evening, on the next day, she had called a tiffin from outside for dinner as she was angry with her mother-in-law. It is stated that the wife had admitted that she had destroyed the picture-poster of a baby that was affixed on the wall when there was a big quarrel between herself and the husband. It is stated that the wife had admitted that her father had bought a stamp paper (Exhibit 51) and she had signed on the said stamp paper, wherein she had written in her handwriting that she would behave

well with her in-laws, if she was permitted to reside in the matrimonial home. It is stated that the wife had admitted that she had called the police in the matrimonial home. It is stated that the wife had also admitted that she was standing near the well, as pleaded by the husband. It is stated that the wife had admitted that on 01.10.2010, she had gone to the housing society, where the husband resides and that she had lived for one night in the house of one Shri Deshpande. It is stated that in the circumstances of the case and in the face of the admissions of the wife in her cross-examination, the Family Court was justified in granting a decree of divorce in favour of the husband on the ground of cruelty.

7. The learned counsel for the husband submitted that Anvesh is a slow learner and since he is seven years of age now, the custody of Anvesh may be given to the husband. It is submitted that considering the nature and the temperament of the wife, as could be gauged from her cross-examination, in the interest of Anvesh, the custody of Anvesh should be given to the husband. It is stated that when the wife is in a bad mood, she does not send Anvesh to the school or to the coaching classes meant for the slow learners. It is stated that during the pendency of the Family Court Appeal, the husband is dropping Anvesh to the school in the morning and is picking him up in the evening and reaching him to the wife. It is stated that though the custody of Anvesh is with the wife,

during the working days of the week, i.e. from Monday to Friday, in terms of the agreement between the parties, as recorded by this Court in the order dated 21.09.2013, the husband voluntarily performs the duty of dropping Anvesh to the school and the classes and reaching him back to the wife's residence on all the school days. It is stated that the husband is paying a sum of Rs.10,000/- per month (i.e. Rs.6,000/- for the wife and Rs.4,000/- for Anvesh) apart from all other expenses that are borne by the husband for the education and the speech and development therapy of Anvesh. It is stated that the husband would continue to pay a sum of Rs.10,000/- to the wife even if this Court grants the custody of Anvesh to the husband. It is stated that in terms of the settlement that was executed between the parties on 19.09.2013 and recorded in the order dated 21.09.2013, the husband used to have the access to Anvesh from Friday evening to Monday morning but, the said access is extremely short. It is stated that in the changed scenario, this Court may grant the custody of Anvesh to the husband. It is stated that the wife is living all alone and separately in a rented house and it is admitted by the wife in her cross-examination that her brother had threatened to kill Anvesh and in this background, it would not be in the interest of justice to permit the wife to retain the custody of Anvesh.

8. On hearing the learned counsel for the parties and on a perusal of the Record & Proceedings, it appears that the following points arise for determination in this Family Court Appeal.

I) Whether the husband is successful in proving that the wife had treated him with cruelty and whether he is entitled to a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act ?

II) Whether the husband is entitled to the custody of Anvesh and/or the wife is entitled to the custody as per the judgment of the Family Court ?

III) What order?

9. To answer the aforesaid points, it would be necessary to consider the pleadings of the parties and the evidence tendered by them. It would not be necessary to reiterate the pleadings as we have narrated the pleadings in detail, in the earlier part of this judgment.

10. The husband had examined himself and reiterated the facts stated by him in his pleadings. The husband was not cross-examined at length. In his cross-examination, the husband admitted that the wife

resided with him in short spells. The husband admitted in his cross-examination that the normal voice of the wife was very loud but, that was not the reason for feeling that she was quarreling when she was talking normally. The husband admitted that his gross salary is Rs.40,000/- per month. There were no suggestions to the husband in regard to the allegations made by him against the wife in respect of the cruel treatment meted out by her to the husband and his parents. The husband had stated in his examination-in-chief that the wife was behaving strangely and erratically and though she was asked not to shout and speak softly, she used to give threats to him and his parents. Though the husband had stated in the examination-in-chief that the wife would threaten the husband and his parents that she would commit suicide, there is no cross-examination of the husband on the said allegation. The husband had stated in his examination-in-chief that the wife had written on the document at Exhibit 51 that she would mend her ways and behave well with the husband if she was permitted to live in the matrimonial home and the husband was not cross-examined on the said statement. The husband had stated in his examination-in-chief that the wife had gone to a well, stood on the brick-skirting of the well on or about 17.06.2010 and threatened to commit suicide if the husband does not behave as per her wishes and there is no cross-examination of the husband in this respect. The husband had stated in his examination-in-chief that with great

efforts, the wife was pulled away from the well but, the husband was under a constant threat that the wife would either try to harm herself or Anvesh, if the things did not go her way. Though the husband had pleaded the aforesaid facts in his petition and had also tendered evidence on affidavit reiterating the facts in the pleadings, there is no cross-examination of the husband on the said facts. In the absence of cross-examination, the Family Court has rightly believed the case of the husband. Apart from the husband, the husband had examined his father and also Dr.Nilkanth Nimdeokar. The evidence of the father of the husband and the doctor supported the case of the husband. Apart from the fact that the evidence of the husband went unchallenged, the Family Court has rightly relied on the admissions of the wife in her cross-examination to hold that the husband has proved that the wife has treated the husband with cruelty and he is entitled to a decree of divorce. Though the wife had stated in her evidence that her in-laws had harassed her and also assaulted her on certain occasions, the wife did not prove the said fact by tendering cogent evidence. In fact, the wife admitted in her cross-examination that her in-laws had never demanded dowry, that her mother-in-law was in service, that she used to go out for work from 10.30 a.m. till 4.30 p.m., that the mother-in-law used to cook food in the morning and that she used to cook the food in the evening. The wife had admitted that her elder brother used to ill-treat her and had even

threatened to kill Anvesh. The wife had admitted in her cross-examination that she was aware before the marriage that her husband was the only son of his parents and that she would be required to live in a joint family. The wife admitted that when her mother-in-law asked her as to why she had cooked the vegetable in the evening when there was sufficient cooked vegetable available, she became angry and had slept empty stomach and also did not have her lunch on the next day. The wife admitted that in the evening on the next day, she had called a tiffin from outside for dinner as she was angry with her mother-in-law. The wife admitted that her father had come to the matrimonial home and had given her an understanding that she should behave properly with the husband and her in-laws. The wife admitted that her father had told her in-laws that the wife was hot tempered. The wife admitted that she assured her father that she would behave properly with the husband and her in-laws. The wife further admitted that she had torn the poster-picture of a baby that was affixed on a wall in her bedroom. The wife admitted that she had written on a stamp paper (Exhibit 51) that she would behave well with her husband and her in-laws in future and that her father had bought that stamp paper and that the contents of the stamp paper were written in her handwriting and that she had signed the same. The wife had admitted that when there was a quarrel between the husband and the wife on 24.05.2010, she had called the police from her

cellphone. The wife had admitted that she was standing near the well as stated by the husband but, that was not for the purpose of committing suicide. The wife admitted that on 08.09.2011, i.e. after the separation, she had called the husband, in his office that Anvesh had fallen down and had a bump on his head with a bleeding injury but, she did not take Anvesh to the doctor. The wife had admitted that she had been to the housing society where her husband resides and lived in the night in the house of one Shri Deshpande and had called the tiffin for Anvesh from her in-laws. From the aforesaid admissions of the wife, it is clear that the wife had treated the husband with cruelty. In this case, the evidence of the husband has remained unchallenged. The evidence of the husband is supported by the evidence of the witnesses examined by him. Apart from the fact that the evidence of the husband has remained unchallenged, the admissions of the wife in her cross-examination have further proved that the wife had treated the husband with cruelty. The wife had made reckless allegations against the husband and her in-laws in regard to the ill-treatment meted out to her including the physical violence but, she has failed to prove the same by leading cogent evidence. In fact, the wife had admitted in her cross-examination that her in-laws had never demanded dowry, that her mother-in-law used to be out of the house from 10.30 a.m. till 4.30 p.m. as she was in service, that her mother-in-law used to cook the food in the morning and that she was required to cook the food

in the evening. The wife had admitted that when her mother-in-law casually asked her as to why she had prepared the vegetable in the evening when the vegetable cooked in the morning was remaining and was sufficient for the family, for dinner, the wife became so angry that she had slept empty stomach that night, did not have her lunch on the next day, and had called for a tiffin for her, for the dinner on the next day. The admissions of the wife clearly show that she was extremely hot tempered and she used to make a big issue of trifle matters. The allegations made by the husband in regard to the eccentric nature and temperament of the wife are proved by the husband not only by his evidence, that has gone unchallenged but, also by the admissions of the wife in her cross-examination. The wife has admitted that she was standing near the well but, she stated that that was not for the purpose of committing suicide. We believe the case of the husband that the wife was threatening the husband that she would commit suicide. The wife was eccentric and the fact that the wife was standing on the brick-skirting of the well, shows that the wife threatened the husband that she would commit suicide. The allegations made by the husband in this regard have been proved by the husband by tendering cogent evidence, that has remained unchallenged. There is no cross-examination of the husband on this aspect from the side of the wife. It is proved by the husband from his evidence as well as the evidence of the wife in her cross-examination that

the wife was treating the husband with cruelty. The Family Court has rightly held that the wife was not behaving properly with the husband and her in-laws, or else there was no occasion for her to prepare the writing on the stamp paper, Exhibit 51, that she would behave well with the husband and the in-laws, in future. The act on the part of the wife to remain without food for more than a day, when she knew that she was pregnant, the act on the part of the wife to call the police in the matrimonial home, the act on the part of the wife to tear the baby poster after a fight, the act on the part of the wife to stand on the skirting of the well to threaten the husband, the act on the part of the wife to threaten the husband to commit suicide, the insistence on the part of the wife to stay away from his old in-laws and the writing by the wife that she would behave well in future, show that the wife treated the husband with cruelty. The cumulative effect of the acts on the part of the wife of becoming angry on trifle matters, threatening the husband to commit suicide and attempting to commit the same by standing near the well surely tantamounts to cruelty. It would be difficult for any husband to live with the wife, who continuously gets flared up on trifle issues and threatens to commit suicide or injure the minor child. The Family Court has rightly held that it was clear from the oral and the documentary evidence on record that the wife had treated the husband with cruelty and that he was entitled to a decree of divorce on the said ground.

11. Having held so, it would be necessary to consider as to who would be entitled to the custody of Anvesh. The wife has admitted in her cross-examination that her brother had threatened to kill Anvesh. She had also admitted in her cross-examination that though on 08.09.2011, she had telephoned the husband that Anvesh had a fall and had a bump on his head with a bleeding injury, she did not take Anvesh to a doctor. Though the aforesaid admissions on the part of the wife would result in recording a finding that the wife was not taking proper care of Anvesh, we are not inclined to permit the husband to have the custody of Anvesh in the entirety. It is not in dispute that the husband is paying a sum of Rs.10,000/- to the wife and Anvesh and also paying the school fees, fees for the speech and development therapy and is bearing the other expenses for Anvesh. It is fairly stated on behalf of the husband that even if the custody of Anvesh is granted to the husband, the husband would still continue to pay a sum of Rs.10,000/- to the wife. We have found from the evidence of the husband and the statements made on his behalf in this Court at the time of hearing that the husband is conducting himself as a good father and is also desirous of giving a substantial amount to the wife towards her maintenance. It is also not disputed by the counsel for the wife that the husband used to drop and collect Anvesh from the school and the coaching classes, even after the parties had decided to share the custody-access to Anvesh, as per the terms of settlement,

executed on 19.09.2013. The husband and the wife had agreed in terms of the interim settlement that Anvesh would be in the custody of the wife from Monday to Friday and from Friday evening to Monday Morning, the custody-access of Anvesh would be with the husband. We find that the custody of Anvesh is given to the wife by the Family Court only because the custody of a child should normally remain with the mother, if the child is below five years of age. Now, Anvesh is seven years of age and in the circumstances narrated hereinabove, it would be necessary in the interest of justice to permit the husband to have the custody of Anvesh for some more time during the school days and equally with the wife during the vacations. In the circumstances of the case, we are not inclined to grant the custody of Anvesh only to one of the parents as the child is a slow learner, and in our view, both the parents should be able to shower their love and affection on Anvesh so that the child remains attached with both of them.

12. The terms of settlement executed between the parties on 19.09.2013 as an interim arrangement have worked to a great extent and in the circumstances of the case, we direct that the custody of Anvesh would be with the husband from Friday evening (after the School hours) till Tuesday morning, when Anvesh would be dropped to the school. It is needless to mention that the wife would have the custody of Anvesh from

Tuesday evening (after the School hours) till Friday evening. We have arrived at this arrangement, with a view to give equal opportunity to both the parents to spend time with Anvesh who is just seven years of age and is a slow learner. The husband may continue to drop Anvesh to the school and classes and bring him back to the house of the wife even when Anvesh would be in the custody of the wife. During the vacations, the custody of Anvesh should be shared equally by the husband and the wife, that is to say that, if the vacations are for a period of twenty two days, Anvesh would remain with each of the parents for eleven days. This arrangement would apply to all the vacations including the Summer, the Winter and the Diwali vacations.

13. For the reasons aforesaid, the Family Court Appeal is dismissed. The cross-objection is allowed in terms of the directions in paragraph 12 of the judgment. In the circumstances of the case, there would be no order as to costs.

JUDGE

JUDGE

Deshmukh/APTE

CERTIFICATE

I certify that this Judgment uploaded is a true and correct copy of original signed Judgment.

Uploaded by: Rohit D. Apte.

Uploaded on : 21.09.2016.

Bombay High Court