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SMT. CHANDRAKALA TRIVEDI

v.

DR. S.P. TRIVEDI

AUGUST 24, 1993

B

[S. RATNAVEL PANDIAN AND R.M. SAHAI, JJ.]

Hindu Marriage Act, 1955 :

C

Section 13(1)(a)—Divorce—Allegation of cruelty—Bitterness continuing despite becoming grandparents—Interference by Supreme Court in appeal against grant of divorce—Whether called for.

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The respondent-husband had filed a petition for divorce on the ground of cruelty against the appellant wife under Section 13(1)(a) of the Hindu Marriage Act. It was dismissed by the Matrimonial Court. The Division Bench of the High Court, in the appeal filed by the respondent, granted the decree. This appeal is against the grant of decree of divorce by the High Court.

Dismissing the appeal, this Court

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HELD: 1. Without examining the correctness of the findings of the Court below it is certain that in view of the allegations made against each other the marriage of the appellant and respondent, in any circumstances, cannot be continued further. The marriage appears to be practically dead as from cruelty alleged by a husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu wife. [788-E-F]

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2. Therefore, the respondent-husband is directed to purchase a flat for the appellant between Rs. 3 to 4 lakhs and hand over the vacant possession within six months and deposit a further sum of Rs. 2 lakhs in the name of the appellant at the Family Court, Bombay. In the alternative, if the appellant is not agreeable for the flat the respondent shall deposit a sum of Rs.5 lakhs which the appellant shall be entitled to withdraw.

[799-C-D]

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3. The question whether the Division Bench was in error in observing that the matrimonial proceedings are quasi-criminal in nature and therefore it was for the wife to prove beyond doubt that the husband was leading

an adultrous life has some merit but it need not be examined as it would entail remand which shall be continuation of further agony. [798-G] A

Narayan Ganesh Datane v. Sucheta Naryana Dastane, [1975] 3 S.C.R. 967, referred to.

4. The findings of unbecoming conduct of the appellant is shaky. It is directed that such findings in the judgment of all courts below shall stand deleted. [799-A] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1838 of 1990. C

From the Judgment and Order dated 17.10.89 of the Bombay High Court in LPA No. 105/89.

S.M. Jain, A.N. Pareekh, Sushil Kumar Jain and A.P. Dhamija for the appellant. D

K.K. Singhvi, Mrs. Pushpa Singhvi, B.N. Singhvi and A.K. Gupta for the respondent.

The Judgment of the Court was delivered by

R.M. SAHAI, J. This is wife's appeal against grant or decree by divorce by the High Court on ground of cruelty under Section 13(1)(a) of the Hindu Marriage Act. When leave was granted this Court observed, E

"Special leave is granted as *prima facie* it appears that there are some points of law arising in the matter which may deserve consideration. We must, however, express that it is with some regret that we are granting leave in this matter because it appears to us that the marriage between the parties is, for practical purposes, dead. The only child of the marriage is a daughter who is also married and settled. The enforced continuity of the marriage will only mean that the parties will spend more years in bitterness against each other. The husband is in a position to provide reasonable maintenance or permanent alimony. We can only hope by the time the appeal reaches - hearing the parties will be in a more reasonable frame of mind and arrive at some resolution of their problems which will be mutually acceptable to them." F G H

- A But when the special leave petition was taken up for hearing the parties adopted very tough and rigid attitude. And that too when they are grandparent by now. Prime of life is lost but the fire of dislike for each other was still burning hot. We do share feelings of wife expressed by the learned counsel that a conservative Hindu lady would no prefer to be know as divorcee in the society. At the same time we cannot be oblivious of impossible situation in which the parties have landed themselves which indeed is unfortunate.
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- Both the appellants (wife) and the respondent (husband) come of middle class families. Their father were vaid by profession. The husband while he was doing internship at the J.J. Hospital, Bombay, was married to the appellants and from their wedlock a daughter was born who admittedly is now married. Differences appear to have arisen sometime in late seventies nine years after marriage due to alleged intimacy of the husband with another lady doctor, which ultimately led to filing the petition for divorce by the husband on ground of cruelty. When written statement was filed and allegations of adultery were made against the husband he set up a case of undesirable association of his wife with young boys. Unfortunately for the appellants even the Matrimonial Court which dismissed the petition found that her behaviour was not of a Hindu married woman. Whether the allegation of the husband that she was in the habit of associating with young boys and the finding recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband and wife as have been made in this case then it is obvious that the marriage of the two cannot in any circumstances be continued any further. The marriage appears to be practically dead as from cruelty alleged by the husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu Wife.
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- The submission of the learned counsel for the appellants that the Division Bench committed error in observing that matrimonial proceedings are quasi criminal in nature therefore it was for the wife to prove beyond all reasonable doubt that the husband was leading an adulterous life appears to have some merit in view of a decision of this Court in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, [1975] 3 SCR 967. But we do not propose to examine it as we are satisfied that the marriage is dead and the findings of fact cannot be set aside by this Court except that the appeal can be sent back to Division Bench to decide it again which would mean
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another exercise in futility leading to tortuous litigation and continued A
 agony of the parties. We may also mention that the findings of unbecoming
 behaviour or the appellant appear to be shaky. We, therefore, direct that
 such findings in the judgment of all the courts shall stand deleted. Yet we
 have decided not to interfere with the order passed by the Division Bench.
 One of the reasons for this is that the husband on our persuasion agreed B
 to provide for a one bed-room flat to the appellant in a locality where it
 can be available between Rs. 3 to 4 lacs. He also agreed to deposit a sum
 of Rs. 2,00,000 for the welfare of the appellant.

4. Therefore, while dismissing this appeal we direct the husband
 (respondent) to purchase a flat for the appellant in Thane between Rs. 3 C
 to 4 lacs. He shall further deposit a sum of Rs. 2,00,000 by a demand bank
 draft in name of the appellant with the Family Court, Bombay which shall
 be withdrawn by her. The house shall be purchased within six months from
 today and vacant possession shall be handed over to the appellant.

5. In case the appellant is not agreeable for one room flat at Thane D
 she shall intimate in writing within one month from today. On being
 informed of it the husband shall deposit a sum of Rupees Five Lakhs by a
 demand draft payable to the appellant with the Family Court within three
 months thereafter. The appellant shall be entitled to withdraw it.

6. The decree for divorce shall remain suspended for the aforesaid E
 period depending on the appellant if she accepts Rupees Five Lakhs or a
 one room flat in Thane and Rupees Two Lakhs.

Subject to these the appeal is dismissed.

Parties shall bear their own costs. F

N.P.V.

Appeal dismissed.