



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION***

***FAMILY COURT APPEAL NO.159 OF 2010  
WITH  
FAMILY COURT APPEAL NO.161 OF 2010***

K [REDACTED] B [REDACTED] C [REDACTED]

Age. 31 yrs.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Malad (West), Mumbai-400 064.

...Appellant  
(Orig. Respondent)

Versus

B [REDACTED] S [REDACTED] C [REDACTED]

[REDACTED]  
[REDACTED]

Cotton Green, Mumbai-400 015.

...Respondent  
(Orig. Deft.)

Ms. Aditi Naikare (through legal aid) for the Appellant.

Mr. Vaibhav Jagdale for the Respondent.

***CORAM: BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.***

***RESERVED ON : 17<sup>th</sup> MARCH 2026  
PRONOUNCED ON : 8<sup>th</sup> MAY 2026***

**JUDGMENT : (Per Manjusha Deshpande, J.) :**

1. Both these appeals arise out of the common judgment delivered by the Judge, Family Court Mumbai at Bandra in Petition No.A-1022 of 2004 and Petition No.C-188 of 2004 delivered on 23<sup>rd</sup> July, 2010, thereby the petition for divorce has been decreed by dissolving the marriage under Section 13(1)(i-a) of the Hindu Marriage Act and dismissing the petition for maintenance filed by the wife. Feeling aggrieved by the outcome of both the petitions the respondent-wife has approached this Court by way of filing the appeals against the impugned orders.

2. The husband had filed Petition No.A-1022 of 2004 for divorce under Hindu Marriage Act 1955, on the ground of cruelty, whereas the wife has filed Petition No.C-188 of 2004 seeking maintenance and residential accommodation under the provisions of the Hindu Adoptions and Maintenance Act, 1956.

According to the husband, the marriage between the parties was solemnized as per the Hindu Vedic Religious Rites on 28<sup>th</sup>

February 2002. Within few days of solemnization of marriage, dispute arose between the parties.

In June 2002, their dispute was resolved through mediation and they decided to start afresh. However, this reconciliation did not last for long and again on 7<sup>th</sup> July 2002, the wife left the matrimonial home and started residing with her parents.

After waiting for a considerable period the husband filed Petition for Divorce on the ground of cruelty. The allegations of the husband were that wife was not behaving properly; was not doing her household work; she was disobedient towards his parents; her behavior was rude; she was not able to cook; the wife caused him mental stress, all these acts amount to cruelty.

The parties filed their respective written statements and lead evidence. The husband examined himself and his two witnesses in support of his allegations of cruelty. The wife deposed on oath and opposed all the allegations. After hearing the respective parties the impugned Judgment came to be passed.

3. So far as the relief of maintenance claimed by the wife is concerned, during the pendency of the maintenance petition the application for interim maintenance filed by the wife was allowed and the husband has been directed to pay an amount of Rs.1200/- per month along with a cost of Rs.1,000/- vide order dated 21<sup>st</sup> September, 2005. This order continued to operate during the pendency of the petition till its decision.

It is submitted that the respondent was very much employed and is a qualified Chartered Accountant who was earning more than Rs.30,000/- to Rs.40,000/- per month during the pendency of the petition before the Family Court. The defence of the respondent before the Family Court about losing the job and not being able to earn anything is taken with a view to defeat her claim of maintenance. Presently he is having an established practice as a Chartered Accountant, therefore, the order refusing maintenance needs to be set aside by enhancing the amount which is granted by this Court by way of ad-interim relief.

4. According to the appellant, it is admitted by the respondent that she was conducting art classes like decoration of bridal sarees, decorative articles along with basic drawing and painting from which she was earning sufficiently as such she was able to maintain herself which dis-entitled her for receiving any maintenance.

5. It is submitted that she, on her own volition, deserted the respondent on 7<sup>th</sup> July 2002 by leaving the matrimonial house and refusing to resume cohabitation. It was also contended before the Court that the respondent was not having any source of income because he was without any stable job and whatever his earning was it was from his Articleship.

6. The learned advocate for the appellant submits that, the evidence produced by the parties has not been properly appreciated by the learned Judge of the Family Court while passing the impugned judgment. While refusing the maintenance there is nothing produced on record by the respondent to show that the appellant is having

sufficient income. It also needs to be appreciated that a hobby or art cannot become a means of survival or a stable income for one's livelihood.

Inspite of the fact that the respondent has not produced any material on record to show that the appellant is having any stable and permanent source of income she has been denied maintenance holding that she is not entitled for maintenance.

7. It is submitted that relying on one single advertisement given by the appellant, in the newspapers about her art classes, the learned Judge has come to a conclusion that she is having a stable source of income. The learned advocate submits that, the appellant being a legally wedded wife, is entitled for a decent maintenance and provision of residence, befitting the status of her husband who is a Chartered Accountant. Thus, she is entitled to be maintained with the same status as that of her husband. Hence, the learned Judge has committed a grave error in denying the relief of maintenance as claimed by her in the petition for maintenance.

8. It is also submitted that the learned Judge has believed the distorted version of their married life presented by the respondent before the Court as a gospel truth. The learned Judge has failed to appreciate she left the matrimonial house on 7<sup>th</sup> July, 2002, as she was forced to leave due to the harassment of the respondent and his relatives.

9. Although the respondent has claimed that she has behaved in a cruel manner with him, by her conduct and in language, but infact it was the respondent-husband and his parents who kept on making demands of dowry, expensive jewelleries, cash etc. from the appellant and her parents. Her parents have already spent Rs.4,00,000/- on her marriage, in order to meet every possible demand made by the respondent and his parents. The parents as well as the respondent himself have treated the appellant with a prejudice mind.

10. The appellant has denied the allegations of refusing to do the domestic work. It is submitted that these allegations have been made only with a view to create grounds of divorce and defeat the claim of the appellant. In fact she was made to do all the household work of cleaning the house, utensils, clothes, cooking food etc. Despite doing all the household chores, the family members of the respondent were never satisfied, she had to bear all the atrocities of the family members of the respondent. They were refusing to eat the meals prepared by her, and compelled her to eat the entire leftover food all alone. She used to be scolded for petty things and was physically assaulted. Due to the harassment and torture she was compelled to leave the house and lodge a complaint. It was the respondent who inflicted physical and mental torture on the appellant. The allegations against the appellant were supported by examining the witnesses who are close relatives i.e. mother and maternal aunt who are interested witnesses. Thus, reliance on those witnesses to prove cruelty is justifiable. Therefore, the judgment and order passed by the learned Judge, Family Court, Mumbai at Bandra needs to be quashed and set

aside.

11. Per Contra the learned advocate for the respondent-husband submits that, the conduct of the appellant was such that it caused him mental agony. Firstly she was not giving respect to his parents; she behaved rudely and insulted them. She has left the house without just and reasonable cause without informing him on 7<sup>th</sup> July, 2002; she has harassed and tortured him by threatening to commit suicide. She has harassed him by filing written complaints with the police station as well as with various authorities as a counter blast to the petition for divorce filed by him.

12. The learned advocate submits that the evidence produced by the respondent is categorical and accurate on the issue of cruel treatment given by the appellant. So far as the, evidence in support to his allegations of cruelty is concerned, it is supported by the testimony of his mother, PW2-Amrutben Chhadva and PW3 his maternal aunt – Kasturben Vira. Therefore, the evidence produced by him has gone

untraversed holding that the allegations of cruelty stands proved.

Sufficient opportunity to lead the evidence was granted to the appellant, however she has failed to lead any evidence except her own testimony. As against that, the respondent had led cogent evidence through two other witnesses apart from his own evidence given on oath. The allegation made by the respondent about refusal of the appellant to stay jointly and demanding separate residence, has been fully corroborated by the testimony of PW2. There is no contradiction, or variation in the testimony of the witnesses examined by the respondent therefore the testimony of the witnesses has been rightly believed by the Court.

13. The learned advocate for the respondent further submits that, even the conduct of the appellant itself corroborates allegations made against her, necessity of calling a meeting within two and a half months of the marriage, for bringing about some solution to the prevailing situation itself speaks in volumes about her conduct. It is submitted that infact the period of cohabitation of the appellant in the

house of the respondent itself is too short.

In order to substantiate the allegations of cruel treatment by the appellant, the respondent, has relied on one instance when the respondent was humiliated publicly by the appellant, while attending a function commonly held in their community, where she has refused to have snacks offered during the programme on the pretext that she was having a fast when she was actually not fasting at all which came to the notice of all the relatives present, which caused him embarrassment and humiliation to a great extent. The appellant has admitted of having attended such function with her mother-in-law. The appellant has also accepted during the cross examination that, after marriage the quarrel between them started about 8 days or there-about. She also accepted the suggestion that the reason for their quarrel was her inability to do the household work.

14. We have heard the respective parties, perused the documents placed on record. After hearing the parties and appreciating the facts and the legal position which exists as on date, what emerges is

that after a duration of short cohabitation of less than 3 months of their marriage the parties have started residing separately. The attempts for reconciliation during the intervening period, have failed.

15. The respondent has claimed a relief of divorce alleging cruelty against the appellant-wife. In support of the allegations of cruelty he has examined himself along with two other witnesses i.e. PW2 and PW3 respectively, who are his mother and the maternal aunt. They have supported the allegations about the behavior of the appellant branding it as cruel, by alleging that she did not give due respect to the elders; was always in a mood to quarrel; would not listen to the advice given by the elders; she was not able to cook food properly and was causing them embarrassment in the society, these are the allegations made against the appellant. These allegations are made on the background of the short tenure of cohabitation of less than 3 months. Therefore, the question remains that whether the behavior of the appellant about lack of expertise in domestic work, cooking food and constant bickering amounts to cruelty.

16. After going through the evidence, we find that this phenomenon is usual feature in the beginning of a marriage. Therefore, this behavior alone would not amount to cruelty during the short stint of cohabitation. The allegations made by the respondent are general, which are usually made by the parties to a marriage in the initial days of adjustments. Thus, this ordinary wear and tear of marriage has been given undue weightage to treat it as cruelty. The term cruelty as contemplated in Section 13(1)(ia) of the Hindu Marriage Act 1955, must be of such intensity that, it should make the cohabitation of other spouse impossible. It should be of such nature that appellant spouse carries a reasonable apprehension of physical or mental harm due to the behavior of the other spouse. There has to be a continuous humiliation, severe persistent behavioral issues and false allegations that would result in humiliation and lowering down one's image in public.

Applying the said parameters when we examine the allegations made against the appellant, which are claimed to have been

proved during the proceedings before the Family Court, we do not find the allegations to be of such a nature that it can be termed as 'cruelty' of such intensity making the respondent entitled for a decree of divorce.

17. Bald allegations of the respondent supported by the interested witnesses who amongst them is, one against whom allegations are made by the appellant cannot be a reliable witness she is the mother of respondent and specific allegations of cruelty and ill-treatment are made against her, such witness is bound to depose against the appellant. Thus, the reliance on such evidence placed by the learned Judge to hold that cruel treatment has been meted to the respondent is unsustainable in view of the foregoing facts of the present case.

18. Even the witness No.3 is a sibling of PW2 is clearly an interested witness, who is never going to put forth an impartial version of the events that have occurred. Thus, even her testimony is not

worth taking into consideration.

19. If testimony of both the witnesses is ignored, the only evidence that remains is the evidence in the form of testimony of the respondent himself. There are counter allegations made by the appellant and the respondent against each other. Thus, the allegation of cruelty against the appellant-wife is not proved by the respondent-husband. The learned Judge of the Family Court has committed a grave error by relying on the scanty material to hold that the respondent has proved cruelty, making the respondent entitled for decree of divorce.

20. The nature of allegations that are treated as cruelty, needs to be appreciated for deciding whether the allegations made by the respondent-husband amounts to 'cruelty'. From the pleadings as well as the deposition of the witnesses, the nature of allegations amounting cruelty made against the appellant are as follows:-

(i) Refusing to obey the commands of in-laws;

- (ii) Allegation that the meals she prepared were not palatable; she was not ready to cook; not able to perform the household chores;
- (iii) She never prepared tiffin for her husband while he was leaving the house for his work;
- (iv) She was frequently visiting her parents house and was required to be brought back;
- (v) Refusing to give respect to the elders;
- (vi) She behaved in a rude manner.

All these allegations are made against the appellant during their cohabitation of few months i.e. between 28<sup>th</sup> February 2002 to 7<sup>th</sup> July 2002. During such short span the allegations that are made are not at all of serious nature, that can be held to be amounting to 'cruelty'.

21. The respondent-husband has filed proceedings for divorce invoking Section 13(1)(i-a) of the Hindu Marriage Act, 1955, which reads thus:-

*13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition*

*presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—*

*(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*

*(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or.....”*

The above provision enable either the husband or a wife to present a petition for divorce on the ground that the other party has after solemnization of marriage treated the petitioner with cruelty. However, the word ‘cruelty’ has not been defined in the Hindu Marriage Act, 1955. The meaning of word ‘cruelty’ in context with marriage would mean willful, unjustified conduct by one spouse, that causes serious physical or mental pain and suffering rendering continued cohabitation unbearable. It also contemplates a reasonable apprehension that living with the other spouse is harmful and injurious to the life, limb or health of the other spouse.

Cruelty is broadly categorised as ‘physical cruelty’ and ‘mental cruelty’. Physical cruelty constitutes striking, slapping, pushing, kicking or any type of bodily damage by assault or threats of such acts.

‘Mental cruelty’ means a conduct that causes emotional distress, humiliation or suffering making it impossible for a spouse to continue with the marriage. The examples of mental cruelty are using abusive language, derogatory remarks, public embarrassment, restriction on freedom. These are some of the examples, however, it is subjective and may change from person to person, according to the social environment and the family background. Therefore, since there are no definite parameters as to what amounts to cruelty. The concept of ‘cruelty’ and its meaning changes from case to case based on facts of each case.

22. When we analyse the allegations made against the appellant and put ourselves a question whether the conduct of the appellant towards the family members of the respondent and the respondent himself amounts to cruelty. In our view in order to invoke the ground of cruelty there has to be consistent apprehension in the mind of a spouse that the continued cohabitation has become so unbearable making it impossible to live with the other spouse. The first

hurdle is the period of cohabitation of the appellant and the respondent, which is so short that it is beyond comprehension that the parties found it impossible to live with each other any further.

23. The allegations made against the appellant are of trivial nature that are usually made by the respective spouses against each other in the beginning of their marriage. The conduct of cruelty must be persistent for a fairly long time, where the relationship had deteriorated to such an extent that it is impossible for the wronged party to cohabit with the other party. Considering the length of cohabitation of the parties, we do not find that they have lived together for sufficient length of time to infer from the conduct of the wife, whether it would amount to cruel behaviour to such extent, which made their cohabitation impossible.

For grant of divorce on the ground of cruelty, the actions, complained of must be severe and causing extreme mental or physical violence rather than ordinary household disagreements. This squarely applies to the present case. Mere failure to perform domestic work

such as cooking, cleaning does not automatically amount to cruelty as marriage is a partnership of equals and not a service contract and the wife's are not "deemed maids". Therefore, refusal of the wife to perform daily chores even in our view do not qualify as a mental cruelty.

24. In view of the aforementioned observations and the evidence led by the parties, we do not find that the learned Judge of the Family Court is justified in holding that the respondent-husband has proved the allegation of 'cruelty' against the appellant-wife. Since we are of the view that the alleged conduct of the appellant is insufficient to constitute 'cruelty', therefore we hold that the order passed by the learned Judge of the Family Court is against the purport and meaning of the concept of "cruelty" for grant of divorce under Section 13(1)(i-a) of the Hindu Marriage Act.

25. The other petition decided in the common judgment is about the claim for maintenance made by the appellant in Hindu

Marriage Petition No.C-188 of 2004. The appellant had filed petition for maintenance under the provisions of Hindu Adoptions and Maintenance Act 1956, seeking directions to pay her a monthly sum of Rs.5,000/- towards maintenance and alimony along with a prayer for grant of expenses for her accommodation @ Rs.5,000/- per month. It was her contention that she was constrained to leave her matrimonial house due to the ill-treatment by the respondent and his parents along with other family members, as such she has been residing separately since 7<sup>th</sup> July 2002, without any monetary support from the respondent; she does not have any source of income and she is not qualified to apply for any job since she is educated only upto matriculation. Till the filing of the petition for maintenance she did not have any independent source of income, whereas it is claimed by her that the respondent who is a qualified Chartered Accountant, is earning a handsome monthly income of Rs.30,000/- to Rs.40,000/- as he also undertakes private works of accounting along with his employment in one Accountancy Firm i.e. Gala and Gala.

26. Being a legally wedded wife of the respondent she is entitled for maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. Her application was resisted by the respondent by filing written statement, wherein he claimed that the appellant has been residing away from the matrimonial house without any reasonable cause, she has herself deserted him on 7<sup>th</sup> July 2002, therefore, she is not entitled to claim any maintenance from him. According to him, his income was not as high as claimed by the appellant but he was earning about Rs.10,000/- per month. He relied on the Income Tax Returns which discloses that his income was about Rs.10,000/- to Rs.12,000/- per month. He has placed on record the Income Tax Returns from the year 2017 and 2018, which show his Gross Income was Rs.1,26,039/-; in the year 2018-2019, it was Rs.1,36,478/-, in 2019-2020, it was shown as Rs.1,39,887/- and in 2020-2021, it was again reduced to Rs.1,27,650/-, for the Financial Year 2021-2022, his Gross Income was Rs.1,29,330/-. According to him he has responsibility of his mother who is aged and ailing, therefore he has to take care of her medical expenses as well as his

own needs, therefore, he did not have any additional income to meet the demands of the appellant by paying maintenance of Rs.30,000/- per month.

27. When the appellant had approached this Court in the present Appeal for Maintenance i.e. Family Court Appeal No.161 of 2010, by way of an interim order the appellant was awarded Rs.5,000/- per month with effect from 1<sup>st</sup> April 2013 vide order dated 29<sup>th</sup> August 2013, in Civil Application No.111 of 2013. Thereafter the appellant has again filed Interim Application No.2 of 2019 for enhancement of the maintenance, claiming that the respondent/opponent has not placed his true income and assets before the Court, he has suppressed his actual income as well as the assets. She has placed on record the picture with the name plate of respondent in a residential building with multiple flats among, which one of the flats is owned by him, which he claims to be residing on rental basis. Another picture of a house constructed in the village of the respondent is also placed on record. She relies on the profile page

of the Institute of Chartered Accountants of India claiming that the respondent is a professional with independent accounting practice.

28. At this stage, having considered the findings recorded hereinabove on the basis of the pleadings and evidence led by the parties, it becomes necessary to consider the claim of the appellant-wife for maintenance and residential accommodation. The record indicates that the appellant had instituted Petition No. C-188 of 2004 asserting that she is a housewife, unemployed, and unable to maintain herself, and that she was constrained to reside with her parents after being subjected to ill-treatment and being driven out of the matrimonial home. The said position is consistently maintained in her pleadings as well as in her evidence.

29. Upon re-appreciation of the evidence on record, this Court finds that the conclusion drawn by the learned Family Court that the appellant was capable of maintaining herself is not supported by any cogent or reliable material. The entire finding of the Family Court rests

upon a solitary instance of an advertisement allegedly issued by the appellant in relation to art and craft activities. As already noted from the record, there is no material whatsoever to indicate that such activity translated into a regular or sufficient source of income. It is well settled that mere possession of a skill or sporadic engagement cannot be equated with a stable source of livelihood. The evidence on record does not demonstrate that the appellant had any independent income sufficient to maintain herself.

On the other hand, the appellant has consistently asserted that the respondent is professionally qualified and earning. It is submitted that the respondent was earning between Rs.30,000/- to Rs.40,000/- per month from his professional engagements. The respondent has not placed any cogent material to conclusively dislodge this assertion. Even otherwise, it is an admitted position that the Respondent is a Chartered Accountant by qualification, and therefore possesses the professional capacity to earn.

In response to the above assertion the respondent has sought to rely upon his Income Tax Returns to project a limited

income; however, it is pertinent to note that even in the interim proceedings, such returns were taken into consideration only in the absence of any better material and cannot be treated as conclusive of the Respondent's true earning capacity.

30. In this context, the principles laid down by the Hon'ble Supreme Court in *Rajesh vs. Neha and Another*.<sup>1</sup> assume significance, wherein it has been observed that income disclosures in maintenance proceedings must be scrutinized with care, as they may not always reflect the true financial capacity of the earning spouse. The respondent, being a qualified Chartered Accountant, possesses the professional capacity to earn, and the assessment of his financial capacity cannot be confined merely to the income disclosed in the returns, but must take into account the overall circumstances, earning potential, and standard of living.

It is also required to be noted that the interim maintenance, even after enhancement to Rs.5,000/- per month in the year 2013, was fixed more than a decade ago. The Court cannot be

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<sup>1</sup> (2021) 2 SCC 324

oblivious to the substantial increase in cost of living, inflation, and basic living expenses since then. An amount which may have been considered reasonable at an interim stage, based on limited material, would not suffice for ensuring a dignified existence in the present economic scenario.

As regards the claim for residential accommodation, though the same was declined at the interim stage, the rejection was on the ground that such relief partakes the character of a final relief and was not appropriate for grant at an interlocutory stage. The said observation cannot be construed as a rejection of the substantive entitlement of the appellant to residence. The evidence on record clearly indicates that the appellant has been residing with her parents after separation and has no independent residential arrangement. The right to residence is an integral component of maintenance, particularly where the wife does not have independent means.

Thus, upon a holistic appreciation of the evidence on record, this Court finds that (i) there is no reliable material to establish that the appellant has an independent source of income, (ii) the

respondent possesses the professional qualification and earning capacity to maintain the appellant, and (iii) the findings recorded by the learned Family Court are based on an erroneous appreciation of evidence and cannot be sustained.

Having regard to the aforesaid, the appellant-wife is entitled to maintenance at a reasonable rate. The determination must be fair, not excessive, and sufficient to enable the appellant to live with dignity. In the considered opinion of this Court, an amount of Rs.10,000/- per month towards maintenance and a further sum of Rs.10,000/- per month towards residential accommodation would meet the ends of justice. The finding of the learned Family Court denying maintenance to the appellant is therefore liable to be set aside. Both the Family Court Appeals are accordingly disposed of, on the following terms and conditions :-

**ORDER**

- i) Both the Family Court Appeals are allowed;
- ii) The common Judgment and Decree dated 23<sup>rd</sup> July, 2010 passed by the learned Judge, Family Court,

Bandra, Mumbai in Petition No. A-1022 of 2004 and Petition No.C-188 of 2004 is hereby quashed and set aside;

iii) Petition No. A-1022 of 2004 filed by the respondent–husband seeking divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 stands dismissed;

iv) Petition No. C-188 of 2004 filed by the appellant–wife under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 stands allowed;

v) The respondent–husband shall pay to the appellant–wife maintenance at the rate of Rs.10,000/- (Rupees Ten Thousand only) per month;

vi) The respondent shall further pay a sum of Rs.10,000/- (Rupees Ten Thousand only) per month towards residential accommodation;

vii) The aforesaid amounts shall be payable from the date of the Application;

viii) The amounts shall be paid on or before the 10<sup>th</sup> day of each calendar month;

ix) No order as to costs.

*MANJUSHA DESHPANDE, J.*

*BHARATI DANGRE, J.*