

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

FAMILY COURT APPEAL NO. 55 OF 2024

Mrs. Shipra Aditya Jain

(Before Ms. Shipra Gopalhari
Upadhaya) Age: 32 Years,
Occupation: Service, R/o: F-102,
Devnandan Supremus, Near
Galaxy Township, Opp. RAF
Campus, Vastrapur, S.P. Ring
Road, Ahmedabad .. Appellant

Versus

Mr. Aditya Jaykumar Jain

Age: 31 Years, Occupation:
Service R/o. Flat No. B-3, Juhu
Airport Colony, Opp. Nanavati
Hospital, Vile Parle (W),
Mumbai 400 056 .. Respondent

...

Mr. Tushar Shinde (through V.C.) i/by Mr. Swapnil Telang, for
the Appellant.

Mr. M. K. Guha a/w MR. Avnendra Kumar and Mr. Rajnath Pal,
for the Respondent.

...

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

DATED : 31st JULY, 2026

Judgment [Per Manjusha Deshpande, J.]:-

1. Rule. Rule made returnable forthwith and heard finally
with the consent of the parties.

2. According to the Appellant, a short question is involved
in this Appeal, as to whether due to absence of the Appellant in

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the proceedings for divorce filed by the Respondent-husband, can the Family Court allow the Petition for divorce *ex-parte* only on the basis of pleadings of the Respondent-husband. Therefore, we decided to hear the Appeal finally, however, when the matter was listed on 27.03.2026, we directed the counsel for the Respondent to place on record the copy of Petition No. A-1239 of 2019 alongwith the copy of evidence affidavit. Accordingly, he has placed on record the photocopy of the Petition for divorce and the evidence in the form of affidavit of examination-in-chief produced by the Respondent.

3. Mr. Tushar Shinde, learned counsel for the Appellant, who appeared through V.C. submitted that, the learned Judge of the Family Court has erred in granting decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short “the HMA Act”) on the ground of cruelty. It is submitted that the Appellant had engaged Advocate to represent her in the matter. Due to his inaction and default, the matter before the Family Court, proceeded *ex-parte*, since she was advised and assured that, her presence is not necessary. Since she does not reside in Mumbai, she was unable to attend the dates assigned by the Family Court. As a result, she could not oppose the prayer made by the Respondent, which has

resulted in the impugned order, solely based on the averments made by the Respondent, without hearing the Appellant which is against the principles of natural justice. She has been deprived of opportunity to lead evidence and cross-examine the witnesses of the Respondent. The Family Court should not have passed a decree of divorce placing reliance on the un-rebutted evidence. Since the decree of the divorce was prayed on the ground of cruelty, it was necessary for the husband to prove cruelty as defined under Section 13(1)(i-a) of the HMA Act.

The learned counsel drawing our attention to the paragraph Nos. 27 and 28 of the impugned judgment would submit that, there is no reasoned order passed by the Judge of the Family Court, while granting the prayer of the Respondent-husband. He submits that the N.C. report lodged in the police station is the material relied by the learned Judge to hold that the ground of cruelty is proved. According to him, this is the only material pleaded by the Respondent, which is not proved. It is thus prayed that the impugned judgment and order dated 08.02.2024, passed by the Family Court, Mumbai dissolving the marriage between the parties is required to be quashed and set aside. The Appellant has relied on the following

judgments:

- i) ***Riya Suralkar Vs. Rahul Suralkar***¹
- ii) ***Mrs. Akella Lalitha Vs. Sri Konda Hanumantha Rao & Anr.***²
- iii) ***Seema Manoj Pardesi Vs. Manoj Sitaram Pardesi***³

4. Learned counsel Mr. M. K. Guha, appearing for the Respondent, opposed the submission of the Appellant. It is submitted that the parties have been separated for more than eight years. No relationship survives between them. Therefore, there is no point in either setting aside the judgment or remanding the case back to the Family Court. The learned counsel would submit that, after the Petition was filed on 11.04.2019, before the Family Court at Bandra, Mumbai, number of opportunities have been granted to the Appellant to appear and oppose the Petition for divorce. He would submit that in all 33 dates were assigned in the present case by the Family Court. The Appellant was granted various chances to file her Written statement; three chances were given for her cross-examination and three chances to conduct the examination in chief. The Rojanama would reflect that the

1 FCA No. 101 of 2025 (Decided on 01.10.2025)

2 2022 LiveLaw (SC) 638

3 FCA No. 39 of 2013 (Decided on 28.02.2013)

number of chances were given to the Appellant to oppose the Hindu Marriage Petition for divorce. It is submitted that the Appellant was deliberately absent all throughout proceedings. She was successful in dragging the litigation, which has resulted in *ex-parte* order.

It is submitted that, though the judgment has been passed *ex-parte*, due to the absence of Appellant throughout the proceedings, the impugned order is not passed purely on the basis of averment made in the Petition, but the Respondent has led evidence by submitting his own affidavit-in-lieu of examination in chief, alongwith the affidavit of his mother Mradula Jaykumar Jain and affidavit of one Piyush Anil Pandya, who is a close family friend of the Respondent, to substantiate the allegations of cruelty at the hands of the Appellant. This evidence produced by the Respondent has gone un-rebutted due to failure of the Appellant to cross-examine the witnesses. Based on the aforementioned evidence, the learned Judge has granted Decree of divorce on the ground of cruelty. He therefore would submit that, there is no merit in the Appeal filed by the Appellant, which deserves to be dismissed.

5. We have heard the respective parties and also perused

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the compilation of documents produced by them. The Respondent-husband has filed petition for Divorce on the ground of 'cruelty' as provided under Section 13(1)(i-a) of the HMA Act, 1955. According to the Respondent-husband, the conduct of the Appellant since the beginning of their marriage was constantly causing embarrassment to him in the public and even before his family members. The Appellant is a short tempered lady. There are various instances which have been narrated by him to demonstrate that the Appellant used to insult him in public and had a callous approach towards him. In spite of best of efforts made by him, he was not able to bear the stress and mental agony, due to the conduct of the Appellant. She used to doubt that he was conducting an affair behind her back. She distrusted his fidelity and accused him of bringing girls at home. On one occasion, she even assaulted him for which he was required to be taken to the hospital for first aid, which culminated in lodging complaint against the appellant with Dindoshi Police Station, for physical assault committed by the Appellant. He even alleged that the Appellant has refused to establish any relationship with him which amount to mental cruelty.

6. In support of the aforementioned grounds raised in the

memo of marriage petition, the Respondent has examined himself at Exhibit-18, where the allegations of her rant and callous behaviour has been stated on oath. It is alleged that she often used bad words against him. He has narrated incident of her short tempered nature which has caused him embarrassment in the public and in front of his family members. He has stated about his reconciliation efforts made by him which turned out to be futile, which has caused him severe depression. He had planned to bring about reconciliation at Ahmedabad for which he booked a flight so as to meet her at 'Gandhidham', where their love affair had started. In support of his claim, he has placed on record the hotel voucher and boarding passes from Mumbai to Ahmadabad.

The Respondent has also filed on record the N.C. complaint lodge by him on 27.12.2025 against the physical assault by the Appellant-wife alongwith the medical papers. He has made a categorical statement in the affidavit that, the wife used to refuse to establish any relation with him, and whenever he made an attempt to resist her act of cruelty she would threaten him of committing suicide or filing false complaint for demand of dowry. These are the few instances

which have been stated by the Respondent husband in the affidavit of examination in chief.

7. PW-2 Ms Mradula Jaykumar Jain, mother of the Respondent has also filed her affidavit of examination-in-chief, who has also narrated the instances of cruelty and misbehavior of the Appellant which has caused great distress to the Appellant and his family members. PW-3 Mr. Piyush Anil Pandya, who is one of the close family friend of the Respondent-husband has also narrated an incident of cruelty which goes to show that the behaviour of the Appellant was causing great mental cruelty to the Respondent right from the day of fixing of their marriage till their separation. These affidavits are also supported with other evidence in the form of prescriptions of the doctors. A complaint at Exhibit-33 dated 03.01.2016 filed by the Respondent, against the threats given by the Appellant for causing him physical and mental harassment, quarreling over petty things and her threats to put him and his family members behind the bars. It also refers to an incident of assault by the Appellant on 27.12.2015, attempting to break the head of the Respondent. Thus, the allegations of cruelty are proved by the Respondent by leading evidence.

8. Although the learned counsel for the Appellant has relied on some judicial pronouncements, to contend the Divorce decree cannot be granted *ex-parte*, in our view, the two judgments in ***Mrs. Akella Lalitha*** and ***Seema Manoj Pardesi*** (*supra*) are not applicable to the facts of the present case. So far as the decision of this Court in ***Riya Suralkar*** (*supra*) is concerned, this Court has taken a view that, trial Court cannot automatically allow the Divorce proceedings on the basis of pleadings of a party, by treating it as a gospel truth. The ground of 'cruelty' has to be independency assessed and analyzed on the basis of merits by the trial Court. These observations, according to the Appellant, are squarely applicable to the case in hand. Though we are also in agreement with the view taken by this Court in the said judgment, however, the said judgment needs to be read down completely, and not in piecemeal. This Court has held that there has to be findings recorded with reasons and an application of mind by the trial Court. It has to decide whether the Appellant has proved his case, on the basis of pleadings and evidence. In short, on the basis of the evidence led by the party filing the proceedings, the decree of divorce cannot be passed mechanically, without appreciating evidence and a supported reasoned order. In the present case, the

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aforementioned judgment is not applicable for the reason that, the Respondent has placed on record evidence in the form of his own affidavit and two other affidavits of his mother and the near acquaintance respectively, which demonstrate the mental and physical cruelty meted out to the Respondent-husband. The learned Judge has relied some instances as pleaded by the Respondent which amounts to mental cruelty. In the judgment while answering the issue whether the petitioner proves the cruelty by the Respondent, the learned Judge of the Family Court has observed that, the evidence of the two witnesses is corroborating the version of the Respondent-husband about the allegations of cruelty at the hands of the Appellant wife. He has also relied on the N.C. report for physical assault filed by the Respondent against the Appellant-wife. The medical papers for the injury caused by the wife are at Exhibit-31. Some photographs of the assault with a bamboo stick at public place are placed on record at Exhibit-32.

When all this evidence is taken together, we do not find any infirmity in the findings recorded by the learned Judge of the Family Court about the alleged 'cruelty' by the Appellant-wife. As we have already taken note of the roznama of the trial Court which discloses that the appellant has remained absent

inspite of being served. Though she had engaged an advocate to conduct her matter on many occasions both of them have remained absent by filing adjournment applications. On at least five occasions adjournments have been granted to the appellant for filing her written statement. Finally, on 6th August 2021, she has been granted adjournment to file her written statement subject to depositing costs of Rs.100/-. Even this chance has not been availed by the appellant. An opportunity to place on record her evidence in the form of Affidavit in lieu of examination-in-chief has been granted to the Appellant on three dates i.e. 17th June 2023, 11th August 2023 and 13th October 2023. Inspite of all these chances, she has failed to lead any kind of evidence. She was also granted three chances to cross-examine the Respondent-husband and his witnesses, but that opportunity has also not been availed by the appellant.

On going through the roznama, it is apparent that the appellant-wife has failed to pursue the litigation diligently inspite of being aware about the orders passed by the Family Court from time to time. She has failed to lead evidence and oppose the petition for divorce. Consequently, the Family Court was constrained to pass a decree of divorce, relying on the

evidence produced by the Respondent-husband which unerringly points towards the 'cruelty' of the Appellant wife, hence the learned Judge has allowed the petition. We do not find any ground for causing interference in the order made by the Appellant, since the order is based not only on the pleading of the Respondent husband but also corroborative evidence at Exhibits- 29 to 33 produced by him to support his allegations of cruelty against the Appellant wife.

Based on the pleadings and the evidence produced by the Respondent-husband, a well-reasoned order is passed, which does not deserve any interference. Consequently, the Appeal fails and is accordingly dismissed.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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signed by
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VISHNU
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