

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
--	--	--

SECOND APPEAL NO. 129 OF 2015
WITH CA/3782/2015 IN SA/129/2015

ASHABAI BHAGWAN MARATHE
VERSUS
BHAGWAN KISAN MARATHE

...
Advocate for Appellant : Mr. Brahme Shailesh P.
Advocate for Respondent: Mr. S. P. Shah.

CORAM: T. V. NALAWADE, J.
DATED: 26th August, 2015.

PER COURT:

1. The appeal is filed against the judgment and order of R.C.A. No.275 of 2012 which was pending in the Court of Adhoc District Judge-1, Dhule, against the decision of Appeal No.277 of 2012 which was pending in the same Court and also against the judgment and order of H.M.P. No.193 of 2010 which was pending in the Court of Civil Judge, Senior Division, Dhule. In a proceeding filed under section 13 of Hindu Marriage Act by Respondent, husband divorce is given in his favour on the grounds like cruelty and desertion. Both the sides are heard.

2. Present Appellant was given in marriage to Respondent in the year 2003. She has a daughter from Respondent who was born on 16th June, 2004.

3. It is the case of the husband that there was cohabitation initially at Shirpur. It is contended that right from beginning the wife was not happy and she had expressed that she was not ready to cohabit at Shirpur. It is contended that the husband then took the present appellant to Panvel where husband had temporary job. It is contended that after stay of about 1 month at Panvel, the wife started harassing him and she was even giving abuses. It is the case of the husband that even after the birth of the daughter the conduct of the wife did not improve.

4. It is the case of the husband that the wife is hot tempered and she did not like even the visits of the mother of the husband and brother of the husband to his residential place. It is the case of the husband that she was not happy also due to circumstance that the husband was not in a position to spend on her costly Sarees, on hotelling and for outing. It is the case of the husband that the wife was not

discharging her obligations and she was not even cooking food. It is his case that she was insisting to shift to her parents' house and stay with her parents.

5. It is the case of the husband that he refused to stay in the house of her parents as Ghar-Jawai and due to that on 27th August, 2005 the father, brother and uncle of the wife came to Panvel, gave him severe beating and gave a false complaint against him and his relatives in Panvel police station.

6. It is the case of the husband that in report given to police false allegations were made about his character and due to that complaint he and his parents were defamed. It is his case that in the said case he and his relatives came to be acquitted.

7. It is the case of the husband that present Appellant was never ready to cohabit with him at his native place which is a village and under various pretexts she used to return to the house of her parents. It is his case that only due to the circumstance that she is educated, he asked her to complete B.Ed. Course and for that he spent money by selling the

ornaments even of his mother. It is his case that he was given job of temporary nature due to influence of one Bhaskar Suryawanshi, a relative of the wife and the said relative was also harassing him.

8. It is the case of the husband that when the wife left his company on 29th August, 2005 she was pregnant. He has contended that the wife hates him and out of this hate, she aborted child behind his back and without taking his consent. He has contended that he had taken the test to confirm pregnancy on 12th August, 2005 itself and as per his information, the pregnancy was terminated by the wife in the hospital of one Dr. Patil. It is his case that when he made inquiry, the wife said that she had no desire to resume cohabitation.

9. It is the case of the husband that to see his daughter when he went to the house of the parents of the wife on the occasion of her 2nd birth day, they refused to allow him to enter their house. According to him, on the occasion of the 2nd birth day of his daughter one news/ advertisement was published for giving complements and in that matter his name was not mentioned as father of the child and even as

the husband of the present appellant.

10. It is the case of the husband that the wife had filed proceedings under the Protection of Women from Domestic Violence Act and in that matter he was required to pay Rs.1 Lakh as compensation and pay maintenance of Rs.2,500/-. It is his case that due to the aforesaid problems created by the wife, his father suffered a mental shock and he died on 22nd February, 2010. It is his case that even after the death of his father, the wife did not visit his house and this circumstance shows that she has no interest in resuming cohabitation.

11. The wife contested the matter by filing written statement. She has contended that at the time of the marriage the husband was in temporary service but he was not getting anything from his service and due to that her uncle helped him in getting him job in V. K. Collage, Panvel. It is her case that as the husband got employment in Panvel till 2003 he took her to Panvel and there they cohabited till August, 2005. It is the case of the wife that the husband was insisting to see that her parents and relatives take some steps for giving appointment to him on permanent post. It is her case that he used to ask her to bring money from her

parents and on that count he used to give abuses and beating to her. It is her case that the mother of the husband was also giving ill-treatment to her by giving abuses and by not providing sufficient food. It is her case that she was not treated well even when she was pregnant. It is her case that the expenses of the delivery were borne by her parents. It is her case that the parents and other relatives of the husband were insisting him to give ill-treatment to her and they were asking her to bring Rs.7 Lakh for purchasing a flat at Panvel.

12. It is the case of the wife that due to insistence of the husband, she took admission for B.Ed. Course in June, 2005 and the amount of donation etc. was given by her father. It is her case that the husband was taking suspicion about her character and he was virtually following her to the college out of that suspicion.

13. It is the case of the wife that when she was carrying of 1-1/2 months, in the month of August, 2005 the husband followed her up to college and then gave beating to her on public road. It is her case that due to this incident she gave report to police and crime was registered against husband for offence under section 498-A of Indian Penal Code. She has

contended that she was required to file a proceeding under the provisions of Protection of Women from Domestic Violence Act as the husband was not ready to take her back to the matrimonial house. It is her case that even after filing of this proceeding, she made attempt to return to matrimonial house. It is her case that she is still ready to return to the matrimonial house and she avoided to give evidence in criminal case filed under section 498-A of I.P.C. It is her case that after learning about the death of the father of the husband she had gone to his native place and she had stayed there for a night but on the next day she was driven out of the house by her husband.

14. Both the husband and wife gave evidence in the trial Court. In the pleadings, the wife had admitted that the husband had no permanent job and due to efforts made by her relatives he could get job at Panvel, though it was on a temporary post. In the pleadings she has admitted that when in August, 2005 the separate residence started, she was carrying of at-least 1-1/2 months. Her case shows that she had given the report to police immediately and case was filed for offence punishable under section 498-A of I.P.C. against the husband after starting of the separate residence. It is

also not disputed that she had filed a proceeding under the provisions of Protection of Women from Domestic Violence Act and in that proceeding, the orders of aforesaid nature were made in her favour.

15. The evidence given by the wife shows that she is not disputing that the financial condition of the parents of the wife is comparatively sound and the husband was not able to pull on as he was not getting sufficient salary. Husband has not disputed that due to the help given by the parents of the wife he got the employment. He has denied that he had taken suspicion about the character of the wife. He has denied that he did not want to have second child immediately. Further, there is no specific contention made in the written statement by the wife in that regard.

16. In the cross examination, the husband has admitted that due to filing of criminal case against him, he lost interest in the married life and no desire was left with him to bring the wife to the matrimonial house. His other evidence is consistent with the aforesaid pleading.

17. The evidence of the wife and the pleading show that

she is not disputing that the separate residence started from 29th August, 2005. The proceeding for divorce on the ground of desertion was filed on 16th June, 2010. There is no convincing evidence with the wife to show that after the death of the father of the husband she had visited the matrimonial house and she had stayed there for a night. Thus, on the date of filing of the petition parties were living separate for the period of more than 4 years. When the wife had approached police and criminal case was filed against the husband and his relatives for offence punishable under section 498-A of I.P.C. it was necessary for her to show by evidence that she had made the attempts to settle the dispute after the registration of the crime. Except her words, there is nothing on record in that regard. The submissions made show that both the husband and wife are educated. There are following circumstances against the wife which are considered by the trial Court and the first Appellate Court:

- (i) There is no convincing reason with the wife for a separate residence from the husband for aforesaid period.
- (I) Her conduct of filing at least two proceedings against the husband shows that she had no desire to resume cohabitation. She has no convincing material

to show that there was cruel treatment to her and that is why she had started living separate from the husband.

(II) The circumstance that she underwent termination of pregnancy when she was living in matrimonial house, shows that she had no intention to resume the cohabitation and she wanted to see that she does not get one more issue from the husband.

(III) She admits that when advertisement was given on the occasion of 2nd birth day of the daughter, in the said advertisement the name of the husband was not mentioned as the father of the child or even as her husband.

(IV) Her evidence shows that she was not making any inquiry about the husband and she does not know as to in which month or year the husband continued to work in Panvel and when he shifted to his native place Velhane.

On the basis of aforesaid circumstances, inference is drawn by the courts below that there was a desertion and there is no good reason with the wife for living separate from the husband. There is concurrent finding on this ground.

18. On the ground of cruelty there are mainly two circumstances like registration of crime on the basis of report given by the wife for offence punishable under section 498-A read with 34 of I.P.C. and the termination of pregnancy by wife without taking permission of the husband. On this ground there is substantive evidence and there are admissions of the wife in pleading and evidence is of aforesaid nature. In the evidence, wife has admitted that after registration of the crime not only the husband but the parents of the husband, brother of husband and sister of husband were arrested by police and they were in custody for 3 days. It is not disputed that they got acquittal on merits and she did not turn hostile. This circumstance can be considered to ascertain as to whether the wife did it intentionally and that amounts to cruelty. She could have examined doctor to give the reason for termination of pregnancy but she avoided to do so. On these main two circumstances the Appellate Court has drawn the inference of cruel treatment. Finding is given on facts in respect of both the grounds and there is a material for the same.

19. Learned counsel for the Appellant wife submitted that the trial Court and the first Appellate Court have committed

error in considering the so called admissions given by the wife in the previous proceedings like application filed under the provisions of Protection of Women from Domestic Violence Act and in the case filed under section 498-A of I.P.C. when the depositions given by her in those proceedings were not confronted to her. The reasoning given by the Appellate Court shows that the Appellate Court has not considered the circumstance as admission.

20. The learned counsel for the wife placed reliance on case reported as **AIR 1997 (SC) 1712 (Sita Ram Bhau Patil V/s Ramchandra Nago Patil)**. He took this Court through para Nos.14, 15 and 26 of the decision of Supreme Court. The Apex Court has laid down that if admission given in a previous judicial proceeding is to be used then the said admission needs to be confronted to the witness as mentioned in section 145 of the Evidence Act. The learned counsel for the husband placed reliance on the case reported as **AIR 1996 SC 405 (Bharat Singh V/s Bhagirathi)**. In view of the circumstance that the case on which the learned counsel for the wife placed reliance was decided subsequently

this Court holds that the observations made in the subsequently decided case need to be used and followed. This Court has already discussed the relevant material to ascertain as to whether the wife is telling truth and that is the material besides the so called admissions given in the previous proceedings. As the aforesaid grounds were required to be proved by proving some facts and those are proved as per the decisions given by the trial Court and the first Appellate Court, this Court holds that it is not possible to interfere in the decision given by the Courts below. In view of the aforesaid discussion, this Court holds that no substantial question of law as such is involved in the present matter. In the result, appeal stands dismissed.

21. In view of final disposal of the second appeal, the pending Civil Application No.3782 of 2015 stands disposed of.

[T. V. NALAWADE, J.]

Dt.26/08/2015
ans/129