

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 155 OF 2014
WITH
CIVIL APPLICATION NO. 2017 OF 2014

Vasant s/o. Annasaheb Matsagar **....Appellant.**

Versus

Sau. Yogita w/o. Vasant Matsagar **....Respondent.**

Mr. V.B. Garud, Advocate for applicant.

Mr. P.A. Kulkarni, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 19th August, 2015.

ORDER :

1. The appeal is filed against judgment and order of Regular Civil Appeal No. 317/2010 which was pending in the Court of Ad-hoc District Judge -2, Aurangabad. The District Court has set aside the judgment and order of H.M.P. No. 218/2009 which was decided by the Civil Judge, Senior Division, Aurangabad. The trial Court had given decree of judicial separation to the present appellant/husband and this decision is set aside by the District Court. Both the sides are heard.

2. The proceeding was filed by the husband for divorce on the grounds mentioned in section 13 (1) (ia) and section 13

(1) (iii) of the Hindu Marriage Act. The marriage between the parties took place on 15.2.2001. At the time of marriage, the petitioner husband had completed his education up to M.E. (Civil). It is the case of husband that he was doing the business of consultancy since 1998 in Aurangabad. It is contended that as after the marriage, his mother expired and his father was a handicap, he shifted family to village Jarul, Tahsil Vaijapur, District Aurangabad in the year 2003.

3. It is the case of husband that he shifted to Mumbai for completing Ph.D. course at I.I.T. Bombay, but he used to visit his native place, his village, almost every week. It is his case that after the marriage, he allowed the wife to complete M.Sc. and she got appointment as Lecturer in M.I.T. College, Rotegaon. It is his case that the wife used to commute between Rotegaon and Jarul on scooter.

4. It is the case of husband that there was no problem for first six months of the marriage, but after that, the wife started expressing suspicion about his character and she started making allegation that he had affairs with a lady. He contended that due to such suspicion, the wife started picking up quarrels with him and she tried to commit suicide by consuming tablets

of medicines which were expired and she also tried to hang herself in the matrimonial house. He contended that the wife used to give insulting treatment to him and she was not performing the matrimonial obligations.

5. The husband has made some allegations about the conduct and approach of the wife to make out the case that she was mentally disturbed, but this ground was not pressed and the decree of divorce was not given on this ground by the trial Court also. The particulars of the allegations made in respect of that ground are not discussed due to this reason.

6. It is the case of husband that in the year 2005, he shifted to America for service purpose and he lived there till December 2008. It is his case that the wife continued to harass him and give illtreatment to him. He contended that due to the cruel treatment of the wife, he left America and shifted to New Delhi and on the date of petition, he was serving in Civil Engineering Department of I.I.T., New Delhi. He contended that since 2008, the wife deserted him by leaving his company without any reason. He contended that he made many attempts to bring the wife back to the matrimonial house, but her parents refused to send her to matrimonial house and she also said that

she is not ready to cohabit with him. He contended that the wife is interested in taking divorce from him.

7. The wife filed written statement and she denied the allegations of the cruel treatment and desertion made against her. She contended that the petitioner has made false contentions and he has suppressed the truth. She contended that the husband has crossed the limits of indecency and he himself is guilty of moral turpitude. She contended that husband is having extra-marital relations and he was caught red handed by her. It is her case that the husband wants to live like a free bird and he does not believe in social or cultural values and he does not want any kind of responsibility.

8. It is the case of wife that the husband had an affair from prior to the marriage and he wanted to marry one girl, who was his colleague in his business. The wife has contended that he could not marry the said girl as there was a caste barrier and so, he did farce of performing the marriage with her and he denied his relationship with the said girl. It is her case that she suffered right from beginning, but she continued to cohabit with the hope that one day the husband will improve his behaviour. It is her case that she is still ready to forget and forgive and

resume cohabitation.

9. The wife has denied that the husband had registered for Ph.D. course in Mumbai and he is Ph.D. It is her case that the husband went to Mumbai as he wanted to live there and he got opportunity to enter I.I.T. Mumbai as Research Scholar. It is her case that the husband insisted that she should stay in Aurangabad to continue her studies and that way, she was kept at other place by husband.

10. The wife contended that after the death of mother of husband, she started living in Jarul, the native place of the husband as there was nobody to take care of handicap father of husband. It is her case that she served the father-in-law for five years. It is her case that the husband used to visit Jarul once or twice in a year and he did not care even for his father. It is her case that as the husband was not taking care and she was taking care of father-in-law, she started working as Lab Assistant in M.I.T. College.

11. The wife contended that false allegations of mental disorder are made against her only with one object of taking divorce from her. She contended that she never harassed the

husband even when his behaviour was against ethics and culture and his character was not good.

12. It is the case of wife that she was taken to United States of America (USA) by the husband, but there, the husband treated her as a maid servant. It is her case that the husband was not taking her with him when he used to go on tour in USA. It is her case that she was virtually driven out of the matrimonial house in USA by handing over air ticket to her for Mumbai and no arrangement was made for her further travel from Mumbai to her parents' house. It is her case that when husband returned to India and joined I.I.T. Dehli, she tried to contact him many times on phone and E-mail, but husband did not respond to her communications and so, she was living with her parents. She has denied that she had deserted the husband. She has denied that husband had visited her parent's house to take her back to the matrimonial house.

13. It is the case of wife that only one day prior to the date of engagement, she learnt about the affair of the husband with a girl and the name of that girl was also informed to her. It is her case that on this ground, the engagement ceremony was also cancelled, but the husband and his relatives then created

drama and somehow convinced her and her relatives and made them ready for the marriage. It is her case that only after the marriage, she realized that it was a foul play of the husband and she was deceived. It is her case that the husband could not marry with the said girl as his father had given threat of committing suicide. It is her case that the said girl was looking after the business of the husband when husband left for Mumbai to join I.I.T. Mumbai. It is her case that the said girl remained in touch with her husband even after the marriage. It is her case that the husband was intentionally allowing her to see the desktop on which there were E-mails exchanged by her husband with the said girl. It is her case that the said girl had also confessed about this relationship. It is her case that husband had admitted relationship and he had given blunt reply that he would continue the relationship. It is her case that the husband treated her with hatred and as a tool due to such relationship. It is her case that she was deserted by the husband and no arrangement was made for her maintenance.

14. The issues were framed on aforesaid two grounds. The husband examined himself and he examined one Ashok Matsagar, his real brother. The evidence is mainly on the contentions that out of the suspicion, the wife was harassing the

husband and she was picking up quarrels. The evidence shows that there was cohabitation till December 2008. The evidence is given that the wife returned from America and she started staying with her parents and she refused to return to matrimonial house. The proceeding came to be filed on 25.2.2009. Relief of decree of judicial separation was claimed as alternate relief. The trial Court gave relief of judicial separation, the relief under section 10 of Hindu Marriage Act. This decision was challenged by the wife by filing Civil Appeal No. 310/2010. The husband filed cross objection and in the cross objection, he claimed the relief of divorce.

15. The evidence of the wife is consistent with her contentions made in the written statement. It appears that she produced some record, but the said record like letters sent on E-mail and one hand written letter were not proved as they were copies and proper procedure for proof was not followed.

16. The learned counsel for husband argued on one more circumstance like filing of complaint application in police station which could have been used as F.I.R. by police for registering the crime under section 498-A of Indian Penal Code. The submissions made show that the police did not register the

crime and the matter was considered by the Redressal Cell Forum in the police station. Some reported cases are cited on the basis of this circumstance, but as the crime was not registered and the wife did not prosecute that matter and when she did not file even private complaint, this Court holds that this circumstance can not be considered. Further, in the pleadings, there is no mention of this circumstance.

17. From the admitted facts, it can be said that the wife cohabited with the appellant at various places though for short duration, when she was taken to those places by the husband. The husband himself has admitted that when he shifted to Mumbai, he left the wife at his native place and there she was made to stay with his handicap father. The evidence shows that she kept herself busy by taking admission to M.Sc. course and by completing that course she even joined as a Lab Assistant in a college when she was living in matrimonial house at native place of the husband. Though no issue is born out of this relationship, the facts remain that she cohabited with husband in India and also in USA till the year 2008. There is word against word and the contentions made by the husband are denied by the wife.

18. From the year 2001 to 2005 the husband stayed in Mumbai continuously in hostel as he wanted to make career and during that time, the wife lived at the native place of husband for serving his ailing father. She continued to live there till 2007 and then for some period, she was taken to USA by the husband. Husband is not disputing that she separately and alone returned to India and since then, she has been living in the house of her parents. She has given evidence that even at present she is ready to resume cohabitation and she is ready to forget and forgive.

19. From the aforesaid circumstances, it can be said that the husband had not shown real interest in living with the wife and for most of the time of the aforesaid period, he lived alone. Reasons for the same may be any. He has no record to show that wife had expressed any grievance as she was made to stay at the native place for many years where there was handicap father of the husband. These circumstances are not certainly in favour of the husband and they do not indicate the cruel treatment from the side of the wife. On the contrary, these circumstances show that the husband was taking everything for granted. If the husband had real intention to bring the wife to matrimonial house, he would have first given notice or would

have filed proceeding for restitution of conjugal rights, but he filed proceeding for divorce on aforesaid two grounds. When the wife is M.Sc., there was cohabitation of so many years and there was no possibility of having any record to prove the mental disorder, the husband made such allegations against the wife. This conduct of the husband also needs to be considered against him. There was nothing on the record to indicate that wife had given cruel treatment or she had deserted the husband and so, the relief under section 10 of Hindu Marriage Act could not have been granted. It can be said that it was move on the part of the husband to get some relief and then on the basis of such order, take further relief like relief of divorce. All these things are considered by the appellate Court and the appellate Court has set aside the decision given by the trial Court. In such a case, decision is mainly on the basis of the evidence, facts. The entire material is considered and correctly appreciated by the appellate Court. This Court holds that no substantive question of law is involved in the present matter.

20. The learned counsel for husband placed reliance on some reported cases which are as under :-

i) 2010 (5) LJSOFT 29 [Ajay Ashok Khedkar Vs. Sou. Laleta Ajay Khedkar],

ii) 2002 (1) CIVIL COURT CASES 268 (PUNJAB AND HARYANA HIGH COURT) [Manjit Kaur Vs. Avtar Singh],

iii) 2010 (3) LJSOFT 17 [Smt. Hemati Hemchandra Talekar Vs. Hemchandra Bhagwan Talekar],

iv) 2012 (9) LJSOFT 6 [Nitin Ramesh Dhiwar Vs. Sou. Roopali Nitin Dhiwar],

v) 2012 (9) LJSOFT 41 [Bhavna N. Shah Vs. Nitin Chimanlal Shah],

vi) 2000 (2) LJSOFT 18 [Harvinder Singh Marwah (Dr.) Vs. Charanjit Kaur],

vii) 2010 (8) LJSOFT 58 [Ramratan s/o. Pandurang Sunwani Vs. Smt. Maya w/o. Ramratan Suwani].

The facts and circumstances of each and every case are always different. Only because, in one case due to filing of a case for offence under section 498-A of I.P.C., the relief of divorce was given, that cannot become ratio for other case of which the facts and circumstances are different. In the present case, the wife could have insisted for registration of crime or she could have filed private complaint, but she preferred not to do so. On pre-ponderance of probabilities the finding as given by the appellate Court is possible and so, there is no possibility of interference.

21. In the result, appeal stands dismissed. In view of

dismissal of appeal, Civil application is also disposed of.

[T.V. NALAWADE, J.]

SSC/