

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 218 OF 2015

Umesh Madhukar Patil,
Age: 33 years, Occu. Private Service,
R/o Sanjivani Nagar, Chopada,
Taluka Chopada, District Jalgaon

...APPELLANT
(Orig. Petitioner)

VERSUS

Priya Umesh Patil,
Age: 26 years, Occu. Beauty Parlour,
R/o C/o. Mahendra Vasant Patil,
Khandale, Taluka Bhusawal,
District Jalgaon

...RESPONDENT
(Orig. Respondent)

Mr Girish Rane, Advocate for appellant

CORAM : N.W. SAMBRE, J.

**Date of reserving
the order : 22nd June, 2015
Date of pronouncing
the order : 25th June, 2015**

ORDER

The present Second Appeal is at the behest of the husband, who was unsuccessful in the proceedings initiated for divorce against the respondent – wife under section 13 (i-a) and (i-b) of the Hindu Marriage Act, 1955.

2. Brief facts giving rise to the filing of the present Second Appeal are as under :-

The appellant claims that he married to respondent on 13th December, 2009. According to him, after marriage, the present respondent resided with him only for about three weeks and on the occasion of Makarsankrant she went back to her parental house and did not turn up thereafter. He would further urge that the present respondent has filed complaint under section 498-A of the Indian Penal Code against present appellant and his family members on 31st March, 2010, which was given publicity in the newspaper. It is further claimed by him that the said proceedings were withdrawn by the respondent not on the ground of any settlement but simpliciter and as such, same amounts to "cruelty" to the present appellant.

3. The respondent – wife resisted the claim of the appellant by filing written statement at Exh.18, wherein she denied all allegations of the present appellant. In her written statement, she stated that she resided with the present appellant along with her in-laws and also visited places of pilgrimage from time to time. She further narrated that as she could not behave as per the instructions of her in-laws, the mother-in-law started suspecting her character. According to her, when she went to her parental place along with mother-in-law, she was informed not to return back and subsequent thereto, at no point of time she was taken back by the present

appellant to his house, though sufficient messages were given to him. According to her, on 7th April, 2010, in response to criminal complaint, she informed the police that she is ready to cohabit with the appellant, which request was accepted by the appellant and as such she had withdrawn the report. According to her, the proceedings for restitution of conjugal rights are already pending and as such, prayed for dismissal of the suit.

4. On the basis of the pleadings of the parties, the Trial Court settled the issues at Exh.20.

5. The appellant examined himself at Exh.22, so also his father P.W.2 Madhukar at Exh.26. The respondent – wife examined herself at Exh.28 and closed the evidence.

6. Learned Trial Court, upon appreciation of the evidence, dismissed the suit on 31st July, 2013, which was further confirmed in Civil Appeal No.32 of 2013. As such, present appeal.

7. Mr Rane, learned Counsel appearing on behalf of the appellant submits that in view of the fact that the respondent cohabited with the appellant only for three weeks and thereafter without any intimation left his house, amounts to “cruelty” and since the wife has not reported back for a period of two years and has rather filed complaint under section 498-A of

the Indian Penal Code, which was later on withdrawn, the same should have been accepted as amounting to “cruelty” by both the Courts below.

8. With a view to analyze the above referred submissions of the appellant, this Court, with the assistance of Mr Rane, learned Counsel appearing on behalf of the appellant, has gone through the evidence and the findings recorded by both the Courts below. This Court noticed that the appellant herein has suppressed the fact that out of the wedlock a child was born on 15th December, 2010 at Bhusawal. Mr Rane, while justifying the said fact has urged that though the marriage took place on 13th December, 2009, the respondent stayed with the appellant only for a period of three weeks and as such, according to him, the said child cannot be termed as son born out of the wedlock. It is also required to be noted that the provisions of section 112 of the Evidence Act were brought to the notice of the learned Counsel appearing on behalf of the appellant. While responding to the same, he would urge that the evidence on record depicts a contrary picture, as according to him, the respondent has given an admission that she has left the house after three weeks of the marriage. The above referred contentions were duly dealt with by the Court below and had noticed that in the evidence it has also come on record that in view of settlement, the appellant and the respondent have stayed together for a day.

9. It is also noticed by the lower appellate court that P.W.2 Madhukar in his cross-examination has stated that there were counter cases against each other by the appellant and respondent. It is also stated that Hindu Marriage Petition No.553 of 2010 was filed against the appellant on 28th October, 2010 and the divorce proceedings were filed on 29th June, 2010. It was also brought on record that proceedings under section 125 of the Code of Criminal Procedure were filed before the Judicial Magistrate First Class, Jalgaon. According to the learned Court below, with a view to give counter blast, the present appellant has filed the proceedings after the above referred proceedings for divorce. The lower appellate court noticed that after the marriage, the appellant cohabited with the respondent. The lower appellate court also noticed that had it been a case that the respondent was not interested in cohabiting with the appellant, there would not have been proceedings for restitution of conjugal rights. The lower appellate court refused to accept the theory of the present appellant, that in view of proceedings under section 498-A of the Indian Penal Code against the appellant and his parents, he is entitled for decree of divorce under section 13 of the Hindu Marriage Act. The lower appellate court has analyzed the evidence brought before it while negating the said contentions. It is also required to be noted that the appellant herein, in view of section 112 of the Evidence Act, has not discharged his burden.

10. In view of the observations made by both the Courts below, particularly having appreciated the evidence while dealing with the claim for divorce under section 13 of the Hindu Marriage Act, the ground of cruelty on which the divorce was sought was not established, in my opinion, the findings recorded by both the Courts below are just and proper.

11. In view of above observations, the question of law that is sought to be espoused in the present appeal needs hardly any consideration as the findings are based on sound principles of law and the evidence.

12. In the light of above, the Second Appeal fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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