

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.
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SECOND APPEAL NO. 285 OF 2011

RAJENDRA @ RANOJI VISHNU ROHAKALE
VERSUS
MIRABAI KRAJENDRA @ RANOJI VISHNU ROHAKALE

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Advocate for Appellant : Mr. Bhore K. S.
Advocate for Respondent: Mr. D. D. Pokarkar.

CORAM: T. V. NALAWADE, J.
DATED: 31st August, 2015.

ORDER:

1. The appeal is filed against judgment and order of Regular Civil Appeal No.67 of 2009 which was pending in the Court of learned District Judge-5, Ahmednagar. It is also filed against judgment and order of HMP No.70 of 2007 which was pending in the Court of learned Civil Judge, Senior Division, Ahmednagar. The proceeding filed by the present Appellant for divorce under the provisions of Section 13 (1) (a) (b) of Hindu Marriage Act is dismissed. Both the sides are heard.
2. It is the case of the Appellant, husband that his

marriage took place with the present Respondent as per Hindu rites and custom on 2nd June, 1990 and she cohabited with him till August, 1998. One son is born out of this wedlock and the said son is in the custody of the Appellant.

3. It is the case of the Appellant that right from beginning the wife did not behave properly and she used to pick up quarrels with him on petty counts. It is his case that the wife used to leave his company and she used to return to the parent's house without informing him and every time he used to bring her back to matrimonial house after somehow convincing her. It is contended that the wife is suspicious in nature and out of this suspicion she used to harass him. It is contended that ultimately on 7th August, 1998 in the night time she left the matrimonial house and she started living with her parents. He has contended that he made many attempts to bring her back to matrimonial house but she did not return to the matrimonial house.

4. It is the case of the husband that after leaving his company, the wife gave report against him and a case for offence punishable under section 498-A and 34 etc.

of IPC was filed against him and his relatives and it was a false case. It is his case that she had filed proceeding for maintenance against him by making false contentions. It is his case that she had applied to the District Court for getting custody of his son but she failed in that attempt. It is his case that he had filed proceeding under section 9 of Hindu Marriage Act for restitution of conjugal rights but unfortunately the said proceeding came to be dismissed. It is his case that as the wife is living separate since 1998 she has deserted him and there are other aforesaid circumstances. On the aforesaid grounds relief of divorce was claimed.

5. The wife contested the proceeding by filing written statement. She denied the allegation that she was taking suspicion and out of suspicion she was harassing the husband. She has denied that she used to leave matrimonial house on her own for her parents house. She has denied that in August, 1998 she left the company of her husband on her own.

6. It is the case of the wife that she was treated well only for few days of the marriage and after that the husband and his relatives started giving ill-treatment to

her. It is her case that she was living in the house where the husband, his parents, brothers and sisters used to live. It is her case that all of them used to harass her by saying that she was not able to do even household work. It is her case that on many occasions, after picking up quarrels she was driven out of the matrimonial house and her parents and relatives had convinced husband to take her back to matrimonial house.

7. It is the case of the wife that when she first became pregnant, the husband had caused her abortion when she was not consenting to do. It is her case that when she gave birth to a son, her husband, his relatives never allowed her to keep the son with her and they created circumstances due to which the son was kept with the husband.

8. It is the case of the wife that the husband and his relatives then started making demand of money as they wanted to purchase a tractor. According to her they were also asking her to bring gold ornaments. It is her case that her parents could not meet these demands as they are poor and ultimately she was driven out of the matrimonial house on 7th August, 1998. It is her case

that when parents made attempt to reach her back to matrimonial house, the husband and relatives told that they would accept her in the matrimonial house only if their demand of money was met with.

9. It is the case of the wife that due to aforesaid circumstances she was required to give report to police and a case was filed against the husband and relatives for offence punishable under section 498-A, 34. etc. of I.P.C. It is her case that the Criminal Court has convicted and sentenced the husband and his parents. It is her case that the husband married second wife on 11th December, 1998 and the second wife, whose name is Sunita, is living with the husband.

10. It is the case of the wife that husband tried to create false record by sending notice to her to ask her to return back to the matrimonial house. It is her case that the notices were replied and she had expressed willingness to return to the matrimonial house but she was not accepted back in the matrimonial house. It is her case that the husband had filed a false proceeding under section 9 of Hindu Marriage Act but the Court dismissed the proceeding as the husband failed to prove

that she was living separate from him on her own.

11. It is the case of the wife that she had filed proceeding for maintenance both in Criminal Court and Civil Court and maintenance is granted in her favour. It is her case that husband never paid the maintenance willingly and every time she was required to file proceeding for recovery of maintenance. It is her case that husband started another way of harassment and he filed proceeding for cancellation of maintenance order. It is her case that as ill-treatment was given to her and the husband is not interested in resuming cohabitation and as husband has married second wife the husband is not entitled to the relief of divorce.

12. The trial Court framed issues on the basis of aforesaid pleadings. The husband examined himself. The wife examined herself and she examined her brother.

13. Admittedly, husband is in service and the occupation of the wife is given as a labour in a proceeding filed for divorce. This circumstance shows that the financial condition of the parents of the wife is not that good and the husband admits that she is

required to do labour work. The husband has admitted that the wife was working in the field of his family during cohabitation. It is not disputed that husband and his parents were convicted for the offence punishable under section 498-A of I.P.C. by the trial Court, though they came to be acquitted in appeal during pendency of the proceeding. The acquittal is given after giving benefit of doubt.

14. The evidence given by the husband is as per aforesaid contentions and similarly evidence is given by the wife as per her pleading. No particulars of attempts made by the husband, like taking relatives to the house of the parents of the wife to bring her back, are given in the pleading. For the first time in evidence husband gave names of some mediators but he did not examine any mediator. He could not give particulars of the instances when he had tried to settle the dispute and bring the wife back to matrimonial house.

15. On the other hand wife has given evidence that she made every attempt to settle the dispute. Her brother has given similar evidence. There is one clinching circumstance in support of the case of the wife and that

is the decision of the Court in the proceeding filed under section 9 of the Hindu Marriage Act by the husband. Husband failed to get decree of restitution of conjugal rights and so it needs to be presumed that he failed to prove that the wife was living separate on her own. It is not in dispute that wife has filed a proceeding for offence of bigamy against husband. Her evidence shows that she has given particulars of the second marriage of the husband. She has given the names of the parents of the second wife and she has given evidence that now the second wife has one daughter from the husband. The Courts below have held on preponderance of probability that the husband has married second wife. During cross examination of the wife, it is suggested to her by husband that she is not ready to return to the matrimonial house as the husband has married second wife. This suggestion shows that the husband is not disputing that he has married second wife.

16. The evidence of the parties show that the wife would not have returned to her parents house on her own. She has given evidence that she was driven out of matrimonial house as the husband had suspicion about

her character and as the aforesaid demands made by the husband were not met with by her parents. Husband could not give convincing evidence to show that his offer to bring back the wife was genuine and he had intention to bring the wife back to the matrimonial house. When he married second wife it cannot be said that he wanted to bring the present respondent back to the matrimonial house.

17. The question, whether there was sufficient cause for the wife, is a question of fact and on this fact both the Courts below have given concurrent finding. In view of the aforesaid material, this Court holds that it is not possible to interfere in the finding given on this fact and no substantial question of law as such is involved in the matter.

18. In the result, appeal stands dismissed.

[T. V. NALAWADE, J.]

Dt.31/08/2015
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