

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.251 OF 2015**

Malikarjun Arjun Chougule

..Appellant

Vs

Sou. Sarubai Malikarjun
Chougule

.. Respondent

Mr.Rajshekhar S. Alange , Advocate for Appellant.

CORAM : R.G.KETKAR,J.

DATE : 09/04/2015

PC:

1. Heard Mr. Rajshekhar Alange, learned counsel for the appellant at length.
2. By this Appeal under section 100 of the Civil Procedure Code, 1908 (for short, 'C.P.C. '), the appellant-husband has challenged the Judgment and decree dated 16.7.2012 passed by the learned Jt. Civil Judge, Sr.Dn., Solapur in Hindu Marriage Petition No.136 of 2011 as also the Judgment and decree dated 18.11.2014 passed by the learned District Judge-1, Solapur in Civil Appeal No.358 of 2012. By these orders, the Courts below dismissed the Petition instituted by the appellant under section 13(1)(i-b) of the Hindu Marriage Act, 1955 (for short, 'Act').
3. In support of this Appeal, Mr. Alange submitted that in paragraph 1 of the petition, the appellant specifically asserted

that respondent had deserted him without any reasonable cause and without his consent from 26.1.2006. The respondent has also inflicted cruelty on him. For more than 10 years the respondent has deserted the appellant without any reasonable cause. He further submitted that the respondent resisted the petition by filing written statement. By prayer clause (b), she prayed for passing a decree for judicial separation. The Courts below failed to consider the prayer made by the respondent for judicial separation.

4. Mr. Alange further submitted that during cross examination of the respondent, she admitted that she is residing separately from the appellant since last 10 years. He also submitted that though by prayer clause (b) the respondent prayed for passing a decree for judicial separation, during the cross examination she denied that she is not ready and willing for cohabitation with the appellant. She deposed that she is ready to cohabit with the appellant and it is not necessary to pass a decree for judicial separation. He submitted that in view of the admissions of the respondent, the Courts below ought to have passed decree under section 13(1)(i-b) of the Act as the respondent has deserted the appellant for a continuous period of not less than two years immediately preceding the presentation of the

petition. He submitted that Appeal requires consideration as it raises substantial questions of law.

5. I have considered the submissions advanced by Mr Alange. I have also perused the material on record. As noted earlier, the appellant has instituted Petition under section 13(1)(i-b) of the Act for a decree of divorce on the ground of desertion. The respondent has dealt with the assertions made by the appellant in paragraphs 1, 7 and 8. She denied those assertions. On the contrary, she came out with the case that because of conduct of the appellant she was constrained to lodge complaints against him. She further stated that earlier the appellant had filed proceedings for divorce and had withdrawn the same. The present proceedings are instituted by the appellant as he wants to perform second marriage. It is also material to note that out of their wedlock, four children are begotten. During the course of the appellant's evidence, he admitted that as he wants to perform second marriage, he has filed proceedings for divorce. Both the Courts below, after appreciating the evidence on record, have concurrently held that the appellant has failed to make out the grounds of cruelty and desertion and, accordingly, dismissed the petition for divorce.

6. M. Alange submitted that in view of the prayer clause

(b) made by the respondent in terms of prayer clause (b) of the Written Statement, the Courts below ought to have passed a decree for judicial separation. I do not find any merit in this submission for more than one reason. In the first place, Section 10 of the Act provides that either party to a marriage, whether solemnized before or after the commencement of the Act, may present a petition praying for a decree for judicial separation **on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which** a petition for divorce might have been presented. It is undoubtedly true that the respondent has prayed for passing a decree for judicial separation. However, she did not spell out any of the grounds as contemplated under section 13(1) or 13(2) of the Act. Whatever assertions were made by the respondent were in response to the allegations made by the appellant in his petition. The respondent specifically came out with the case of cruelty meted out by the appellant on her and for which she was constrained to file complaints with the police. Secondly, the appellant even did not raise this ground in the Appeal filed by him against the trial Court's judgment.

7. Mr. Alange submitted that the respondent admitted in

the cross examination that she is residing separately for more than 10 years and, therefore, in terms of Section 13(1)(i-b), the Courts below ought to have passed a decree for judicial separation. Perusal of Section 13(1)(i-b) read with Explanation shows that the expression “desertion” means the desertion of the petitioner by the other party to the marriage **without reasonable cause and without the consent or against the wish of such party.** Perusal of the material on record shows that it is the appellant who inflicted cruelty against the respondent-wife. The material on record also indicates that the appellant has instituted the proceedings for divorce as he desires to remarry. For all these reasons, I do not find that the Appeal involves any question of law, much less substantial question of law. Hence, Appeal fails and the same is dismissed.

(R.G.KETKAR, J.)