

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.561 OF 2014
WITH
CIVIL APPLICATION NO.1380 OF 2014**

Prajali Prasad Kanitkar, Pune Appellant
(Ori. respondent)

Vs.

Prasad Chandrakant Kanitkar Respondent
Kolhapur (Ori. Petitioner)

Mr. Vaibhav P. Patankar, Advocate for the Appellant.
Mr. Siddharth Gadve, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 4th February, 2015.

P.C.

1 The appellant, the original respondent-wife has filed this Second Appeal to challenge the concurrent findings of the courts below that she has subjected the respondent-husband with cruel treatment and on that count, the trial court allowed the petition for divorce filed by the respondent. The decree of the trial court is confirmed by the appellate court by dismissing the appeal preferred by the appellant.

2 Mr. Patankar, the learned advocate for the appellant submits that there are two substantial questions of law arising for consideration of the court in the present appeal. First is that, according to him, the finding of cruelty arrived at by the courts below is perverse in as much as the same is not supported by the material on record. Secondly, that the finding as regards desertion as a ground for the dissolution of marriage was not available to the respondent, since the statutory period of desertion of two years was not yet complete.

3 Mr. Patankar submits that the courts below had accepted the argument of the respondent that the appellant did not give a positive response to the notice sent by the respondent calling upon the appellant to return to the matrimonial home and restore marital relations. He points out that the notice dtd.15th September, 2009 relied upon by the respondent, which was produced in evidence was not for restitution of conjugal rights, but was for calling upon the appellant for dissolution of marriage, by consent. He submits that the observations of the trial court at paragraph 14 of it's judgment that the appellant had failed to respond to the notice for restitution of conjugal rights is not borne out by the notice dtd.15th September, 2009 sent by the respondent and the reply dtd.15th October, 2009 sent by the appellant. He argues that it was the appellant, who had in fact shown a conciliatory stand in her reply to the notice of the respondent. She had also filed proceedings for restitution in the family court at Pune being Case No.1070 of 2009, the appellant however failed to bring any

evidence before the court as regards the proceedings. The appellate court then drew inference that the appellant is not interested in the restitution.

4 Perusal of the notice dtd. 15th September, 2009, substantiates the argument of Mr. Patankar that it was not for restitution of conjugal rights. The reply of the appellant apparently shows conciliatory stand. However that is only one of the circumstances taken into consideration by the courts below. There is extensive evidence led by the respondent as regards the instances of mental and physical cruelty that he was subjected to by the appellant. One of the witnesses examined was the father of the appellant. The courts below have noted that the father in his cross-examination has in terms admitted that the respondent had complained to him about the behaviour of the appellant. Since the finding of cruelty arrived at by the courts below is a finding of fact, the same cannot be interfered with at the stage of the Second Appeal unless the findings are shown to be perverse i.e. absolutely not supported by the material on record or contrary to the material on record. Perusal of the proceedings shows that there is sufficient evidence produced by the respondent in support of his allegation that he was subjected to cruelty, both mental and physical by the appellant.

5 The argument as regards ground of desertion even if accepted as correct, will not affect the ultimate result in the

proceedings, since the courts have arrived at concurrent findings as regards the other ground for dissolution of marriage i.e. of cruelty. Hence, the Second Appeal is dismissed.

6 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)