

UNREPORTED

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD****FAMILY COURT APPEAL NO. 14 OF 2007**

Anil Nanasaheb Pagare
Age 34 years, Occ.Contractors,
R/o Agasti Colony, Behind Baliram
Patil High School, CIDCO,
Aurangabad. .. Appellant

Versus

Sujata @ Anupriya W/o Anil Pagare
Age 27 years, Occ.Beautician,
R/o C/o Punjaram Laxman Pradhan,
Samarthnagar, Aurangabad. .. Respondent.

WITH**FAMILY COURT APPEAL NO. 15 OF 2007**

Anil Nanasaheb Pagare
Age 34 years, Occ.Contractors,
R/o Agasti Colony, Behind Baliram
Patil High School, CIDCO,
Aurangabad. .. Appellant

Versus

Sujata @ Anupriya W/o Anil Pagare
Age 27 years, Occ.Beautician,
R/o C/o Punjaram Laxman Pradhan,
Samarthnagar, Aurangabad. .. Respondent.

WITH

FAMILY COURT APPEAL NO. 2 OF 2009

Anil Nanasaheb Pagare
Age 34 years, Occ.Labour,
R/o Augasti Colony, Behind
Baliram Patil High School,
CIDCO, Aurangabad.

.. Appellant

Versus

1. Sow. Sujata W/o Anil Pagare,
Age 27 years, Occ.Beautician,
R/o C/o Samatanagar,
Aurangabad.

2.Yash @ Shantanu S/o Anil
Pagare, Age 3 years, Occ.
Education, R/o as above,
U/g of Resp. No.1.

.. Respondents.

WITH

CIVIL APPLICATION NO. 2828 OF 2009

Shri A. D. Kasliwal, Advocate for the Appellant.
Shri S. D. Hiwrekar, Advocate for the Resondents.

**CORAM : S. V. GANGAPURWALA
AND**

A. M. BADAR, JJ.

DATE : 06TH JANUARY, 2016.

ORAL JUDGMENT (Per S.V.Gangapurwala,J.)

1. The appellant in all these appeals is the husband and the respondent is the wife.

2. Husband filed proceedings for divorce on the ground of cruelty. Wife filed application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. Wife also filed an application for maintenance under Section 18 of the Hindu Adoption and Maintenance Act. The Family Court, Aurangabad, dismissed the petition filed by the husband for divorce and allowed the petition filed by the wife for restitution of conjugal rights. It also partly allowed the petition for maintenance, thereby granting maintenance of Rs. 2,000/- p.m. to the wife and 1,500/- p.m. to the son. The said judgment and orders are assailed by way of present appeals.

3. Mr. Kasliwal, the learned counsel for the appellant husband strenuously contends that, the Family Court failed to consider the averments with regard to the cruelty in its proper perspective. The conduct of the wife tantamounts to cruelty. The respondent herein was always making absurd allegations against the appellant that the appellant is impotent and the respondent had even slapped the appellant herein. It is the respondent who left the house of the petitioner in July 2005. It is dangerous to continue marital relationship with the

respondent. According to the learned counsel the respondent is also habitual in filing false complaints. Even she filed complaint under Section 498-A of the Indian Penal Code. The appellant is acquitted. Filing false complaints also tantamounts to cruelty. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **"Mr.M. Vs. Mrs.M"** reported in **2014 (2) ALL M. R. 750**. The learned counsel submits that, the appellant has examined his father who has also substantiated the allegations made by the appellant. The learned counsel submits that, the Family Court has failed to consider the evidence on record and the conduct of the respondent would tantamount to cruelty both physically and mentally.

4. Mr. Hiwrekar, the learned counsel for the respondent wife submits that, the Respondent has not deserted the appellant. It is because of the cruelty on the part of the appellant, the respondent was driven out of the house and had to stay with the minor son. The allegations made by the appellant are without substance. The Respondent wife is always ready to cohabit with appellant. The complaint filed by the respondent under Section 498-A of the I.P.C. is subsequent to the filing of the petition for divorce and

the acquittal of the appellant is on account of the benefit of doubt. The Family Court has properly considered all the relevant aspects of the matter.

5. Mr. Kasliwal, the learned counsel submits that, during the pendency of this proceeding the appellant met with an accident and his hand is required to be amputated. The amount of maintenance awarded is exorbitant. In fact, the appellant is not liable to pay maintenance amount also as the respondent wife on her own accord has left the matrimonial company of the appellant.

6. Per contra Mr. Hiwrekar, the learned counsel for the respondent states that, the appellant is a contractor, taking contracts of the Municipal Corporation. The said fact is admitted by the father of the appellant so also the appellant.

7. We have considered the submissions canvassed by the learned counsel for respective parties, so also, have gone through the judgment and the depositions.

8. The appellant has filed proceedings for divorce solely on the ground of cruelty. The only allegation of cruelty

attributed to the respondent is that respondent used to call the appellant impotent and on one occasion had slapped the appellant. The said allegation does not appear to be true, apart from the fact that they are not substantiated by any other corroborative evidence. The appellant and respondent have a son from the said wedlock. This itself would negate any allegations being made about impotency. The fact of respondent slapping the appellant is not borne out from any independent evidence. The Judge of the Family Court has scanned the said evidence. We have also gone through the same. The said allegations are not proved even by preponderance.

9. In light of the above, the Family Court did not commit any error in dismissing the petition for divorce and allowing the application of the respondent for restitution of conjugal rights. As far as maintenance is concerned it has come in evidence that the appellant is a contractor. The said fact is admitted by the appellant so also by his father in the deposition. Considering the status of the parties and the cost of living,

so also the fact that now the son is of the age where he would be taking higher education. The amount of maintenance of Rs. 2,000/ (Rupees two thousand) and 1,500/- (Rupees one thousand five hundred) per month awarded is not exorbitant.

10. Family Court Appeals are accordingly dismissed. No costs.

11. Civil application also stands disposed of.

Sd/-
(A.M.BADAR, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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