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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.91 OF 2008
WITH
CROSS-OBJECTION (ST.) NO.30504 OF 2009

Shri Suresh Puri ... Appellant

Versus

Smt. Sneha Suresh Puri ... Respondent

Mr. Rajesh N. Kachare for the Appellant – husband.

Ms. Sonal i/by L.J. Law for the Respondent – wife.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 1st JULY, 2016

ORAL JUDGMENT (Per A.S. Oka, J.)

1 The Family Court Appeal is preferred by the husband taking exception to the dismissal of Petition A-1236 of 2000 filed by him seeking a decree of divorce on the grounds of cruelty and desertion under Sub-section (i) of Section 13(a) of the Hindu Marriage Act, 1955 (for short “the said Act”). We may note here that the Respondent – wife had filed a Petition under Section 18 of the Hindu Adoption and Maintenance Act, 1955 seeking maintenance at the rate of 25,000/- per

month. The impugned judgment is a common judgment by which the said petition being Petition No.C-259/2000 was allowed and the husband was directed to pay maintenance of Rs.5,000/- per month from the date of the order.

2 From paragraph 1 of the Memorandum of Appeal, it appears to us that the husband has challenged the decrees passed on both the Petitions. The cross-objection of the wife is confined to the decree passed in C-259/2000.

3 The learned counsel appearing for the Appellant – husband has taken us through the pleadings as well as the notes of evidence. He pointed out that though at the instance of wife, a complaint alleging commission of offences under Sections 498A and 406 under the Indian Penal Code was registered, the husband filed a Petition for restitution of conjugal rights under Section 9 of the said Act. He pointed out that for resumption of cohabitation, certain objectionable conditions were imposed by the wife and, therefore, considering the conduct of the wife, the Appellant husband had no option but to withdraw the said Petition on the ground that he wants to file a Petition for divorce. Inviting our attention to the affidavit in lieu of examination of the husband and his cross-examination, his submission is that consistent conduct of the

Respondent firstly of not resuming cohabitation and secondly of filing false complaint alleging commission of offences punishable under Sections 498A and 406 of the Indian Penal Code shows that cruelty was inflicted on the Appellant husband. He pointed out that as the husband could not get anticipatory bail in the said case, he had to remain in police custody for about 12 days. He submitted that even after filing a Petition for restitution of conjugal rights, the Respondent wife showed no interest in resuming cohabitation. He submitted that from the year 1994, the Respondent wife has remained away from the husband and only after giving a chance to the Respondent wife to resume cohabitation by filing a Petition for restitution of conjugal rights that the present Petition for divorce was filed. He submitted that in any case, the marriage is irretrievably broken down. He submitted that a decree ought to have been passed both on the ground of cruelty and desertion and especially on the ground of desertion.

4 The learned counsel appearing for the Respondent wife in support of cross-objection and while supporting the decree dismissing the Petition for divorce urged that conduct of the Appellant husband is noted by the learned District Judge at Delhi in the Petition filed for restitution of conjugal rights. She pointed out that the Respondent – wife had shown readiness and willingness to resume cohabitation. All

that she stated before the Court was that as the husband was intending to reside in Delhi, he should point out the location of the permanent accommodation for residence. She, therefore, submitted that a decree cannot be passed on the ground of desertion. She urged that as far as cruelty is concerned, there is absolutely no evidence. As regards the prayer for maintenance, she pointed out the evidence of both husband and wife. She pointed out that the husband is a reputed businessman and there is material on record to show that he has been frequently travelling abroad every year for the purposes of his business. Her submission is that his business is not confined only to sale of garments but he was in the business of shares and stocks as deposed by the wife. Therefore, her submission is that maintenance of Rs.25,000/- per month ought to have been granted.

5 The learned counsel appearing for the husband pointed out that interim orders passed by this Court show that interim maintenance initially fixed at Rs.7,500/- per month was brought down to Rs.4,500/- per month. He submitted that there is absolutely no evidence regarding the income of the husband and that is why even the interim maintenance granted at the rate of Rs.4,500/- is on the higher side. He would submit that cross-objections do not merit any consideration and therefore, the same may be dismissed.

6 We have given careful consideration to the submissions. Firstly, we deal with the ground of cruelty. The main ground of cruelty urged by the husband appears to be registration of the FIR at the instance of the wife for the offences punishable under Sections 498A and 406 of the Indian Penal Code and his detention in police custody and judicial custody for a period of 20 days. As far as his alleged detention in police custody in jail for 20 days is concerned, we find that there is absolutely no documentary evidence adduced by the husband and precisely that is the finding recorded by the learned Judge of the Family Court. Nothing is stated by the husband as regards the outcome of the criminal case. It is not pointed out whether the case is pending or the case is decided. Therefore, the learned Judge of the Family Court is right in not accepting the case of cruelty only on the basis of the allegation of filing a false complaint and detention of the husband.

7 There is one more aspect of the matter as far as cruelty is concerned. The averments made in the Petition for divorce show that if not from 1994 but at least from 1995, the parties have not stayed together. The present Petition for divorce was initially filed in the Court at Delhi on 17th September, 1999 which was subsequently transferred to the Family Court at Bandra, Mumbai.

8 Copies of the orders passed by the District Court at Delhi in a Petition for restitution of conjugal rights have been placed on record. Along with a list of documents at Exhibit 20, the Appellant husband has placed on record a copy of the Petition for restitution of conjugal rights filed by the Appellant husband. We have perused the said copy of the Petition which is filed at Item No.4 in the list of documents at Exhibit 20. The said Petition appears to have been filed in the year 1995. We have carefully perused the averments in the Petition under Section 9 of the said Act. We find that in the said Petition, there is no allegations of cruelty made against the wife. After filing of the said Petition, the parties did not cohabit together. Even assuming that there are certain allegations made of cruelty for the period prior to the filing of the Petition under Section 9, it is obvious that any such objectionable conduct of the wife is waived by the Appellant husband by filing a Petition for restitution of conjugal rights.

9 Therefore, only real ground which could be considered in support of ground of cruelty is filing of FIR by the wife. We have already dealt with the same and concurred with the view expressed by the Family Court.

10 Now, we come to the ground of desertion. The law on the

aspect is very clear. A spouse who files a Petition seeking divorce on the ground of desertion has to prove something more than mere separation. What is required to be established is the intention or animus on the part of the Respondent to desert the Petitioner spouse.

11 It will be necessary to make a reference to the order sheet in the Petition under Section 9 filed in the District Court at Delhi by the husband. The order sheet is at Exhibit 38. The order dated 12th January, 1999 passed by the learned Additional District Judge at Delhi records that parties have made submissions which are recorded on a separate sheet. The said separate sheet is also a part of Exhibit 38. The statement of the wife recorded on the separate sheet on the very day is that she was ready to join the company of the husband unconditionally wherever he will be residing. In response to the said statement of the wife, the learned Judge has recorded the statement of the husband on the same day which reads thus :-

“I am ready to keep the respondent provided the respondent withdraws all her cases pending against me and my family members including criminal litigation pending at Bombay.”

12 In response to the said statement, wife made a statement that she was willing to withdraw all litigations both civil and criminal against the husband and his family members. In the said statement, she

recorded that she was not aware whether the husband was having a permanent abode in Delhi or not and she wants to verify the same. The order of the Court passed on the same date records that the wife is ready and willing to join the company of the husband and she wants to ensure that the husband is having a permanent place to stay in Delhi. The Court passed an order that the husband should show the premises to the wife on the very day. The Petition was kept back. However, the further order of the Court records that there was some dispute between the parties as to whether both of them were there at the meeting place which they had agreed. After referring to the said dispute, the learned Judge specifically recorded that the purpose of filing the Petition of the husband was not bonafide. After the said order was passed, the husband made a prayer for permitting withdrawal of the said Petition with liberty to file a Petition for divorce. While the said Petition was dismissed as withdrawn, the Court did grant liberty with a rider that the wife will be entitled to take all such objections as she may deem fit in the circumstances of the case.

13 The statements of the wife recorded in the said proceedings show that she was unconditionally willing to resume cohabitation with the husband. She even agreed to the condition of the husband of withdrawing all the civil and criminal proceedings filed by her. Her

anxiety was whether the husband had a permanent place of abode in Delhi. As the husband was intending to reside in Delhi, the expression of such anxiety by the wife cannot amount to putting in any condition. In any case, the expression of the said anxiety will not amount to giving a conditional offer to resume cohabitation. On the very day parties were supposed to take inspection of the permanent place of abode at Delhi, but the inspection could not be taken. The husband did not apply for time to give inspection of the residential premises where he was proposing to stay with the wife. After the Court at Delhi observed that the purpose of filing the Petition was not bonafide, instead of making any further effort to ensure that cohabitation with the wife is resumed by showing her residential premises, he straightaway applied for withdrawal of the petition for restitution of conjugal rights. As stated earlier, the Petition was withdrawn on 12th January, 1999. From the Petition filed in the year 1999 for dissolution of marriage, it is not the case of the husband that after 12th January, 1999 he made any effort to resume cohabitation or he informed the wife particulars of his permanent place of abode in Delhi. Therefore, considering the evidence on record it is impossible to record a conclusion that there was any intention on the part of the wife to desert the husband. On the contrary, the intention on the part of the wife was to resume cohabitation which is reflected from the orders passed in the proceedings for restitution of

conjugal rights filed by the husband. The orders recorded in the said proceedings are of 12th January, 1999. As stated earlier, the Petition for divorce was filed immediately on 17th September, 1999 in the Court at Delhi.

14 Therefore, it is not possible for us to interfere with the decree of dismissal of the Petition for divorce filed by the husband.

15 Now, as far as the prayer for maintenance is concerned, in the Petition for maintenance the wife filed affidavit in lieu of examination-in-chief. In the said affidavit, in paragraph 21, the wife deposed about the nature of business of the husband. Paragraph 21 reads thus :-

“21. I say that the Respondent-husband being a businessman is a rich and high status is powerful both politically and financially. I further say that the Respondent No.1 is doing business of Garments, in shares, in estate Agency and also electronic items. I further say that the Respondent No.1 travels out of India almost on every week/month and visiting various countries often for the business purpose as such the Respondent No.1 is in very sound position and has sufficient income to maintain me. The Respondent has also invested in shares for which he is receiving the dividends. I am producing some of the dividends issued by the concerned company in the name of the Respondent No.1 and the same may be marked as Exh. “D-7”. I

further say that besides this he has also invested and purchased the shares of other companies. I further say that the Respondent No.1 however is not disclosing the truth either to this Hon'ble Court or to me with malafide intention to deny my rights and or to avoid the matrimonial obligations of maintaining me. I further say that, the Respondent has deposited a sum of Rs.1,20,000/- in cash on 29th November, 1994 and Rs.1,40,000/- on 1st December, 1994 in Current Account No.10933 with the Bank of India, Opera House branch. I am producing the opening form and statement of transaction in the said Account from 2nd September, 1994 till 22nd November 1995 and the same may be marked as Exh. "D-8".

(underline supplied)

16 Thereafter, she proceeded to point out inconsistent statements made on oath by the husband in different proceedings as regards his source of earnings and various accounts in different banks. As far as the financial status of the husband is concerned, she claimed that the flat in Sholay Apartments in Andheri at Mumbai was of the husband. In paragraphs 6 and 7 of her examination-in-chief, she has stated thus :-

“6. The Respondent No.1 has furnished and decorated the said flat with furniture such as sofa showcase, well kitchen units and in the bedroom bed air-conditioned and in the bathroom Geyser. I further

state that I was using all those amenities while staying into the said flat as wife of the Respondent No.1. The Respondent No.1 through the Respondent No.2 used to pay the maintenance bills of the said flat to the society and the Respondent No.1 also used to give money to the Respondent No.2 for making payment of Electricity and Telephone Bills. I further state that the Respondent No.1 also used to give about Rs.15,000/- per month to me for my sundry expenses. I further state that I had a peaceful comfortable and happy marital life.

7. I state that the Respondent No.1 purchased a Maruti Car in Delhi in my name. The said car was purchased in Delhi because price of Maruti Car was marginally less in Delhi comparatively in Mumbai. In or about by the beginning of 1994, the said car was brought to Mumbai. I state that I learnt driving in Mumbai and I had obtained motor driving license in Mumbai. I was driving the said car, which was brought to Mumbai. As the said car was being parked in the compound of the society of Sholay Building, the parking charges were recovered for parking in the same and the same were paid by the Respondent No.1 to the society. I am producing the copy of the bill issued by the Society, showing the parking charges were collected from the Respondent and the same may be exhibited as Exh.-D-3.”

17 We have perused the cross-examination of the wife made by the Advocate for the husband. We find that there is absolutely no

challenge in the cross-examination to the statement made by the wife in paragraph 6 of her examination-in-chief that the husband used to give her a sum of Rs.15,000/- per month for meeting sundry expenses. In the cross-examination, a suggestion was given that the wife was carrying on business as a dress designer. She denied the correctness of the said suggestion. In the cross-examination, she reiterated that the husband was dealing in shares and getting the goods from the outside (from abroad) and selling it.

18 We have perused the affidavit in lieu of examination-in-chief of the husband and in particular his cross-examination. In paragraph 15 of his cross-examination, he stated thus :-

“15. I used to call the clothes from Dubai. I used to go to purchase the clothes prior to one year of my marriage. Prior to it, I was doing service in Construction company at Dubai. I was there for 14 years, but unemployed for four years. Today I am doing the same business. I went to Bangkok and Hong Kong for four to five times in the year 2007. I am not having any shop at Delhi. I am supplying the clothes to the Retailers.”

(underline added)

19 Thus, the husband admitted that he was in the business of ready-made garments and he was doing the said business even on the date of deposition. He admitted that he went to Bangkok and Hong

Kong in the year 2007 for four to five times. In paragraph 18 of his cross-examination, the husband stated thus : -

“I used to go to out of India i.e. at Dubai, Bangkok and Hong Kong for three to four times in a year. My income is Rs. 10,000 to Rs.12,000/- per month. My wife has obtained a loan for purchasing a car on her name, but I used to repay the installments. She was not earning. I do not know whereabouts of the Car which was purchased at Delhi.”

20 Thus, there is a clear admission that he used to go out of India to Dubai, Hong Kong and Bangkok for three to four occasions in a year. He claims that wife had purchased a vehicle by taking loan and he was paying the instalments of the loan. In paragraph 18, the husband has admitted that wife is not earning. No specific case is made out in the deposition of the husband that the wife was earning and in any case, no attempt was made to lead evidence to show that wife was earning. The husband was confronted with a photocopy of the agreement for sale of a flat in Sholay Building in Mumbai. He admitted the said agreement which is marked at Exhibit – 40 which shows that husband and his mother are shown as the purchasers. Thus, the flat was jointly purchased by the husband and his mother of the flat. Though in

paragraph 21, the husband stated that he will bring the passport on the next date, the perusal of the record shows that passport was not produced by him. He accepted that once additional pages were attached to his passport by stating that if the pages in passport are full, the Passport Authorities attach additional pages.

21 Thus, the husband has not disputed that he was paying a sum of Rs.15,000/- to the wife per month. He accepted that he was in the business of ready-made garments and used to travel abroad three to four time in a year for the purpose of his business. He also accepted that wife does not have any income and in fact he used to pay instalments of the car loan taken by the wife. Therefore, the statement made in paragraph 18 by the husband that his income was only Rs.10,000 to 12,000/- per month is completely a false statement. The husband has not placed on record any document to show his income. He could have produced the accounts of his business for the relevant period. Thus, a conclusion can be drawn that the husband is a businessman who is frequently travelling abroad for the purpose of business. When the husband and wife were together, he used to pay a sum of Rs.15,000/- to the wife for sundry expenses. The husband ought to have produced his passport on record. His passport would have given details of his visits abroad. For non-production of passport, the Family Court ought to have

drawn an adverse interference against the husband. Even if we keep assisted the case of the wife that the husband was also in a share business, by no stretch of imagination, it can be said that income of the husband was less than Rs.30,000/- pm. Apart from this, it is also brought on record that the husband was a co-owner of a flat in a prime residential locality in a Suburb of Mumbai. Therefore, in our view, considering the admitted facts on record, the maintenance amount cannot be less than Rs.15,000/- pm. We make it very clear that for the purposes of determining the maintenance, we have examined evidence on record as of 31st December, 2007. If there is any subsequent change in circumstances, the wife can always file appropriate proceedings before the appropriate Court for enhancement. Therefore, in our view, the cross-objection deserves to be partly allowed by granting maintenance at the rate of Rs.15,000/- pm. We propose to grant time till the end of the year to the husband to pay arrears of maintenance.

22 Accordingly, we pass the following order :-

ORDER

- (i) Family Court Appeal No.91 of 2008 is dismissed with no order as to costs;
- (ii) Cross-objections (St.) No.30504 of 2009 is partly allowed. We direct that the husband shall pay

maintenance at the rate of 15,000/- per month to the wife from the date of the impugned decree instead of Rs.5,000/- per month;

- (iii) We direct the husband to pay arrears payable upto 31st July, 2016 at the rate of 15,000/- per month by 31st December, 2016;
- (iv) The husband shall continue to pay a sum of Rs.15,000/- per month from August, 2016 onwards on or before 15th day of every calender month;
- (v) Considering the fact that the cross-objection filed by the wife was also dismissed, we are not passing any order as to costs.

(A.A. SAYED, J)

(A.S. OKA, J)