

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FAMILY COURT APPEAL NO.78/2015

Sau. Shilpa Prasad Shimpi
...Versus...
Shri Prasad Madanlal Shimpi

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.R. Deshpande, Advocate for appellant
Shri S.S. Sarda, Advocate for respondent

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.
DATE : 07.07.2016

By this family court appeal, the appellant challenges the judgment of the family Court, dated 14.8.2015 allowing the Hindu Marriage Petition filed by the respondent and dissolving the marriage between the parties by a decree of divorce on the ground of cruelty and desertion.

Few facts giving rise to the family court appeal, are stated thus : -

The appellant (hereinafter referred to as 'the wife' for the sake of convenience) and the respondent (hereinafter referred to as 'the husband') were married at Akola, according to Hindu rites and customs on 25.11.2007. The parties started residing together in the matrimonial house at Dombivali along with the husband's parents, brother and his wife. The parties resided together for some time in the matrimonial house and the wife

conceived in the month of May, 2008. It is the case of the husband in the Hindu Marriage Petition filed by him for a decree of divorce on the ground of cruelty and desertion that the wife was welcomed in the matrimonial home by his parents and relatives and they took care of the wife and treated her with love, affection and respect. It is pleaded by the husband that the husband and wife regularly visited hotels, restaurants, multiplexes on weekends. It is pleaded that after the wife conceived in the month of May, 2008 the husband was very happy and excited. It is pleaded that the husband and his parents took utmost care of the wife and the ceremony of “Sanji”, i.e., the 7th Month Pregnancy Ceremony was performed in the matrimonial house on 30.11.2008, where 40 to 50 invitees were present. It is pleaded that the said ceremony was also attended by the father and the elder sister of the wife and the said programme was highly appreciated by them. It is pleaded that after the ceremony of “Sanji”, the wife went to Akola with her parents for rest and for her delivery. It is pleaded that during her pregnancy period, the wife had maintained a diary that was named as “Garbha Sanskar”. It is pleaded that in the said diary, the wife had stated about the everyday events in her own handwriting. It is pleaded that the wife delivered a female child on 21.1.2009, that was named “Nimisha”. It is pleaded that the husband and his mother immediately reached Akola to meet the wife and the newly born baby. It is pleaded that the wife and her parents fixed the naming ceremony at Akola and gave a very short notice of the said event to the husband and his parents, as a result of which they were not able to attend the ceremony. It is pleaded that though the

husband requested the wife and her parents to postpone the naming ceremony, it was not postponed. It is pleaded that on 13.2.2009 the husband booked the tickets for bringing back the wife and the daughter to the matrimonial home from Akola on 4.4.2009 but the father of the wife flatly refused to send the wife along with the husband. It is pleaded that later on the husband became aware that the wife did not desire to live in a joint family with her in-laws and wanted a separate residence. It is pleaded that the parents of the husband are dependent on him and since they were not keeping good health, he was not able to leave them in a lurch and reside separately with the wife. It is pleaded that the wife, however, pressurized the husband to a great extent to live separately and sometimes even threatened to commit suicide. It is stated that the acts on the part of the wife to threaten the husband for a separate residence, when his old and ailing parents were residing with him, caused great mental pain and agony to the husband. It is stated that the wife returned to the matrimonial home along with the father of the husband on 20.7.2009 but she did not mend her ways. It is pleaded that the husband and his family members told her that it was not possible for the husband to live separately. It is pleaded that on 5.12.2009, the wife quarreled on the issue of separate residence and asked her parents to come to the matrimonial house to fetch her. It is pleaded that on 6.12.2009, when the husband was not ready to give the child to the wife, when she wanted to leave the matrimonial house, she went to the police station and lodged a complaint against him and his family members. It is pleaded that in the presence of the police, the child was handed over to the wife and the wife left the

matrimonial home on 6.12.2009, never to return. On the aforesaid pleadings, the husband sought a decree of divorce on the ground of cruelty and desertion.

The wife filed the written statement and denied the claim of the husband. The wife denied each and every adverse allegation, that was levelled against her by the husband. It was pleaded by the wife that immediately after one month from the marriage, the husband and his parents started ill-treating the wife and insulting her. It is pleaded that the husband and his family members used to tease the wife and used to torture her mentally and physically. It is pleaded that the sister of the husband, namely, Savita used to visit them frequently and she used to interfere in the family life of the husband and the wife. It is pleaded that Savita never behaved well with the wife and at the instigation of the family members, the husband used to mercilessly beat the wife without any rhyme or reason. It is stated that the husband and his parents used to criticize the father of the wife for not providing better facilities and gifts during the marriage. It is pleaded that the husband used to support the illegal acts on the part of his family members and the wife tolerated the same with a hope that one day the husband and his family members would change their ways. It is stated that after two months from the marriage, the wife went to Akola to her parental home and narrated the ill-treatment meted out to her in the matrimonial home but the parents tried to convince her and send her back to the matrimonial home. It is pleaded that the ill-treatment on the part of the husband and his family members increased day by day and they used to abuse the wife in a very

filthy language. It is stated that the wife lived in the matrimonial home under great fear and pressure. It is pleaded that the husband had asked her to sign on a blank stamp paper for seeking a decree of divorce and on her refusal to do so, the physical and mental torture increased. It is pleaded that when she conceived, the husband and his family members did not treat her well and the statements recorded by her in her daily diary clearly go to show that she was frustrated due to the cruel treatment meted out by the husband and his family members. It is pleaded that at the time of "Sanji", 7th Month Pregnancy Ceremony, the family members of the husband gave an insulting treatment to the father of the wife for not giving proper gifts to the guests of the husband. It is pleaded that on 21.2.2009, a female child was born and the husband and the mother of the husband, who had visited the wife at Akola told the wife that they were dissatisfied with the birth of a baby girl, as they had desired a boy. It is stated that due to the birth of the baby girl, the husband and his parents were not happy and instead of behaving well with the wife, the husband and his mother told the wife's father that he was not taking proper care of the baby girl. It is pleaded that the husband and his family members did not attend the naming ceremony of Nimisha and did not turn up to take the wife to Dombivali for more than 6 months. It is pleaded that when the wife returned to the house of the husband at Dombivali on 20.7.2009, Savita, the sister of the husband, was present and she picked up quarrel with the wife for no reason. It is pleaded that on 5.12.2009, the husband started quarreling with the wife without any fault on her part and the father of the husband rushed towards the wife to

beat her, however, she rescued herself and phoned her father to take her back to Akola. It is stated that when she desired to take her child to Akola on 6.12.2009, the husband and his parents did not permit her to do so and therefore, she was constrained to lodge a complaint at the police station. It is stated that with the aid of the police, the child was delivered to the wife and she returned to her parental home at Akola along with the child. It is stated that the husband has neglected the wife and the wife has not deserted him and/or subjected him to cruelty. It is pleaded that in the conciliation proceedings also the husband had refused to take her back. It is pleaded that the wife desires continuation of the marital relationship and a decree of divorce may not be passed.

On the aforesaid pleadings of the parties, the family Court framed the issues. The parties examined themselves. Neither the husband nor the wife examined any other witness on their behalf to further prove their respective cases. On the appreciation of the material on record, both oral and documentary, the family Court, by the judgment dated 14.8.2015 allowed the Hindu Marriage Petition filed by the husband and dissolved the marriage between the parties by a decree of divorce on the ground of desertion and cruelty. The wife has challenged the judgment in this family court appeal.

Shri Deshpande, the learned Counsel for the wife submitted that the family Court was not justified in granting a decree of divorce in favour of the husband, in the circumstances of the case. It is stated that the husband had filed the proceedings at Mumbai for restitution of conjugal rights in the year 2010 and

those proceedings were withdrawn by him after the wife filed the written statement. It is stated that the act on the part of the husband to file the proceedings for restitution of conjugal rights clearly shows that if at all there was cruelty on the part of the wife, the same was condoned. It is stated that there is no allegation levelled by the husband against the wife in respect of cruelty, except the allegation that she desired a separate residence as she was not ready to live in a joint family, in the matrimonial home at Dombivali. It is stated that in every case, a demand for separate residence cannot amount to cruelty. It is stated that a demand for separate residence would by itself not be enough for proving cruelty. It is stated that there are no other allegations levelled against the wife by the husband for proving the cruelty that was meted out to him and hence, the family Court was not justified in allowing the Hindu Marriage Petition on the ground of cruelty. The learned Counsel relied on the judgments, reported in **2005 (Supp.) Bom. C.R. 793** and **AIR 1975 SC 1534** to substantiate his submission. It is stated that the wife had clearly stated in the written statement filed in the present proceedings that she was ready to join the company of the husband and this fact ought to have been weighed by the family Court in the proper perspective. It is stated that whether there is a condonation of cruelty on the part of a spouse needs to be discussed by the family Court before passing a decree of divorce on the ground of cruelty and since this aspect was not considered by the family Court in the impugned judgment, the judgment is liable to be set aside. The learned Counsel relied on paragraph 54 of the judgment of the Hon'ble Supreme Court, reported in **AIR 1975**

SC 1534 in this regard. It is stated that the wife was constrained to leave the matrimonial home on 6.12.2009 due to physical and mental torture by the husband and his parents on 5.12.2009. It is stated that since the wife was constrained to leave the matrimonial home on 6.12.2009, it cannot be said that the wife had deserted the husband without any just and reasonable excuse.

Shri Sarda, the learned Counsel for the husband supported the judgment of the family Court and submitted that the family Court has appreciated the evidence on record in an extremely judicious manner to grant a decree of divorce in favour of the husband. It is stated that the claim of the wife that the husband and his family members were treating her with cruelty stands shattered, in view of her writings in the diary/Garbha Sanskar, that was maintained by her in her own handwriting. It is stated that the extract of the diary has weighed heavily with the family Court to hold that the wife was treated extremely well by the husband during the period from May, 2009, till she left the matrimonial home on 1.12.2008. It is stated that no grievance is made by the wife in the diary against the husband or his family members. It is stated that the wife started behaving badly with the husband after she went to her parental house for her delivery, as she wanted a separate residence for herself, the husband and their daughter. It is stated that a very short notice was given to the husband and his family members about the naming ceremony, as a result of which they were not able to book the railway tickets and join the party for the naming ceremony. It is stated that though a request was made by the husband to

postpone the naming ceremony, deliberately it was not done. It is stated that the wife has no regards for truth as her case varies from proceedings to proceedings and from time to time. It is stated that there is a great variance in her pleadings in the written statement filed in the petition for restitution of conjugal rights, the written statement filed in the proceedings for decree of divorce, in the notice issued by her and also in her evidence. It is stated that considering the major discrepancies and contradictions in her pleadings and statements, time and again, the family Court rightly held that the wife was not desirous of telling the truth before the Court and the case of the wife was not liable to be accepted. It is stated that on a trifle issue there could not have been a serious quarrel on 5.12.2009 and as stated by the husband, the quarrel took place due to the adamance on the part of the wife for a separate residence. It is stated that a false case is sought to be made out by the wife that the husband's father had rushed towards her to beat her and that he had tried to beat her. It is stated that the pleading of the wife, that the husband had physically given beating to her on a number of occasions on the instigation of the other family members, is not substantiated by her evidence. It is stated that, in fact, the said case stands fully falsified by the extract of the diary i.e. tendered by the husband before the family Court. It is stated that it cannot be said that the mere filing of the petition for restitution of conjugal rights would tantamount to an act of condonation of cruelty as condonation of cruelty is a bilateral act and is not an unilateral act on the part of the one of the parties. It is stated that in a similar set of facts, this Court has, in a judgment, reported in **2014 (1) Bom. C.R. 495**

held that mere filing of the proceedings by the husband under Section 9 of the Hindu Marriage Act for restitution of conjugal rights would not mean that the husband has condoned the acts of cruelty on the part of the wife and would not result in refusing a decree of divorce to the husband when cruelty and desertion is proved. The learned Counsel sought for the dismissal of the family court appeal.

On hearing the learned Counsel for the parties and on a perusal of the original record and proceedings, it appears that the following points arise for determination in this family court appeal :-

(1) Whether the husband is entitled to a decree of divorce on the ground of desertion and cruelty ?

(2) What order ?

To answer the aforesaid points for determination, it would be necessary to consider the pleadings of the parties and the evidence tendered by them. We have referred to the pleadings of the parties in detail in the earlier part of this judgment and it would not be necessary to reiterate the facts and pleadings over again. The evidence of the parties is short, inasmuch as, the husband has only examined himself and the wife has examined herself and they have not examined any other witness. The husband has reiterated the statements pleaded by him in the Hindu Marriage Petition in his evidence, on affidavit. It would, therefore, not be necessary to reproduce the evidence of the husband, in his examination-in-chief. The husband was

cross-examined by the Counsel for the wife, at length. He had admitted in his cross-examination that he was residing in a joint family at the time of his marriage with his parents, his brother and his brother's wife. The husband admitted that the wife used to perform the household work and behaved well with the family members for some time. The husband admitted that before the wife went to Akola for her delivery, she never asked the husband to reside separately. The husband denied the suggestion that on the say of his mother and sister, he had insulted the wife and gave physical beating to her on a number of occasions. The husband specifically denied that on 5.12.2009, on the say of his mother and sister, he had beaten his wife. At this juncture, it would be necessary to mention that this was not the wife's case in her written statement, as in her written statement she had pleaded that the father of the husband had rushed towards her to beat her. The husband admitted that he had to handover the child to the wife in the police station and after they returned from the police station, the wife took the child and went to Akola with her father and child. The husband denied the suggestion that he had withdrawn the petition for restitution of conjugal rights, unconditionally, as he was afraid that the wife would resume cohabitation. The husband denied the suggestion that he had not made any attempt for cohabitation and had compelled the wife to reside at her parents' house. The husband admitted that he attempted for reconciliation, but without success. The husband denied that he was deposing falsely about the behaviour of the wife and he had falsely pleaded that the wife had mentally harassed him.

The wife examined herself and reiterated the facts pleaded by her in the written statement, in her examination-in-chief. In the cross-examination, the wife admitted that after the marriage, the husband took her to Kullu Manali. The wife admitted that the husband had borne the entire expenses for the reception. The wife denied that during the first two months, the husband and his family members treated her well. The wife admitted that her in-laws were old and the father of the husband was a retired man. The wife reiterated in the cross-examination that the wife of the husband's brother, namely, Sonal also ill-treated her. The wife stated in her cross-examination that Sonal used to tease and taunt her in view of the lack of gifts given by her parents at the time of marriage. The wife denied the suggestion that she was deposing falsely against Sonal, as there was no pleading against Sonal in her written statement. The wife denied the suggestion that she was treated well, by her in-laws. The wife admitted that the marriage of her sister-in-law Savita had taken place before her marriage and that she was residing in her own matrimonial house. The wife denied the suggestion that after returning from the United States of America (USA), the husband took her for medical examination, as she had conceived. The wife denied that during her pregnancy period, the husband and his family members took care of her. It was denied by the wife that in the night, the husband used to pray for her good health and for the well-being of the baby. The wife denied the suggestion that the husband had given a hand-made greeting card to her on her birthday. It was admitted that her sister and her father attended 'Sanji' programme at Dombivali, that was

attended by more than 40 to 50 persons. The wife admitted that she had maintained the diary of Garbha Sanskar, that was produced at Exh.35. It was admitted by the wife that after some negotiations she returned to matrimonial house on 20.7.2009 but the husband and her in-laws treated her badly. She admitted that there was a quarrel on 5.12.2009 between herself on one side and the husband and his family members on the other. She, however, denied the suggestion that she had insisted in the said quarrel that she did not wish to reside with her in-laws in the matrimonial home. She further denied that the parents of the husband tried to convince her but she was not in a position to listen. The wife denied the suggestion that she was deposing falsely that her husband's father had made an attempt to beat her physically. Certain other suggestions on the part of the husband were denied by the wife. The wife, however, admitted that she had initiated the proceedings under the Protection of Women from Domestic Violence Act against the husband and his family members and levelled several allegations against them. The wife admitted that she had not filed any pursis in the proceedings filed by the husband for restitution of conjugal rights that she was willing to join his company and reside in the matrimonial home. She also admitted that she had not made any attempt in writing to resume cohabitation.

From the aforesaid pleadings and evidence, it is clear that the wife has no regards for truth and she has changed her stand from time to time, as stated on behalf of the husband and as observed by the family Court. It is important to consider the pleadings of the wife and the writings in her diary/Garbha

Sanskar. In her pleadings, the wife has clearly stated that the husband and her in-laws used to treat her very badly since the inception of the marriage. The wife had gone to the extent of saying that she was physically beaten up by the husband on a number of occasions on the instigation of his sister Savita and his parents. The wife had pleaded that she was teased and taunted by the husband and his family members due to the lack of gifts, that were offered by her father to the husband and his family members. The wife has specifically pleaded that the sister of the husband, namely, Savita interfered in her family life and instigated the husband and the other family members. It is pleaded by the wife that she was ill-treated by the husband and when she had refused to sign on a blank stamp paper for divorce, the physical and mental torture increased. The wife had pleaded that on 5.12.2009 also the quarrel took place on a petty issue without any rhyme or reason. The aforesaid evidence of the wife is falsified by her cross-examination and by the extract of the diary at Exh.35. On 7th May, the wife had written in her own handwriting that the atmosphere in the matrimonial home was very congenial and she was feeling very very happy. On 7th June, she wrote that she was very happy as a new baby was to enter their family within a short time but she was a little sad because her husband was out of Dombivali and she could not get his support and care. On 7th July, she had stated that she was very very happy, as telephonically her husband had told her many good things. On 21st to 27th August, according to the wife, she was very happy and feeling contented as her husband was to return from USA. On 21st to 27th September, the wife wrote in the

diary that she was very happy as she could understand the movements of the life within her. Similar feelings are jotted in the diary from 28th September to 6th October and from 7th October to 13th October. It is written that she was experiencing a feeling of calmness. She recited on the next day that she was feeling very happy and like everyday she went for an evening walk along with her husband. On 11th November, the wife wrote that she was little disturbed because she did not get a sound sleep in the afternoon or in the night. Here also, it is not the case of the wife that she did not sleep in view of the ill-treatment by her in-laws. On 12th November, the wife wrote that she was happy to go to the parental home for delivery but she was also sad as she had to leave her husband and reside without him in her parental home. On 13th November, the wife wrote that her husband did not have holiday on that day and therefore, despite her desire, she could not enjoy his company. On this date, she noted that her husband took her to various places everyday so that she should be happy. Her statement in the diary, dated 18th November, clearly shows that even after the husband returned tired, from his office, he used to regularly take her out for one hour and she would remember the pains that her husband has taken for her and her child, throughout her life. On 21st November, she writes that her husband had purchased a new mobile phone for her and though the day was not a special day, the mobile gifted to her was a special gift. On 22nd November, the wife recites in the diary that the day was a memorable day as on that day, her husband gave her a great surprise by wishing her happy birthday at 12 'O' Clock in the midnight and gave her a gift and a greeting card. It is

further recited that she was extremely happy about the gesture and that she would always remember it. On 23rd November, the wife writes that she was very happy and on 25th she writes that she was happy because it was their first marriage anniversary. She states that her husband took her out along with the other family members for dinner and also gave her a greeting card. In the entries made in the subsequent days in the month of November and December, the wife states that she was very very happy, that she was time and again taken by the husband to the Doctor, that he had accompanied her to the Doctor and that the 7th Month Pregnancy Ceremony, "Sanji" was also celebrated very well and happily on 30th November. These statements of the wife in the diary clearly falsify the case of the wife. The wife has admitted that the diary at Exh.35 is maintained in her own handwriting and that she is the author of the same. The writings in the diary at Exh.35 clearly falsify the case of the wife that she was treated badly by the husband and her in-laws and they never took care of her even during the period of her pregnancy. Every entry in the diary, till she left to Akola for her delivery shows that she was extremely happy and content. Each and every day on which she wrote the diary, she has stated that she was very happy and that her husband was taking utmost care of her. She had written that her husband was taking her out everyday for a stroll for an hour even though he came home very tired from the office. Sometimes, even a normal husband may not do for his wife, what the husband in this case has done for the wife, as can be seen from the wife's own writings in the diary at Exh.35. Despite the writing in Exh.35, the wife had the audacity to state in the written

statement and also in her evidence that the husband treated her very badly and did not take care of her during the pregnancy period. Though the wife had admitted in the diary that the 7th Month Ceremony was celebrated very well and happily, in the matrimonial home, she had pleaded in her written statement that there was some trouble between the members of both the families on the said day and the atmosphere was not good. The wife has gone to the extent of saying that her husband had beaten her up on a number of occasions. The period during which the diary was maintained starts from 7th May, 2008 to 17th January, 2009. There are only two entries in the diary that she was not so happy on 13th and 17th January. These entries are jotted down when she was in the parental house at Akola. The entries recite that her husband had confronted her for some time on 13th January 2009 and her in-laws had not called her for a period of one month. There is no other adverse entry, whatsoever, in the diary. It is the case of the husband that after the wife went to the parental home, she desired that she should return to her matrimonial home in which her parents in law should not reside. It appears that the cause of disharmony between the parties was the great insistence on the part of the wife to stay separately from the parents of the husband. It is held by this Court time and again that when the parents are old and ailing, it would not be proper for the son, who resides along with them, to leave them in a lurch and reside in a separate home in a nuclear family i.e. with his wife and his children only because the wife so insists. There is nothing on record to show that the in-laws of the wife were treating the wife badly or in such a way that it was not possible for her to reside

with them. In fact, the diary shows that not only the husband but his parents also behaved properly with her and there was no grudge whatsoever, in the mind of the wife, against her in-laws till she went to Akola for her delivery. If that be so, the act on the part of the wife to insist for a separate residence, so as to put the husband in such a dilemma, where he is not able to leave his parents and also leave his wife and the child, is painful. Mere insistence for a separate residence may not give rise to a conclusion that there was cruelty on the part of the wife, in every matter, but the insistence to such a great extent, which results in constant fights and an atmosphere of total disharmony in the family, would tantamount to cruelty on the part of the wife. The wife had admitted in her cross-examination that her father-in-law was a retired man and the parents of the husband were old. If that was so, it was not possible for the husband to leave his parents at that stage and reside separately in a nuclear family. There may be other constraints which may not have made it possible for the husband to live separately. The matter did not end here. The wife went back to her parental home on 6th December, 2009 after the matter was taken to the Police Station by her. The parties were fighting for the child. The wife then went back to the parental home, never to return. The wife has admitted in her cross-examination that she had not made any efforts in writing that her husband should take her back to the matrimonial home. The wife has further admitted that she had not stated in the proceedings filed by the husband for restitution of conjugal rights, that she is ready to reside with the husband. The wife has admitted that she had not filed a pursis in the family Court at

Mumbai that she is willing to cohabit with the husband. If that be so, as rightly laid down in the judgment, reported in **2014 (1) Bom. C.R. 495**, it cannot be said that the acts on the part of the wife were condoned by the husband by the mere filing of the proceedings for restitution of conjugal rights. The husband had filed the proceedings for restitution of conjugal rights in the year 2010 with a hope that the wife would return. However, since the matter did not proceed expeditiously and nothing happened in the matter for nearly three years except filing of the written statement, where the wife sought for the dismissal of the petition for restitution of conjugal rights, the husband had no other course open but to withdraw the proceedings for restitution of conjugal rights and file the proceedings for a decree of divorce on the ground of cruelty. It is only in these proceedings that for the first time, the wife has expressed that she is ready to reside with the husband in the matrimonial home, but the wife's case cannot be now accepted, in view of her conduct. In the written statement, the wife has levelled totally false and baseless allegations against the husband and his family members. She has falsely pleaded that she was treated extremely badly and that she was also beaten up some times by the husband on the instigation of his family members. The wife has not only levelled false allegations against the husband and his parents but has also made allegations against the husband's sister Savita, that remain unsubstantiated. The wife had not made any allegations against the wife of the brother of the husband, namely, Sonal, in the written statement but in her cross-examination, she attributed bad behaviour and cruelty to Sonal also. The allegations levelled against the husband and his

family members are not substantiated by the wife's evidence. There is no evidence whatsoever by the wife to prove, much less, any cogent evidence that the husband tried to secure the signature of the wife on a blank stamp paper and when she refused to give it, he started torturing her to a greater extent. On a perusal of the evidence on record, it is clear that the conduct on the part of the wife of levelling serious allegations against the husband and his family members in the written statement and not substantiating them by her evidence tantamounts to cruelty. The wife has levelled serious allegations in respect of physical and mental torture against the husband and his family members and has not substantiated the same. In fact, the case of the wife stands falsified by the writings of the wife in the diary for a considerable long period of time i.e. from May 2008 to December 2008. Each and every writing of the wife clearly shows that she was extremely happy in the matrimonial home and that the husband and his family members had treated her very well. If that be so, the wife should not have, in the written statement, levelled such false and baseless allegations against the husband. It is well-settled that levelling of baseless and false allegations against a spouse, in the written statement, that are serious, and failing to substantiate them, tantamounts to cruelty. Hence, we are of the view that the act on the part of the wife to continuously pester the husband to live separately in a nuclear family, by leaving his old and ailing parents when he is not willing to leave them and the conduct on the part of the wife to level serious allegations against the husband in the written statement without substantiating them amounts to cruelty. The Family Court has

rightly held that the husband has successfully proved that the wife had treated the husband with cruelty. It is rightly submitted on behalf of the husband that the mere filing of the petition for restitution of conjugal rights would not tantamount to condonation of the act of cruelty. It is held by this Court in the judgment, reported in **2014 (1) Bom. C.R. 495** that when the desertion continues without even a day's break and the conditional forgiveness offered by the husband, is not reciprocated by the wife and, on the contrary, she refuses to avail the opportunity and proceeds in desertion, it cannot be said that there was a condonation of the act of cruelty and desertion on the part of the wife, by the husband. Since condonation of cruelty is a bilateral act and the wife did not come forward to accept the fair request on the part of the husband to join his company and live in the matrimonial home, it cannot be said that the husband had condoned the cruelty and the family Court should not have granted the decree of divorce in favour of the husband. The pleadings in the proceedings filed by the husband for restitution of conjugal rights are exhibited before the family Court. Though the husband had made an earnest endeavour to ensure that the wife returns to the matrimonial home along with the child the wife refused to accept the offer and failed to return. Since the proceedings dragged for about three years, the husband had no other course open, but to file a Hindu Marriage Petition for a decree of divorce. The wife has levelled serious allegations against the husband and his family members that are falsified by the diary that was maintained by her. The family Court, therefore, rightly held that the wife did not have the desire of

telling the truth and had falsely levelled serious allegations against the husband and his family members in the written statement. The family Court has appreciated the evidence of the parties in a judicious manner and in the right perspective and there is no scope whatsoever for interfering with the findings recorded by the Family Court. In the circumstances of the case, the husband has clearly proved that the wife had deserted the husband and had also treated him with cruelty.

Hence, for the reasons aforesaid, we dismiss the family court appeal, with no order as to costs.

JUDGE

JUDGE

Wadkar
&
Sahare