

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 647 OF 2012

Anusayabai Bhagwat Borse,
Age : 66 years, Occupation :
Household, R/o : Kingaon,
Taluka Yawal, District Jalgaon. .. **APPELLANT.**

VERSUS

Bhagwat Pitamber Borse,
Age : 71 years, Occupation :
Agriculture, R/o : Kingaon,
Taluka Yawal, District Jalgaon. .. **RESPONDENT**

Mr.S.S. Bora, Advocate for the appellant

Mrs.M.L. Sangit, Advocate for the respondent

--

CORAM : SANGITRAO S. PATIL, J.
DATE : 24th JULY, 2017

ORAL ORDER :

The appellant has challenged the judgment and decree dated 26.03.2012 passed in Regular Civil Appeal No.187 of 2006 by the learned District Judge-1, Jalgaon, confirming the judgment and decree dated 24.04.2006 passed in Hindu Marriage Petition No. 298 of 1997 by the learned 2nd Adhoc Additional Sessions Judge, Jalgaon,

whereby the marriage between the appellant and the respondent has been dissolved on the grounds of desertion, cruelty and adultery by the appellant.

02. The learned trial Judge framed following issues and recorded its findings thereon as stated below :-

SR. NO.	ISSUES	FINDINGS
1]	Whether the petitioner-husband proves that the respondent wife has, after the solemnization of marriage, deserted him for a continuous period of not less than two years immediately proceeding the presentation of the petition?	..Yes.
2]	Whether the petitioner-husband proves that the respondent has, after the solemnization of marriage, treated him with cruelty?	..Yes.
2A]	Does petitioner prove that after solemnization of marriage, respondent had voluntary sexual intercourse with any other person than her spouse?	..Yes.

- 3] Is the petitioner taking advantage of his own wrong? ..No.
- 4] Is there any legal impediment in granting the relief of divorce to the petitioner? ..No.
- 5] What order and decree ? As per final order.

03. The first appellate Court considered the evidence on record as well as the judgment of the trial Court and confirmed the above-mentioned findings.

04. The learned counsel for the appellant submits that the trial Court as well as the first appellate Court wrongly relied on the letter alleged to have been written by the appellant, wherein she is stated to have admitted her adulterous life. He submits that the trial Court as well as first appellate Court did not consider the evidence on record properly and recorded wrong findings on the issues that were framed, without there being any evidence to support those

findings. According to him, the impugned judgments are not legal, proper and correct. He therefore, submits that appeal may be admitted.

05. The learned counsel for the respondent supports the impugned judgments and decree.

06. There is concurrent findings of facts by the trial Court as well as first appellate Court in respect of the above-mentioned three grounds of divorce. The letter Exh. 81 was examined by the hand-writing expert namely Sanjay Badrinath Kachar (PW 3) and he opined that it is in the handwriting of the appellant. The said letter speaks for illicit relations of the appellant with one Chudaman Nathu Borse and Narayan Tukaram Mahajan. Admittedly, the appellant and the respondents are residing separate since 1970. The trial Court as well as first appellate Court recorded positive findings that the appellant and the respondents are neighbours. The trial Court specifically observed that the appellant is

keeping illicit relations with some other persons on the face of the respondent and that itself amounts to mental cruelty. All these factual aspects have been properly considered by the trial Court as well as first appellate Court. The concurrent findings of the facts recorded by this Court needs no reconsideration in the Second Appeal. No substantial question of law involves in this appeal.

07. Hence, the order :-

O R D E R

(i) The Appeal is dismissed.

(ii) No costs. Sd/-

[SANGITRAO S. PATIL, J.]

shp