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

SECOND APPEAL NO.602 OF 2016

Nilima w/o Dilip Hatekar,
Age : 34 yrs., Occu. Service,
R/o Godai Colony,
Lumbini Van Parisar,
Sakri Road, Dhule

..APPELLANT
(Orig. Plaintiff)

VERSUS

Dilip Namdeo Hatekar,
Age : 42 yrs., Occu. Service,
R/o 183, Raj-Ratna Society,
Sakri Road, Dhule
And
C/o Superintendent,
Sudhar Kendra/Remand Home,
Sakri Road, Dhule
New Address :
R/o At Post Talegaon (Talatule),
Tq. & Dist. Wardha

..RESPONDENT
(Orig. Defendant)

Ms Pratibha Bharad , Advocate for appellant;
Mr Mukul S. Kulkarni Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th July, 2017

ORAL ORDER

The appellant and the respondent were married on 19th May, 2008 at Dhule as both of them were serving at the said place.

2. It is the case of the present appellant-plaintiff that the respondent-defendant has subjected her to cruelty and deserted her, resulting into she instituting Special Civil Suit No.40 of 2010 under Section 18 of the Hindu

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Adoptions and Maintenance Act, 1956 seeking recovery of marriage expenses, maintenance in lump sum (one time alimony). The suit came to be dismissed by judgment and decree dated 10th September, 2012, which was confirmed in an appeal preferred by the appellant being Regular Civil Appeal No.274 of 2012, decided by Ad hoc District Judge-2, Dhule. Thus, the present Second Appeal.

3. While trying to pursue this Court so as to consider the appeal, the learned Counsel appearing on behalf of the appellant would press into service the grounds, viz. though the documents which were exhibited speak of handing over of stridhan in the marriage, the Courts below have ignored the same. In addition, issue of cruelty is also sought to be canvassed and it is then claimed that the respondent has deserted the appellant, as such the findings recorded by the Courts below are not sustainable.

4. The judgment rendered by the Division Bench of this Court, in the matter of **Shanta Wadhwa vs. Purushottam Mohandas Wadhwa**, reported in **1997 Mh.L.J. 661** is sought to be pressed into service, particularly paragraphs 37 and 38 so as to urge that that even if the appellant is working woman and has an independent source of income, still neglect on the part of the respondent-husband is to be appreciated and one time alimony is required to be ordered.

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5. Mr Kulkarni, learned Counsel appearing on behalf of the respondent while supporting the judgment would urge that against concurrent findings this Court should be slow in interfering in second appellate jurisdiction. According to him, there are admissions given by the appellant, which speak for themselves *qua* the claim in the suit and the Courts below have rightly narrated the admissions. He, therefore, sought dismissal of the appeal.

6. Upon rival pleadings, it is required to be noted that the respondent filed his written statement at Exh.12 and the Trial Court has framed issues at Exh.14. The issues are in relation to proving an issue of cruelty, withdrawal from the society of the plaintiff/desertion, entitlement of the appellant for one time alimony of Rs.7 Lakhs and Rs.3,50,000/- towards the marriage expenses.

7. In support of the claim, the appellant examined herself at Exh.15 and her father Baburao at Exh.25, whereas the respondent-defendant examined himself at Exh.29 and produced documentary evidence at Exhs.22 and 36 to 40.

8. Both the Courts below have analyzed in detail the evidence in the backdrop of the pleadings raised by the appellant.

9. Amongst other, the admitted facts are, the appellant and respondent are gainfully employed. The appellant and respondent were residing at

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Dhule independent of their family members. The appellant never visited the family members of the respondent who are residing at Nagpur.

10. In the aforesaid backdrop, if the evidence of the appellant is to be appreciated, particularly in the light of the admissions given by her, in my opinion, the Courts below have rightly the issues on cruelty and desertion against the appellant. Though this Court is not required to appreciate the evidence unless any perversity is noticed, still from the judgment of the Courts below it could be inferred that there are substantial admissions given by the appellant which demolishes the case of the appellant *qua* desertion and cruelty.

11. Apart from above, the fact remains that the documents which are produced along with list so as to demonstrate stridhan and marriage expenses, the said documents are neither proved by the appellant nor any independent witnesses in support thereof are examined.

12. In addition, a submission is made that the seizure panchnama is drawn in criminal prosecution for an offence punishable under Section 498-A of the Indian Penal Code in which certain articles are shown to have been seized. The said aspect cannot be dwelt upon in the present proceedings as the same cannot be considered to be relevant in view of provisions of Section 43 of the Evidence Act. Though the learned Counsel for the appellant submits that the appellant is in contractual employment and her future requirement is also required to be analyzed, this Court is not

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required to consider the said submission in anticipation particularly when there are certain rights conferred on the appellant to claim maintenance in case of change in the existing situation.

13. In view thereof, I do not find that the appeal involves any substantial question of law. Second Appeal, therefore, stands dismissed.

(N.W. SAMBRE, J.)

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