

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 17 OF 2017

Mahendra s/o Kaduba Wahule,
Age: 30 years, Occu: Private Service,
R/o : Siddharth Nagar, N-12, HUDCO,
Aurangabad.

....Appellant

Versus

Reena w/o Mahendra Wahule,
Age: 26 years, Occu: Household,
R/o C/o Sheelabai Bhimrao Jadhav,
Siddharth Nagar, Near Shubham Provision,
N-12, HUDCO, Aurangabad.

....Respondent

Mr. V.P. Latange, Advocate for applicant.

Mr. A.C. Deshpande, Advocate for respondent. (Sole)

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.**

RESERVED ON : 14/11/2017

PRONOUNCED ON : 15/11/2017

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against judgment and order of proceeding No. A-154/2014, which was pending before the Family Court Aurangabad. The proceeding filed under section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short) for divorce is dismissed by the Family Court. Both the sides are heard.

2) In short, the facts leading to the institution of the present proceeding can be stated as follows :-

The relevant dates and incidents for the present purpose can be given as follows :-

- (i) 21-02-2010 - Date of marriage.
- (ii) February 2011 - Parties started living separate from each other.
- (iii) 27.9.2013 - The date of decision of the proceeding filed by wife under section 9 of the Act.
- (iv) 10.4.2014 - The date of filing of proceeding of divorce by husband.

3) The proceeding for divorce is filed on the grounds of cruelty, desertion and illicit relations of the wife with a person. The said person is named in the petition by the husband. It is his contention that right from the beginning, the wife was not ready to cohabit with him, she used to return to parents' house and on inquiry, she admitted that she had affair with the said person and she had married with the present petitioner only due to insistence of her mother and brother.

4) It is the case of husband that after starting of separate residence, the wife had approached the grievance cell created for

woman and there, when he was ready to accept back her in matrimonial house, she went to her lover and she stayed with him. It is his case that the mother of the wife was required to give missing report and ultimately, she was traced at Talhat, Tahsil Panvel, District Raigad. It is his case that police handed over the custody of the wife to her brother after she was traced.

5) It is the case of husband that probably the wife has married with the person named in the petition and she stayed with him during aforesaid period. It is his case that as the wife has stayed with third person, there is no desire to the petitioner to continue the relationship.

6) It is the case of husband that with malafide intention, wife had made false allegations against his father and that was done by her only to leave his company. It is his case that due to the conduct of the wife, his entire family is defamed and he has started thinking that he will not happy if the relationship is continued. On this ground, he claimed the relief of divorce. He also mentioned the circumstance like dismissal of the proceeding which was filed by wife under section 9 of the Act for getting divorce.

7) The wife filed written statement and denied the aforesaid

allegations. She contended that the decision given by the Family Court against her in proceeding filed under section 9 of the Act is challenged by her by filing appeal. It is her case that illtreatment was given to her by husband and relatives of husband and even demand of dowry of Rs.50,000/- was made from her parents. It is her case that when the husband refused to accept her back in the matrimonial house, she approached the grievance cell prepared for women. It is her case that during those days, she was under mental stress and so, she had left the house of her mother and she had gone to Alibag to live for few days with her sister. It is her case that she was not missing and she was living with her sister at the relevant time. It is her case that this circumstance was misused by the husband and rumours were spread that she had left the station with her boy-friend.

8) For getting the relief, the husband has examined himself. He has deposed that he made inquiry with wife as to why she was not interested in cohabiting with him and the wife informed to him that she had married with him due to insistence of her mother and brother and she had a love affair with a man mentioned by the husband in the petition. He has deposed that due to this reason, the wife started picking up quarrels with his relatives. He has deposed that after leaving his company, the wife had approached to

grievance cell and there he had expressed willingness to accept her in the matrimonial house. He has deposed that even when the proceeding was pending before grievance cell, the wife left the house of her parents on 9.8.2011 without informing anything to mother or brother and due to that her mother was required to give missing report on 11.8.2011 to CIDCO Police Station. He has deposed that police searched for her and ultimately, they traced her at Palhat, Tahsil Panvel and they brought her from Palhat and handed her over to her brother. Husband has deposed that this circumstance is considered by Family Court in proceeding No. A-106/2012, which was filed by wife for restitution of conjugal rights.

9) The husband has deposed that due to the conduct of the wife of aforesaid nature, he and his family members are defamed in the society and he is feeling that he will never be happy in the company of the wife.

10) In rebuttal, the wife has given evidence which is in accordance with the aforesaid contentions made in the written statement. She has given evidence that after the marriage the demand of dowry was made by saying that sufficient amount was not given as dowry at the time of marriage. She has given evidence that in January 2011 when her husband was out of station, her

father in law made advances with bad intention towards her. She has deposed that due to the incident she called her mother to the house of parents and she went with her mother to the house of her parents. She has deposed that she was reluctant to go to the house of her parents, but the relatives of the husband like her in laws insulted her mother and as the in laws said that they would reconsider the matter after few days, she went to the house of her mother. She has given evidence that after 7-8 days she had made an attempt to return to matrimonial house, but in laws had refused to take her back in the matrimonial house. She has given evidence that the cousin of her father in law then took her to matrimonial house, but the father in law repeated the incident against her. She has deposed that she disclosed the incident to her husband, but the husband did not believe her and said that she was making false allegations against her father. She has deposed that due to these incidents she was under mental stress and so, she went to her sister, who is resident of Alibag and she stayed there for about 15 days. She has deposed that she had returned to the house of her mother after 15 days and after that the husband started saying that she had eloped with her boy-friend and so, he was not ready to accept her back in the matrimonial house. She has deposed that the husband then published notice of divorce in newspaper. She deposed that she is still ready to resume cohabitation and false allegations are made

by the husband only to avoid resumption of cohabitation and also for getting divorce.

11) The evidence on record shows that even after the aforesaid incident, the incident of missing of wife for about one and half months, the husband had given notice to the wife and he had asked her to return to matrimonial house. The husband then gave notice in newspaper that he wanted to take the divorce and after that the wife filed proceeding under section 9 of the Act. It can be said that when the husband gave notice in newspaper that he wanted to take divorce, the wife filed proceeding under section 9 of the Act. It can be said that the husband, who has made such serious allegations, had shown willingness to accept her back in the matrimonial house, but, the wife took steps only when he published notice of divorce.

12) It is true that the evidence of husband shows that he had never seen the person who is named in the petition as boy-friend of the wife. The said person is not made party to the present proceeding. The Family Court has rightly observed that due to this circumstance, divorce cannot be given on the ground of adultery.

13) In the evidence, wife has made serious allegations

against the father of husband. She has examined her mother Shilabai in support of her case and she has given similar evidence. The mother has tried to say that due to mental stress without informing to her, the wife had gone to her sister, to Alibag and as she could not notice the wife in her house, she had given missing report. This version cannot be believed as in the missing report itself it was mentioned that after making inquiry, the mother had given missing report. Thus, the evidence of wife and her mother shows that they are not disputing the circumstances like making of allegations against father in law by wife and leaving of station by the wife due to which her mother was required to give missing report. It is also not disputed that since February 2011 the parties are living separate from each other. The divorce proceeding came to be filed on 10.4.2014, after the requisite period of desertion.

14) There is provision of section 14 in the Act which enables the Family Court to consider the oral evidence and documents, which may not be admissible as per the general law of evidence, but the decision of the Family Court given in a proceeding which was filed under section 9 of the Act is ignored by the Family Court in the present matter. In the proceeding filed under section 9 of the Act, there was the issue, whether the husband had withdrawn from the society of wife when there was no sufficient excuse and this issue

was answered against the wife by Family Court.

15) Today this Court dismissed the appeal filed by wife against the said decision (Family Court Appeal No. 18/2013). It is true that the photographs which were considered by the Family Court in the previous proceeding and the record of missing report which was also considered by the Family Court in that proceeding was not produced in the present matter. But the issue about separate residence was considered by the Family Court in previous matter and the finding of the Family Court on that issue could have been considered as one of the circumstance for ground of desertion. There are allegations of the wife that father of the husband had made advances towards her and there is nothing with her to substantiate those allegations. Even specific dates of both the incidents are not mentioned in the pleading. This circumstance can be considered for considering the ground of cruelty. Further, leaving of the station by married women without informing anything to anybody including the mother due to which her mother was required to give missing report is also a circumstance which defames both the families. This circumstance also can be considered for ground of cruelty. When the period was one and half months, the wife has given evidence that she stayed with her sister for about 15 days. Thus, even in the evidence, she has not explained as to where she

was for the remaining period. This Court holds that those circumstances could have been considered by the Family Court. The evidence of wife that she stayed in the matrimonial house only for one month and after that she stayed in the house of her parents can be used for proving the ground of desertion. The allegation made by her about the demand of dowry and the illtreatment which she was allegedly receiving from parents of the husband and husband are also very vague in nature and in the cross examination also, she could not give the particulars of so called illtreatment. The mother of the wife has admitted in the cross examination that husband was ready to take her back to the matrimonial house and he had expressed that before grievance cell also. Only after that the wife left the station and went to aforesaid place. On 11.8.2011 the husband was to take the wife to matrimonial house, but she left the station on 9.8.2011 and due to that the mother was required to give missing report on 11.8.2011. These circumstances are sufficient to infer that the wife had no desire to resume cohabitation. The circumstances are also sufficient to prove the cruelty. This Court holds that the Trial Court has committed error in not giving decree of divorce in favour of husband on the ground of desertion and cruelty.

16) In the result, the appeal is allowed. The judgment and order of the Family Court in Petition No. A-154/2014 is hereby set

aside. The petition filed by husband for divorce on the ground of cruelty and desertion is allowed. The marriage between the husband, present appellant and the wife, present respondent stands dissolved. The costs shall be the cost in the cause. Decree is to be prepared accordingly.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

ssc/