

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 06 OF 2012

Sunil S/o Dhondiram Pol, Age 41
Years, Occupation Service, Resident
of Dhorpura, Ramnagar, Jalna, Taluka
and District Jalna

APPELLANT

V E R S U S

Urmila W/o Sunil Pol @ Urmila
Narsuji Gaikawad, Age 39 Years,
Occupation Service, Resident of,
C/o. Office of Asst. Police
Commissioner, CIDCO Division, Near
Renuka Mata Temple, Aurangabad,
Taluka and District Aurangabad

RESPONDENT

Mr. S.S. Jadhavar, Advocate for the Appellant
Mr. D.V. Bodhankar, Advocate for the Respondent

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

DATE : 9th October, 2017

JUDGMENT : (PER : T.V. NALAWADE, J.)

1. This Appeal is filed by the husband against the Judgment and Decree passed in Petition No.A-116 of 2010, by the Family Court, Aurangabad, under the

provisions of Section 13 (1)(ia) and (ib) of the Hindu Marriage Act, 1955. The trial Court has refused the relief of dissolution of marriage. Both the sides are heard.

2. The relevant incidents and the dates of incidents, are as under :-

(i) **13.05.2001 -**

The marriage and cohabitation after the marriage at Jalna and also at Aurangabad.

(ii) **16.04.2002 -**

The son was born.

(iii) **15.07.2005 -**

The parties started living separate from each other.

(iv) **05.06.2007 -**

Petition filed by husband under Section 9 of the Hindu Marriage Act.

(v) **21.06.2008 –**

The order of dismissal of Petition No. 182 of 2007 filed by the husband under Section 9 of the Hindu Marriage Act.

(vi) **03.05.2010 –**

The petition filed for divorce by husband.

3. It is the case of the husband that he was working as 'Ward boy' in Civil Hospital, Jalna and the wife was working in Police Department at Aurangabad as a 'Clerk'. They cohabited at Jalna for sometime, but thereafter, as per desire of wife, she started to live in Aurangabad and husband started commuting between Aurangabad and Jalna. During their cohabitation, the son was born.

4. The husband has made allegations that he had made an application for loan as he wanted to make construction of house and the wife started asking him to give the amount to her as she wanted to help her

brother by giving amount as her brother wanted to start some business. It is the case of the husband that when he refused to give the amount, the dispute started and the wife started giving him mental and physical harassment.

5. It is the case of the husband that only to harass him, his wife gave false report against him and against his nine relatives to police, and on the basis of that report, the crime came to be registered for the offence punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code. It is the case of the husband that due to filing of the report by his wife, he and his relatives were harassed mentally and physically, and he was required to spend huge amount due to filing of the report. Police have filed the case in the said crime for the aforesaid offences and the said case is still pending.

6. As per the case of the husband, he wanted to settle the dispute and so he gave notice to wife to call her back to the matrimonial house for resumption

of cohabitation. It is his case that his wife gave false reply and avoided to resume cohabitation. It is his case that he then filed Petition No.182 of 2007 for restitution of conjugal rights, but the said proceeding was dismissed as the wife was not ready to return to her matrimonial house. It is his case that wife had filed the proceeding for maintenance in respect of his son and the Court has granted the maintenance in favour of the son.

7. It is the case of the husband that his wife has no intention to resume cohabitation and she is harassing him and his relatives. It is the case of the husband that due to approach and conduct of the wife, it is not possible for him to continue the relationship with his wife. On the ground of desertion and cruelty, the husband has prayed for divorce.

8. The respondent-wife filed the written statement and denied the allegations made against her. It is her case that her husband tried to create record for obtaining divorce from her, and only with that

intention, he had given notice and he filed proceeding under Section 9 of the Hindu Marriage Act. It is her case that her husband was asking her to give Rs.2,00,000/- by taking loan from Employee's Society, and on that count, there was ill-treatment to her. It is her case that as her brother was having ancestral ginning business, he was never in need of money. It is her case that her husband wanted entire amount of salary of the wife in his hand and for that he was harassing her. It is her case that her husband had filed false complaints to her superior officers and even to Anti Corruption Bureau against her to harass her. It is her case that the offer of her husband to resume cohabitation was not *bona fide*. It is her case that due to the conduct of her husband like inflicting burn injuries, she was required to give report/complaint, and then the police case under Section 498-A of I.P.C. came to be filed against her husband. It is her case that due to the aforesaid circumstances and conduct of her husband, she is feeling that there is danger to her life from the husband. She has contended that due to these

circumstances, Family Court refused to grant decree under Section 9 of the Hindu Marriage Act in favour of the husband. She has contended that only after taking steps like filing proceeding for maintenance against the husband, the husband took some steps against her, and so to avoid responsibility, he wants divorce from her.

9. On the basis of rival contentions and reliefs claimed, the issues were framed. The husband was expected to prove the case of desertion and cruelty.

10. The examination-in-chief is as per the pleading in the petition. The evidence of the husband shows that on previous occasion, there was dispute, but after intervention, said dispute was settled and wife had resumed in cohabitation. After resumption of the cohabitation, there was again dispute between them and then report was given by wife to the police station. He admits that in proceeding filed by her, maintenance is granted in favour of his son. The husband has examined his mother in support of his

case. She has admitted that when the couple was cohabiting at Aurangabad, wife was visiting Jalna on occasions. This admission shows that the wife had no objection to go to the native place of the husband. The other evidence of mother of husband shows that she has no personal knowledge about the dispute which was going on between this couple and the nature of litigations filed by them.

11. The evidence of the wife is as per the aforesaid contentions made in the written statement. In cross-examination, she refused to resume cohabitation by saying that she is feeling danger to her life. She has taken support of circumstances like order of maintenance made in favour of her son, pendency of criminal case for the offence punishable under Section 498-A of the Indian Penal Code against husband, filing of complaints by husband against her with Anti Corruption Bureau and the decision given in her favour in proceeding filed by husband under Section 9 of the Hindu Marriage Act.

12. In previous petition, the wife was expected to prove that there was some justification for her to live separate. On the basis of the evidence, the Family Court held that there was justification for the wife to live separate from the husband. No new development is there and so it was very difficult to prove that wife has deserved him. On the ground of cruelty the aforesaid contentions of the husband even if accepted as they are, are not sufficient to prove the ground of cruelty. The case under Section 498-A of the Indian Penal Code is still pending against the husband. Thus, there is no convincing evidence with the husband to prove both the grounds. The family Court has not committed any error in refusing the relief of divorce. In the result, Appeal stands dismissed.

(ARUN M. DHAWALE, J.)

(T.V. NALAWADE, J.)