

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

**FAMILY COURT APPEAL NO.31 OF 2016**

Dhananjay s/o. Shankarrao Eaklare,  
Age : 32 years, Occ. Service,  
r/o. Chinchwad, Pune,  
Dist. Pune ..Appellant

Vs.

Anuradha w/o. Dhananjay Eaklare,  
Age:27 years, Occ. Household,  
r/o. C/o. Pandharinath Irwantrao  
Vibhute (Lecturer), Sharda Nagar,  
Nanded ..Respondent

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Mr.T.M.Venjane, Advocate for appellant

Mr.K.M.Nagarkar, Advocate for respondent

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**CORAM : S.V. GANGAPURWALA AND  
SANGITRAO S. PATIL, JJ.  
DATE : APRIL 28, 2017**

**ORDER :**

Present appeal is preferred against the judgment and order dated 17.10.2016 in Petition No.A-89 of 2014 passed by the Family Court, Nanded, thereby dismissing the petition for divorce filed by the present appellant/husband.

2. Mr.Venjane, learned Counsel for the appellant submits that in fact, the petition for divorce was filed on the grounds of cruelty and desertion, however, the learned Judge of the Family Court, considered the ground of cruelty only. He submits that since 20.12.2011, the appellant and the respondent never cohabited together and are leaving separate. He submits that there was no cause for leaving separate for the respondent. According to the learned Counsel for the appellant, the said fact is not considered by the learned Judge of the Family Court.

3. In the present appeal, today, an affidavit is filed by the respondent/wife. I have also heard Mr.Nagarkar, learned Counsel for the respondent. The affidavit filed by the respondent states that since 20.12.2011, the appellant and the respondent are residing separately and they have not tried to cohabit during that period. It is also stated in the affidavit that the

respondent today has received a demand draft of Rs.Twelve Lakhs from the petitioner towards permanent alimony.

4. It appears that the ground of cruelty has been negatived by the learned Judge of the Family Court. As far as the ground of desertion is considered, the same is writ-large. Even the evidence on record does not show that the parties, at any point of time, resided together from 20.12.2011. Apart from the above, the affidavit filed by the respondent also categorically states that from 20.12.2011, the appellant and the respondent are residing separately and that the respondent did not take any steps to cohabit with the appellant till date. Even, in the impugned judgment delivered by the learned Judge of the Family Court, there is no whisper about cohabitation between the appellant and the respondent during the said period.

5. Considering that since 20.12.2011, the parties are residing separately and that the respondent never made any attempt to cohabit with the appellant, the ground of desertion has been established. It is also stated in the affidavit that the respondent has received a demand draft of Rs.Twelve Lakhs from the petitioner towards permanent alimony and that the same is towards full and final settlement of the claim towards the maintenance.

6. In the light of the above, we pass the following order :-

(i) The impugned judgment and order of the Family Court, Nanded dated 17.10.2016 in Petition No.A-89 of 2014, is quashed and set aside and the petition for divorce filed by the petitioner before the Family Court, stands allowed on the ground of desertion.

(ii) The marriage between the appellant and the respondent stands dissolved.

(iii) Decree be drawn accordingly.

(iv) Present Family Court Appeal stands disposed of accordingly. No costs.

**[SANGITRAO S. PATIL, J.]      [S.V. GANGAPURWALA, J.]**

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