

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

FAMILY COURT APPEAL NO. 03 OF 2017

Shaikh Yusuf Shaikh Usman	.. Appellant
Versus	
Farheen Yusuf Shaikh	.. Respondent

Shri S. R. Dhepale, Advocate for the Appellant.
Shri R. M. Shaikh, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 18TH AUGUST, 2017.

FINAL ORDER :

. The present appeal is filed by the husband against the judgment and order dated 05.11.2016 in Petition No. A-2 of 2014 passed by the Family Court on a petition filed by the present respondent seeking dissolution of marriage.

2. Mr. Dhepale, the learned counsel for the appellant strenuously contends that, the present appellant has moved for restitution of conjugal rights and to give counter blast to said proceedings, the respondent has filed proceedings of dissolution of marriage. According to the learned counsel the Court without appreciating the evidence in its correct perspective has allowed the petition filed by the wife for divorce. The allegations made by the wife are not substantiated, nor corroborated by any

independent evidence. According to the learned counsel isolated incident would not give rise to cruelty. The learned counsel submits that, the evidence led by the respondent is shaky, as such could not have been relied upon. In fact, it is the respondent who use to go back to her parents' house without intimation and the appellant had to bring back the wife. Time and again it is the respondent who did not want to stay with the appellant and his mother. As the wife has refused cohabitation, the husband has filed petition for restitution of conjugal rights.

3. The learned counsel for the respondent supports the order.
4. With the assistance of learned counsel for respective parties, we have gone through the judgment delivered by the Family Court, so also evidence on record.
5. There are counter petitions. The husband has filed petition for restitution of conjugal rights and the wife has filed petition for dissolution of marriage. It does not appear that, the present appellant has effectively cross examined and has controverted the evidence led by the wife.
6. It has been observed by the Court that, the husband was giving threats of committing suicide. One message sent by the husband to the wife on 25th October, 2013 has been proved. The husband has admitted the said message. The said message is to the effect of giving threats of committing suicide. Not only that,

the husband had even pronounced talaq to wife. The said aspect has also been considered by the Family Court. Even the mother of the wife was present when the husband pronounced talaq and the mother of the respondent wife has also proved the said fact. Thrice word talaq was pronounced by the husband. Even the wife had alleged that the husband use to beat her and same is not controverted in the cross examination, all these evidence on record substantiates contention of wife that she has been treated with cruelty. There are some jewellery articles. It has been admitted by the husband that jewellery of the wife is in the locker, which is in the joint name. Though strictly Article A has not been proved, however, still it is clear from other evidence on record that is evidence of the jeweller Exhibit 24 who has proved receipt Exhibit 25 to 34, so also testimony of the wife corroborated with the testimony of mother that these articles were given at the time of marriage. The said finding also appears to be proper.

7. The Family Court has appreciated the evidence in a proper manner. No case for interference is made out. The family court appeal is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]