

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 13 OF 2013
IN**

SECOND APPEAL NO. 1098 OF 2012

Yeshwant Ramji Bhagat ... Petitioner /Applicant

Versus

Priya Yeshwant Bhagat ... Respondent

**ALONG WITH
CIVIL APPLICATION NO. 645 OF 2017
IN
SECOND APPEAL NO. 1098 OF 2012**

Mr. Siddarth Mungate for the Petitioner / Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 29TH SEPTEMBER, 2017

P.C.:

1. The Petitioner / Applicant husband had in the year 2005 filed Hindu Marriage Petition No. 215 of 2005 before the Civil Judge, Senior Division, Pune seeking dissolution of his marriage with the Respondent wife on the ground that she is guilty of cruelty and desertion. By Judgment dated 27th November, 2007, the Civil Judge, Senior Division, Pune held that that the Petitioner / Applicant husband had failed to establish the charges of cruelty as well as desertion against his wife and Hindu Marriage Petition No. 215 of 2005 was dismissed.
2. Being aggrieved by the said Judgment dated 27th November, 2007 passed by the Civil Judge, Senior Division, Pune, the Petitioner / Applicant husband filed Civil

Appeal No. 128 of 2008 before the District Judge-I, Pune at Pune impugning the Judgment dated 27th November, 2007. In the said Appeal, the Petitioner / Applicant raised all grounds available, namely, that the Judgment and Decree passed by the Trial Court is contrary to the law and facts on record; the Trial Court has not framed proper issues and has not recorded correct findings; the Trial Court has not appreciated the oral as well as documentary evidence which was adduced by the Petitioner/Applicant; the Trial Court has not considered that the Petitioner / Applicant and his father made efforts for transfer of Respondent to Pune; the Trial Court has not considered the evidence about ill-treatment given by the Respondent to the Petitioner/Applicant; the Trial Court has wrongly considered the incident of taking the son by the Petitioner / Applicant to Vardha; the Trial Court has not considered that the Respondent has concealed and suppressed the material facts; the Trial Court has not considered that the Respondent herself got transfer to Varangaon, District Jalgaon and withdrew her company from the Petitioner / Applicant; the Trial Court has not considered that the Respondent had made false allegations in criminal case; the Trial Court has not considered the ruling which is cited on behalf of the Petitioner / Applicant and the Trial Court overlooked the documents as regards taking of household articles from the matrimonial home by the Respondent and her Advocate.

3. The Appeal Court after hearing the Advocates for the parties and scrutinizing the oral as well as documentary evidence, raised the following points for determination :

- i. Whether the Petitioner / Applicant proves that the Respondent treated him with cruelty as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, 1955 ?
 - ii. Whether the Petitioner / Applicant further proves that the Respondent deserted him for continuous period not less than two years immediately preceding the presentation of Petition as contemplated under Section 13(1)(ib) of the Hindu Marriage Act, 1955 ?
4. The Appeal Court by its Judgment dated 9th October, 2012, after holding that the Petitioner / Applicant has failed to prove both the grounds, i.e. cruelty and desertion and the Judgment of the Trial Court needs no interference, dismissed the Appeal.
 5. The Petitioner / Applicant thereafter filed the above Second Appeal and impugned the Judgment, by again raising all possible grounds. By an order dated 18th February, 2013, the learned Judge after recording that he has gone through the entire record and that the Trial Court as well as the First Appellate Court have both not accepted the charge of the Petitioner / Applicant that the Respondent wife is guilty of cruelty and / or desertion, dismissed the Second Appeal at the stage of Admission.
 6. The Petitioner / Applicant has thereafter filed the above Review Petition. Since none appeared before this Court on 22nd April, 2016 as well as on 14th September, 2016, the Review Petition was dismissed by this Court (Coram : R.D. Dhanuka, J.). The Review Petition was thereafter restored to file by an order dated 14th December, 2016. As recorded in the order dated 21st April, 2017, even thereafter on several

occasions, the Review Petition was adjourned at the request of the Petitioner / Applicant. The Petitioner / Applicant again failed to appear before the Court on 21st April, 2017 and the Petition was required to be adjourned.

7. Today, when the Review Petition is taken up for hearing, the Advocate for the Petitioner / Applicant seeks to argue the matter, as if the matter is being argued finally before the Court of first instance, i.e. the Trial Court, which cannot be allowed. Both the Courts below, i.e. the Trial Court as well as First Appellate Court after appreciating the evidence, have given their concurrent findings of fact namely that the Petitioner / Applicant has failed to establish the charges of cruelty and desertion against the Respondent. The learned Single Judge of this Court has noted this fact and dismissed the above Second Appeal at the stage of Admission. The alleged new or important matters referred to in the Review Petition were all there before the learned Judge when the above Second Appeal was dismissed. There is no mistake or error apparent on the face of the record. There is no sufficient reason disclosed for the review of the order. Therefore, in my view, no case for review of the order dated 18th February, 2013 is made out and the above Review Petition is dismissed. The above Civil Application is also disposed off.

(S.J.KATHAWALLA, J.)