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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.186 OF 2008

Hemlata @ Sunita Satish Bhukar ...Appellant
vs.
Satish Dinkar Bhukar ...Respondent

Mr.B.A.Lawate for the Appellant
Mr.D.M.Gupte for the respondent

CORAM : A.S.OKA, &
 SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 8, 2017

ORAL JUDGMENT : (PER A.S.OKA,J.)

1 By this Appeal, the appellant-wife has taken an exception to the Judgment and Decree dated 16th August 2007 passed by the learned Judge of the Family Court No.2, Pune. It is a Decree of restitution of conjugal rights under section 9 of the Hindu Marriage Act,1955 (for short 'the said Act'). By the said decree, the appellant-wife was directed to resume co-habitation with the respondent-husband within a period of one month from the date of the decree.

2 The marriage between the parties was solemnised on 24th February 2000. The allegations made in short in the petition filed by the respondent is that on 9th October 2000, the appellant-wife went away from her matrimonial home and started residing in her parents' house. Reliance is placed on the legal

notice dated 27th January 2004 issued by the Advocate for the respondent. It is alleged that the appellant-wife refused to accept the said notice. On the basis of the allegation of desertion which commenced from 9th October 2000, the petition was filed on 18th January 2005.

3 A written statement was filed by the appellant setting out as to how illegal demands were made by the respondent-husband and how she was harassed by her husband and in-laws both mentally and physically. It is contended that on 11th December 2000, when the respondent-husband came back to matrimonial home late in the night, he was under the influence of liquor. He started assaulting wife when she was pregnant and demanded a sum of Rs.one lakh. It is alleged that the respondent drove her out of the matrimonial home. There was no one to protect her. After delivery of a premature child on 26th May 2001, the respondent did not turn up even to see the baby. Various instances of cruelty were set out by her in the written statement. In short, the contention is that in fact she was driven out of the matrimonial home.

4 We may note here that this Bench as well as earlier Benches made several efforts to settle the dispute amicably. However, those efforts were in vain and that is how we have taken up this Appeal for final hearing.

5 The learned counsel for the appellant pointed

out the reply filed by the respondent-husband to Civil Application No.194 of 2009 filed by the appellant-wife. He submitted that paragraphs 7 and 8 of the reply show that even the respondent does not want to support the decree for restitution of conjugal rights. He submitted that paragraph 7 shows that not only that the respondent has illegally married during the subsistence of his marriage with the appellant-wife, but his second wife gave a birth to a child on 30th June 2009. He submitted that in view of statement made in paragraph 8 of the said reply, the decree deserves to be set aside.

6 The learned counsel for the respondent does not dispute the correctness of the statements made by the respondent in the affidavit in reply to Civil Application No.194 of 2009. He submitted that the said reply was filed in the context of the controversy prevailing at that time. He supported the impugned decree.

7 We have given careful consideration to the submissions. We have perused the affidavit-in-reply. Paragraphs 7 and 8 of the said reply filed by the respondent in Civil Application No.194 of 2009 read thus:

"7 With reference to the paragraph 8 of the Rejoinder, I state that I have not conducted second marriage. I state that I married to Applicant on 24.2.2000. However, after our marriage the Applicant was reluctant to live

with me; and inspite of my best efforts, she left me and started residing at her parents place. Inspite of repeated persuasion, she refused to come back to her matrimonial home and I was compelled to file Petition A.No.51/2005 against her, for restitution of conjugal rights. However, she refused to come giving false excused. Even after the decision of 16th August 2007, in the aforesaid Petition, which was given allowing my Petition, Applicant refused to come back. I state that from these events I am of the opinion that Applicant is not ready to come back and to resume co-habitation with me. I came in contact with Kamini, in the months of March/April 2008. The Applicant has already shown her unwillingness to cohabit with me. In such circumstances, I and Kamini come together and we started residing together. However, we have not married. It is true that Kamini gave a birth to male child "Nayan" from me on 30.6.2009.

8 I state that in view of the change circumstances, I am now not interest in prosecuting my Petition for Restitution of Conjugal Rights. It is therefore submitted as now it is not possible for me and applicant to stay together as a husband and wife, the Family Court Appeal filed by her being Family Court Appeal No.186/2008 be allowed. I state that I am ready and willing

to pay the reasonable amount of maintenance to Applicant and to my daughter "Ekata". I state that applicant has filed against me Petition B No.23/2008 in the Family Court, Pune for return of Streedhan. In the said Petition Applicant has filed Application "Exh.5" for interim maintenance at a rate of Rs.3000/- per month. The said Application is pending in the Family Court. I have filed my Say to the said Application. I submit that Applicant will be able to ventilate her grievance in the said Petition. I state and reiterate that I am ready and willing to pay reasonable maintenance to the Applicant and my daughter "Ekata".

(emphasis added)

8 In paragraph 8, the respondent has stated that he is no longer interested in the decree of restitution of conjugal rights and he has no objection if the present appeal is allowed. He has also stated that he is ready and willing to pay a reasonable amount to the appellant and her daughter. In paragraph 7 of the affidavit, the respondent-husband has stated that he came in contact with a woman by the name Kamini and that is how he started residing with that woman. He claim that though they have not married, they have a child born on 30th June 2009.

9 Thus, in paragraph 8 of the affidavit-in-reply, the respondent has consented for setting aside the decree which is impugned in this Appeal and has

agreed to pay a reasonable amount of maintenance.

10 As a result of the said statement made by the respondent, by setting aside the impugned decree, the petition filed by the respondent for restitution of conjugal rights will have to be dismissed. A decree of permanent alimony under section 25 of the said Act cannot be passed while dismissing the petition filed by the respondent.

11 Under the interim order dated 10th February 2010 passed in the Civil Application No.194 of 2009, the respondent has been directed to pay interim maintenance of Rs.10,000/- per month to the appellant and daughter till the disposal of the appeal. The said order continues to remain in force for last more than seven years. The respondent has shown willingness to pay a reasonable maintenance to the appellant and the daughter. We, therefore, propose to continue the order dated 10th February 2010 for a reasonable period with liberty to the appellant-wife to file a substantive proceedings for seeking maintenance for herself and her minor daughter.

12 Therefore, the appeal must succeed. Considering the statements made by the respondent in his affidavit which we have quoted above, this is a fit case where the respondent will have to be saddled with substantial amount of costs. The amount of costs is quantified at Rs.25,000/-.

13 Accordingly, we pass the following order:

(i) Impugned Judgment and Decree dated 16th August 2007 passed by the learned Judge of the Family Court at Pune in a Petition No.A-51/2005 is hereby quashed and set aside. Petition No.A-51/2005 stands dismissed;

(ii) It will be open for the appellant-wife to file appropriate and substantive proceedings for grant of maintenance to her and to the minor daughter as well as for her educational expenses;

(iii) To enable the appellant to file appropriate substantive proceedings and seek appropriate interim relief therein, we direct that interim order dated 10th February 2009 in Civil Application No.194 of 2009 passed in this Appeal shall continue till the end of this calendar year;

(iv) The concerned Court before which the substantive proceedings are filed shall endeavour to dispose of the application which may be made for grant of interim maintenance as expeditiously as possible and in any event within a period of four months from the date on which the application is filed;

(v) We direct the respondent to deposit costs quantified at Rs.25,000/- directly in the bank account of the appellant-wife within a period of three months from today;

(vi) The substantive proceedings which may be filed by the appellant and the interim application made therein shall be decided by the concerned Court on its own merits without being influenced by the

interim order passed by this Court;

(vii) Needless to add that the interim order of this Court which is continued till the end of this calendar year will cease to operate from the date on which interim order is passed by the concerned Court;

(viii) Family Court Appeal is allowed on above terms;

(ix) Pending civil applications do not survive and the same are disposed of.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)