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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL No. 89 OF 2009
WITH
CIVIL APPLICATION No. 308 OF 2015

Mr. Ajay Ramrao Chavan	...	Appellant
Vs.		
Mrs. Sampada Ajay Chavan	...	Respondent

Smt. Seema Sarnaik, for the Appellant.
Mr. Shashank Mangle, for the Respondent.

CORAM : A. A. SAYED, &
MANISH PITALE, JJ.

RESERVED ON : OCTOBER 6, 2017
PRONOUNCED ON: OCTOBER 12, 2017

JUDGMENT : [Per : MANISH PITALE, J.]

1. The Appellant – husband had filed a petition before the Family Court at Pune, seeking divorce from the Respondent – wife under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) on the ground of the Respondent having

inflicted mental cruelty upon him. By the impugned judgment and order dated 17.1.2009, the Family Court Pune has found that the Appellant has failed to prove cruelty, and therefore, the divorce petition filed by the Appellant has been dismissed. By the instant appeal, the Appellant has challenged the said judgment and order of the Family Court, claiming that there was sufficient material and evidence placed on record to prove the mental cruelty inflicted upon him by the Respondent – wife, and that a decree of divorce was required to be passed in the facts and circumstances of the case.

2. The marriage between the Appellant and the Respondent took place on 6.5.2006 and the Respondent joined the matrimonial house at Hadapsar in Pune, where the parents of the Appellant were residing. It is claimed by the Appellant that the Respondent was not happy while living with his parents in the same house and this resulted in friction between the two. Yet, the Appellant and the Respondent continued living together with the parents of the Appellant in the matrimonial house at Pune.

3. On 26.2.2007 the Respondent gave birth to a male child at Kolhapur, where her parents live. On 8.3.2007, less than a month

from the birth of the child, the Appellant issued a legal notice to the Respondent claiming that she was of a quarrelsome nature, due to which he and his parents had suffered immense mental and physical torture. The Appellant stated that in this situation, he had no desire to continue living with the Respondent. On 29.3.2007 the Respondent sent a short reply to the said legal notice stating that she had recently delivered the child and that in such a situation she was pained to receive the said legal notice. She denied all the allegations made in the legal notice and reserved her right to state complete facts as and when situation arose.

4. It has been stated on record by the Appellant that the Respondent – wife alongwith the child came from Kolhapur to the matrimonial house on 12.9.2007 and continued to reside at the said house with the parents of the Appellant. During this period, it appears that there were differences of opinion between the Appellant and the Respondent leading to quarrels. As a result, there were meetings held between the elders and well wishers of both sides to make an attempt to find a solution.

5. On 27.9.2007 the Appellant filed the divorce petition

before the Family Court at Pune praying for dissolution of the marriage under Section 13(1)(ia) of the said Act. It is significant to mention that the main ground, stated in the said petition while alleging cruelty against the Respondent, was that she was insisting upon a separate residence because she had no desire to live with parents of the Appellant. This ground is absent in the legal notice dated 8.3.2007 sent by the Appellant. It is also relevant to mention that although the Respondent was staying in the matrimonial house with the Appellant when the divorce petition was filed, her address in the petition was wrongly shown as that of Kolhapur.

6. On 25.5.2008 the Appellant left the matrimonial house and only the Respondent with minor child and the parents of the Appellant remained in the matrimonial house. In the meantime, the elder brother of the Appellant sent a letter to him in an envelope addressed to the Respondent. In this letter it was claimed that the matrimonial house belonged to the elder brother and that it had been given to the Appellant when he was bachelor. Now, he was married and parents of the Appellant were suffering due to the behaviour of the Respondent. It was claimed that the Appellant was required to vacate

the house. On 16.7.2008 the Respondent sent a legal notice to the Appellant stating that the said letter was manipulated and that its contents were false. She stated that the Appellant was deliberately seeking to manipulate the record so as to create a false impression about the Respondent. On 28.7.2008 the Appellant sent a reply notice to the advocate of the Respondent. All these developments took place during pendency of the said divorce petition. Thereafter, on 14.8.2008 the parents of the Appellant left the matrimonial house, as a result of which the only Respondent and the minor child remained in the house.

7. On 22.9.2008 the Respondent filed her written-statement denying allegations made against her and she stated that all through her stay in the matrimonial house, she had been willing to live with parents of the Appellant and she further stated that allegations regarding demand of separate residence were absolutely false. She also denied that she had threatened to implicate the Appellant and his parents by instituting criminal proceedings for the offence punishable under Section 498-A of the Indian Penal Code (IPC). In the written-statement, Respondent gave details of eight meetings that were held in respect of the disputes between the parties and with a view to finding a

solution to the same. It was stated by the Respondent that the Appellant somehow wanted to get rid of her and that the divorce petition deserved to be dismissed.

8. The Appellant entered in the witness box in support of his petition and produced his mother as witness on his behalf. On the other hand, Respondent appeared in the witness box to support her case and two more witnesses were produced, viz. Dinkar Patil and Kumar Patil, on her behalf to depose in respect of the meetings conducted to resolve the dispute between the parties. The evidence of Kumar Patil was not taken into consideration by the Family Court because the said witness was not available for cross-examination. The evidence of Dinkar Patil was therefore, the only evidence other than that of the Respondent to support her case.

9. Upon recording of evidence and hearing arguments on behalf of the parties, on 17.1.2009, the Family Court delivered the impugned judgment and order. The Family Court found that the main allegation made by the Appellant against the Respondent regarding insistence of separate residence appeared to be an afterthought because the same did not find mention in the legal notice dated

8.3.2007 issued on behalf of the Appellant. Apart from this, the Family Court found that there was insufficient evidence on record to prove the case of cruelty, sought to be made out by the Appellant. The evidence of the mother of the Appellant was discarded, as she was found to be an interested witness. It was also found that there was enough material to show that it was the Appellant, who was responsible for the quarrels and that evidence of the independent witness Dinkar Patil demonstrated that the Appellant wanted to have divorce under any circumstances. The Family Court also referred to Section 23(1)(a) of the said Act to hold that Appellant was not entitled to take benefit of his own wrong, and for this reason, the Family Court dismissed the divorce petition filed by the Appellant. Aggrieved by the same, the Petitioner - husband has filed the present appeal.

10. There are certain subsequent developments and orders passed by this Court, that are relevant in the present case. In fact, it has been contended on behalf of the Appellant that the aforesaid subsequent events show that Respondent has continued to inflict cruelty upon the Appellant. Hence, a reference to the said developments is also being made. On 15.6.2009 this Court issued

notice in the appeal and on 4.9.2009 an order was passed recording that the Appellant and the Respondent had decided to go back together and assured the Court to stay peacefully, to try to settle their disputes. On 11.9.2009 this Court recorded in its order that parties were staying together happily in the matrimonial home and that they were going back together. This fact of the parties residing together was also recorded by this Court on 16.11.2009, and by order dated 18.1.2010 parties were referred to marriage counselor in Pune. The order dated 18.1.2010 records that the Appellant could not make up his mind to take the Respondent and the child back home, despite the fact that they were staying together. But, when a failure report was received from the counselor, this Court by order dated 15.3.2010 recorded that there was no alternative but to fix the matter for hearing on merits. Thereafter, on 12.4.2010 this Court passed an order permitting the Appellant to withdraw from the company of the Respondent. This Court, recorded that during pendency of the instant appeal the parties stayed together from September, 2009 to April, 2010. On 16.8.2010 the instant appeal was admitted and a separate order was passed regarding the amount of maintenance, to be paid by the Appellant to

the Respondent and the minor child. In this order, it was recorded that the Respondent had misled this Court regarding her status of employment and that therefore, only an amount of Rs. 4,000/- per month was granted to her towards the rent for accommodation that she would require in the city of Kolhapur and a direction was given to the Appellant to pay a further amount of Rs. 3,000/- per month for expenses of the minor child. Thereafter, by an order dated 7.12.2010, this Court rejected the further application filed by the Respondent for enhancement of the maintenance, observing in para 6 thereof that the opinion recorded by this Court in the order dated 16.8.2010 would not influence outcome of this appeal and it shall be decided on its own merits.

11. During pendency of the appeal, the Respondent shifted back to Pune from Kolhapur, and therefore, the Appellant was no longer required to pay amount of Rs. 4,000/- per month towards rent for accommodation at Kolhapur. It is undisputed that the Appellant has continued to pay the amount of Rs. 3,000/- per month for the expenses of the minor child. It is stated that he has also paid certain amounts towards buying toys and necessities for the child.

12. On 24.7.2017, an affidavit was filed on behalf of the Appellant, placing on record copies of orders of this Court passed in various civil applications filed by the parties. Certain other documents, including transcripts of SMSs exchanged between the parties, have also been placed on record. It is contended on behalf of the Appellant that these documents demonstrate that the Respondent has continued to inflict cruelty upon the Appellant. The contents of the said affidavit have been denied on behalf of the Respondent.

13. We have heard the learned counsel appearing for the respective parties. Learned counsel Mrs. Seema Sarnaik appearing for the Appellant has submitted that the Family Court has committed a grave error in holding that the Appellant has failed to prove cruelty. It is contended that demand of separate residence by the Respondent and the continued harassment meted out by her to the Appellant and his parents, was evident from the material on record. It was also contended that the Family Court committed grave error in applying Section 23(1)(a) of the said Act to the facts of the present case, and further that the material placed on record viz. the affidavit dated 24.7.2017 filed on behalf of the Appellant demonstrated that the

Respondent was stubborn in nature and that she had continued to inflict cruelty on the Appellant, even during pendency of the instant appeal. The learned counsel appearing for the Appellant placed reliance on the judgments of this court in the cases of – (i) *Avinash Eknath Nikalje, Appellant Vs. Leela Avinash Nikalje, Respondent*¹ and (ii) *Yogesh Sonawane, Appellant Vs. Sou. Jyostna Sonawane*². The learned counsel also relied upon judgments of the Hon'ble Supreme Court in the cases of – (i) *V. Bhagat, Appellant Vs. D. Bhagat (Mrs.), Respondent*³; (ii) *Dr. (Mrs.) Malathi Ravi, M. D., Appellant Vs. Dr. B. V. Ravi, M. D., Respondent*⁴; and (iii) *Manisha Tyagi, Appellant Vs. Deepak Kumar, Respondent*⁵.

14. The said judgments have been relied upon by the learned counsel appearing for the Appellant to contend that demand of separate residence amounts to cruelty, and that subsequent events after passing of the order by the Family Court can also be taken into consideration. Further that the position of law has undergone a change as now it is no longer necessary that apprehension of physical violence

1 AIR 2003 Bom. 244

2 Family Court Appeal No. 353 / 2014, dated 7.4.2015

3 (1994) 1 SCC 337

4 AIR 2014 Supreme Court 2881

5 AIR 2010 Supreme Court 1042

is required to establish cruelty, but that it would be sufficient to show that conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse cannot reasonably be expected to put up with it.

15. On the other hand, learned counsel Mr. Shashank Mangle, appearing for the Respondent has submitted that the judgment and order passed by the Family Court in the present case is justified because the basic contention regarding demand of separate residence by the Respondent was clearly an afterthought. The Appellant wanted to somehow give divorce to the Respondent, and therefore, he made up the aforesaid grounds for divorce. This was obvious because such contention regarding demand of separate residence was not mentioned in legal notice dated 8.3.2007, issued on behalf of the Appellant. It was further contended that even mother of the Appellant has nowhere stated in her evidence that Respondent had driven out the parents of the Appellant. On the contentions raised on behalf of the Appellant concerning the subsequent conduct during pendency of the appeal, the contents of the affidavit of the Appellant dated 14.7.2017 have been stoutly denied and it has been stated that

the observations, made in orders passed in civil applications by this Court, were only prima facie in nature and that they would not adversely affect merits of the appeal. The learned counsel appearing for the Respondent further contended that the Appellant had been making payments of certain amounts over and above the amount of Rs. 3,000/- per month, though only amount of Rs. 3,000/- was directed to be paid to the Respondent and that this demonstrated that relationship between the parties was not dead. It was emphatically stated that the Respondent even now is ready to cohabit with the Appellant and his parents.

16. In this backdrop, following points arise for our determination in this appeal:

<u>Points</u>	<u>Findings</u>
1. Whether the impugned judgment and order passed by the Family Court, in the facts and circumstances of the present case dismissing the divorce petition, was justified?	In the affirmative.
2. What order?	Appeal is dismissed

Reasons

17. Before embarking upon analysis of the facts, evidence and material on record in the present case, it would be appropriate to refer to the law concerning definition of cruelty under Section 13(1) (ia) of the said Act. It has been held by the Hon'ble Supreme Court that a comprehensive definition of the concept of mental cruelty cannot be given, considering that the human mind is extremely complex and human behaviour is equally complicated. But, certain aspects of the concept of mental cruelty can be identified. In the case of *Samar Ghosh Vs. Jaya Ghosh*⁶ the Hon'ble Supreme Court has held as follows:

“98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount

⁶ 2007 (4) SCC 511

to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

18. It has been further held by the Hon’ble Supreme Court in

the case of – *Ramchander, Appellant Vs. Ananta, Respondent*⁷, that the aforesaid instances of mental cruelty given in the judgment of *Samar Ghosh (supra)* are only illustrative and not exhaustive. Therefore, it is clear that no straitjacket formula regarding the concept of mental cruelty can be discerned, but the instances given in the judgment of *Samar Ghosh (supra)* by the Hon'ble Supreme Court are guiding principles for deciding the cases involving one spouse inflicting mental cruelty on the other.

19. In the present case, the facts that emerge on record show that the Appellant and the Respondent were married in May 2006 and that the first document showing conflict between them was a legal notice dated 8.3.2007 sent by the Appellant to the Respondent. This document assumes great significance in the present case because it shows as to what the Appellant considered reasons for his inability to continue to live in matrimonial life with the Respondent. Perusal of the said legal notice at Exhibit 20 shows that the Appellant found Respondent to be extremely stubborn and quarrelsome in nature. It is further stated in the notice that the Appellant and his parents have

⁷ (2015) 11 SCC 539

suffered immense physical and mental harassment at the hands of the Respondent due to her quarrelsome and intransigent nature. On this basis, it is claimed by the Appellant that he is unable to continue marital life with the Respondent.

20. The said legal notice dated 8.3.2007 demonstrates that there were certain temperamental differences between the Appellant and the Respondent. This could qualify as irritation and general wear and tear in married life. The differences of opinion between the wife and parents of the husband can occur because she is a new person in the family. It is crucial that in this legal notice dated 8.3.2007, there is absolutely no mention of demand of separate residence by the Respondent and that such demand was causing harassment to the Appellant and his parents. It is also significant that the said legal notice dated 8.3.2007 is sent by the Appellant in less than 15 days of the Respondent having delivered the child at Kolhapur. In fact, in her reply dated 29.3.2007 the Respondent has mentioned this fact.

21. Perusal of the divorce petition, evidence of the Appellant and that of his mother show that the whole case of harassment and cruelty is based on the alleged demand of separate residence by the

Respondent. The absence of such statement in the aforesaid legal notice dated 8.3.2007 clearly shows that the said ground of demand of separate residence was clearly an afterthought. Apart from the said aspect, the evidence regarding the alleged quarrelsome nature of the Respondent is of a very general nature and no specific instances of violence or unacceptable behaviour of the Respondent – wife were brought on record. There was only a mention made of alleged threats given by the Respondent to initiate criminal proceedings against the Appellant and his parents under Section 498-A of the I P C. In fact, no such complaint was ever filed by the Respondent.

22. The evidence of an independent witness, viz. Dinkar Patil, is significant in this context. He was the person present in one of the meetings dated 1.10.2006 wherein an attempt for reconciliation was made. The said witness has stated that when the Appellant was asked as to what harassment he had suffered, the Appellant stated that he had not suffered any harassment and that he simply wanted divorce. When the said witness tried to reason with the Respondent, he abruptly left the meeting. In the cross-examination of this witness, the only thing that is revealed is that he had been a friend of the father of

the Respondent. This cannot be a factor to discredit the evidence of said witness because meetings for reconciliation are generally conducted in the presence of well wishers of both the parties.

23. Perusal of the orders passed by this Court in various civil applications during pendency of the appeal show that a serious attempt was made by the parties to live together and that they did live together between September 2009 to April, 2010. The contention raised on behalf of the Appellant that conduct of the Respondent during pendency of the appeal demonstrates continuing cruelty, is not substantiated by the material on record. The only adverse observation made against the Respondent is in the order dated 16.8.2010 wherein it has been observed by this Court that the Respondent has misled the Court as regards her status of employment. But this resulted in the Respondent being denied payment towards maintenance. In fact, in the subsequent order dated 7.12.2010 this Court specifically observed that the opinion expressed in the order dated 16.8.2010 would not influence the merits of the present appeal.

24. Applying the position of law, as elucidated by the Hon'ble Supreme Court in the above referred judgments, to the facts

of the present case, it is evident that the Appellant has failed to show that conduct of the Respondent is so abnormal and below acceptable norms that the Appellant cannot reasonably be expected to put up with it. It appears from the material on record that there were temperamental differences between the Appellant and the Respondent, but only this factor cannot entitle the Appellant for a decree of divorce. We find that the Family Court is justified in holding that the ground of separate residence claimed by the Appellant, as the basis for cruelty, was an afterthought and that the Appellant failed to prove that he was entitled to a decree of divorce under Section 13 (1) (i-a) of the said Act. As a result, the reliance placed by the learned counsel appearing for the Appellant on judgments of the Hon'ble Supreme Court and this Court wherein demand of separate residence has been held to be amounting to cruelty, is misplaced and do not support the case of the Appellant.

25. As regards the judgment of the Hon'ble Supreme Court in the case of *Dr. (Mrs.) Malathi Ravi (supra)* relied upon by the learned counsel appearing for the Appellant to contend that subsequent conduct and events concerning the Respondent should also be taken

into consideration for analysing whether she has inflicted cruelty upon the Appellant, a perusal of the said judgment would show that it has been held that subsequent facts under certain circumstances can be taken into consideration. As to whether the circumstances of the present case justify taking into consideration the subsequent facts, needs to be appreciated, but, even if it is held that the subsequent facts must be taken into consideration, we find that conduct of the Respondent, emphasised by the Appellant during pendency of the appeal, is not of such a character that any inference can be drawn regarding cruelty or continuing cruelty inflicted upon the Appellant. It is during the course of applications made by both the parties in the pending appeal that certain orders have been passed, wherein observations have been made by this Court, but by no stretch of imagination, it can be said that any inference of cruelty can be drawn against the Respondent.

26. The submission made on behalf of the Respondent concerning Section 23(1)(a) of the said Act to the effect that Appellant could not be said to have taken advantage of his own wrong, needs to be appreciated on the basis of material that has come on record.

Strictly speaking, Section 23(1)(a) of the said Act may not be applicable in the present case because Family Court has come to a conclusion that the Appellant failed to make out a case of cruelty for seeking divorce. The said provision would be applicable if an affirmative finding is rendered by the Court, and then it is found that the Petitioner is seeking to take advantage of his / her own wrong. To that extent, the submission regarding non-applicability of the said provision may be correct. The Family Court appears to have been anguished by the fact that the Appellant had behaved in a manner that caused pain to the Respondent, particularly when he issued the legal notice dated 8.3.2007 to her, which was less than 15 days from the date when she delivered the child. It appears that the Family Court found the overall conduct and behaviour of the Appellant unacceptable, leading to its finding on issue No. 2 before the Family Court.

27. In any case, the Family Court had come to a considered conclusion that the Appellant had not made out his case of cruelty under Section 13 (1) (i-a) of the said Act while dismissing the divorce petition. We find that the conclusions rendered by the Family Court

are based on correct appreciation of the evidence and material on record and none of the findings can be said to be perverse. An attempt was made on behalf of the Appellant to demonstrate that there was nothing left in the marriage with passage of time and that the Appellant was in no state of mind to take back the Respondent and the minor child to his home. We feel that this cannot be a factor to decide the fate of the divorce petition, filed by the Appellant. He came to the Court with a specific case of mental cruelty being inflicted by the Respondent on him. But he has failed to prove his case on the basis of evidence and material on record. We find from the record that between September 2009 to April 2010 the parties did stay together with the minor child under orders of this Court and even during this period it was recorded in the order dated 18.1.2010 that the Appellant could not make up his mind to take the Respondent and child to his home. The record shows that the Appellant was intensely desirous of having divorce, but he has failed to make out the case with which he has approached the Court.

28. A feeble attempt was made by the counsel appearing on behalf of the Appellant to claim that an adverse inference needs to be

drawn against the Respondent that there was no sincerity in her statement about her desire to cohabit with the Appellant and his parents even today, because she did not file any application under Section 9 of the said Act for restitution of conjugal rights. The said submission made on behalf of the Appellant is wholly without any substance because it cannot be held that the divorce decree as prayed for by the Appellant deserves to be granted only because the Respondent – wife failed to file an application for restitution of conjugal rights.

29. Thus, on considering the contentions raised on behalf of both the parties and on perusal of the record, we find that the judgment and order passed by the Family Court dismissing the divorce petition of the Appellant is justified and that there is no merit in the present appeal. Point No. 1 is therefore, answered in the affirmative. Accordingly, appeal is dismissed with no order as to costs.

30. In view of dismissal of the appeal, Civil Application No. 308 of 2015 filed therein does not survive and is therefore disposed of.

Sd/-
[MANISH PITALE, J.]

Sd/-
[A. A. SAYED, J.]