

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 64 OF 2017

Sou. Sandhya Vijay Sansare	...	Appellant
vs.		
Vijay Samwel Sansare	..	Respondent

Ms. Ameeta Kuttikrishnan Advocate appointed for the Appellant.
Mr. Sarwadnya S. Kadtane i/b. Mr. K.V.Nikam for the Respondent No.1.

**CORAM: R.M.SAVANT &
SMT.SADHANA S.JADHAV, JJ.**
DATE : 14th July 2017.

P.C.

The above Family Court Appeal takes exception to the judgment and order dated 2.7.2015 passed by the learned District Judge-I, Solapur, by which order the Petition filed by the Appellant came to be dismissed. The Appellant and the Respondent were married on 9.6.1993. Out of the said wedlock, they have three children, one son and two daughters. It is an undisputed fact that since the year 1998, the Appellant and the Respondent are not residing together. The Marriage Petition No.9 of 2009 was filed by the Appellant for divorce on the ground of cruelty and for restitution of conjugal rights.

2. The said Marriage Petition was replied to on behalf of the

Respondent-husband. In the said reply, the stand taken was that the Appellant was not willing to cohabit with him and that she had left the matrimonial house without informing him or his parents. It was stated that since 1998, the Appellant has deserted him and that he had made various attempts for cohabiting, but the said attempts were futile. It was also stated that the Respondent had filed a Petition for restitution of conjugal rights and in spite of the Consent Terms arrived at in the said Petition, the Appellant did not cohabit with the Respondent and in fact had filed various litigations in various Courts.

3. On the basis of the pleadings of the parties, issues were framed by the trial Court. The issues were revolving around the fact whether the Appellant i.e. the Applicant had proved that the Respondent has refused and neglected to maintain her, whether the Respondent-husband proved that the Appellant/Applicant had deserted and harassing him and whether the Appellant/Applicant is entitled for restitution of conjugal rights.

4. The Appellant/Applicant examined herself in support of her case and also examined her real sister Alka (PW-2). The Respondent-husband examined himself. By way of documentary evidence, copies of the orders in the previous proceedings were placed on record. It has come in the evidence before the trial Court that the Respondent-husband had paid

maintenance to the Appellant and the children as per the orders passed by the Court and that he is regularly paying maintenance to the Appellant till date. On the basis of the evidence, which has come on record, the learned Judge of the Family Court concluded that the Appellant had made no attempts to cohabit with the Respondent-husband. The trial Court observed that there is no independent evidence either from the Appellant's side or the opponent's side to corroborate as to who is guilty of desertion. The learned Judge therefore, rejected the ground of desertion.

5. Insofar as the application for restitution of conjugal rights is concerned, the learned Judge, in the aftermath of all that had happened previously, refused to allow the said Application for restitution of conjugal rights and observed that the Application was merely a ruse adopted by the Appellant to claim maintenance from the Respondent-husband. Hence, the trial Court, on the basis of both oral and documentary evidence, has recorded findings in respect of the ground of desertion as also the application for restitution of conjugal rights.

6. We have, with the assistance of the learned Counsel, perused the impugned judgment as also have gone through the evidence which has been reflected in the said judgment. We do not find this a fit case to interfere in our appellate jurisdiction. The Appeal is accordingly dismissed.

7. The learned Advocate appointed for the Appellant Ms. Ameeta Kuttikrishnan would be paid remuneration by the Maharashtra State Legal Services Authority as per rules.

(SMT. SADHANA S.JADHAV, J.)

(R.M.SAVANT,J.)