

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

***SECOND APPEAL NO. 706 OF 2015
Along with
CIVIL APPLICATION NO. 1506 OF 2015
(For stay/injunction)***

Dr.Vinayak Ramchandra Manglekar (Kulkarni) .. Appellant
Vs
Dr.Priti Vinayak Manglekar(Kulkarni) .. Respondent

***Along with
SECOND APPEAL NO. 326 OF 2017
Along with
CIVIL APPLICATION NO. 82 OF 2016
(For stay)***

Sou.Priti Vinayak Manglekar (Kulkarni) .. Appellant
Vs
Shri.Vinayak Manglekar (Kulkarni) .. Respondent

Mr.Vishal Kanade a/w Satish Raut, for the Appellant in S.A. No.706 of 2015 & the Applicant in Civil Application No.1506 of 2015 and Respondent in Second Appeal (Stamp) No.21312 of 2015.

Mr.Anand Patil, for the Appellant in Second Appeal (Stamp) No.21312 of 2015 and the Applicant in Civil Application No.82 of 2016 and the Respondent in Second Appeal No.706 of 2015.

Dr.Vinayak Manglekar, Appellant in S.A. No.706 of 2015 present in Court.

Coram : N.M.Jamdar, J.

Date : 27 April 2017.

Oral Order :

Both these Appeals arise from the order passed by the learned District Judge, Kolhapur dated 11 March 2015 and they have been placed on board together and argued together and are disposed of by this common order.

2. The Second Appeal No.706 of 2015 is filed by Vinayak Manglekar (Husband) seeking to challenge the order passed by the learned District Judge, Kolhapur dated 11 March 2015, whereby the grant of permanent alimony to Priti Manglekar (Wife) at the rate of Rs.7,000 /- per month as granted by the trial Court was confirmed. Second Appeal No. 326 of 2017 is filed by the Wife challenging judgment and order passed by the District Judge Kolhapur confirming the order passed by the trial Court granting decree of divorce.

3. Both the Husband and Wife are senior medical practitioners. Both are the senior citizens as on date approximately sixty-six and sixty four years respectively of age. They have grown up children. Both are living separately for last almost two decades. The wedding between the parties took place on 15 June 1976. Differences arose, and the Wife filed Hindu Marriage Petition No.203 of 2004 in the Court of Civil Judge, Senior Division, Kolhapur seeking Restitution

of conjugal rights. It was the case of the Wife that the Husband was addicted to vices, and he had various illicit relationships. According to her she found the Husband in a compromising position and because of this mental shock she left for Oman, Saudi Arabia and stayed there from June 1998 to May 1999. She tried to cohabit with the Husband but he did not allow and therefore a petition for Restitution of conjugal rights had to be filed. She also sought permanent alimony.

4. The Husband, filed Written statement denied the contentions. He stated that he is a reputable medical practitioner, having received various awards and such allegations which are baseless, caused tremendous mental cruelty to him. It was stated that the Wife even tried to poison him and tried to manipulate the bank records and left him and the children on her own accord to Oman and the parties have been separated since 1999. He filed a counter claim and sought a decree of divorce.

5. The learned Civil Judge framed issues as to whether the Husband had withdrawn himself from the society of the Wife without reasonable cause, and whether the allegations made by her were proved. Issues were also framed regarding the counter-claim of the Husband as to whether Wife had deserted him and had committed cruelty. The learned Civil Judge came to the conclusion that there was desertion on the part of the Wife and she had subjected the Husband to mental cruelty and accordingly proceeded to reject

the claim for restitution of conjugal rights and granted decree of divorce with permanent alimony of Rs.7,000/- per month.

6. The Regular Civil Appeal No.149 of 2010 was filed by the Wife in the District Court, Kolhapur. The Husband filed cross-objection as regards grant of permanent alimony. The learned District Judge after assessment of evidence dismissed the Appeal and the cross-objections by judgment and order dated 11 March 2015.

7. Thereafter these two Second Appeals have been filed.

8. Heard learned counsel for the parties.

9. The learned counsel for the Appellant submitted that in both the Courts there is no discussion on the aspect of cruelty as well as desertion by the Wife. He submitted that the parties were residing with each other till the year 2004 and Hindu Marriage Petition was filed in the year 2004 itself. The learned counsel submitted that the incident of food poisoning was not proved and there are contradictory findings as regards cruelty. He submitted that the Husband had made various baseless allegations against the Wife which he has failed to prove. As far as the Appeal filed by the Husband is concerned, the learned counsel submitted that the financial condition of the Wife is not sound, on the other hand, the Husband has substantial properties as well as settled medical practice and therefore, grant of permanent alimony of Rs.7,000/- should not be interfered with.

10. The learned counsel for the Husband on the other hand submitted that, there is a concurrent finding of fact as to cruelty and desertion and there is no substantial question of law. He submitted that the allegations made by the Wife are grave enough to cause mental cruelty. It was contended that the Wife left for Oman deserting, not only the Husband but also the children, and therefore, the divorce was sought in the year 2004. It was submitted that letters were written by the Wife, to the Wife of the person with whom she was having illicit relationship. He submitted that these letters are on record. It was also contended that the Wife forged the signatures for obtaining a loan. In support of the Appeal filed by the Husband learned counsel submitted that for grant of permanent alimony, conduct of the parties is material and in view of the conduct of the Wife, which has been discussed by both the Courts, she is not entitled to the grant of permanent alimony as well as her financial condition is sound.

11. It has to be kept in mind that both, the Husband and Wife are senior citizens. They are both medical practitioners and settled in life. Their children are grown-up. Their marriage took place in the year 1976 and as held by the trial Court they have been staying separately since the year 1999 i.e. for almost two decades. This Court has made attempts to amicably resolve the dispute. The learned single judge (*S.C.Gupte, J.*) also heard the parties in chamber.

Mediation proceedings also took place in the trial Court. It is informed by the learned counsel for the parties that inspite of their best efforts dispute could not be amicably resolved.

12. As far as the grievance made by the learned counsel for the Husband that there is no discussion on cruelty and desertion is concerned, same is not correct. Both the Courts have discussed these aspects. The decree of divorce has been granted in favour of the Husband on the ground of mental cruelty. The Wife had made various allegations regarding the Husband which are of serious nature. It was alleged that the Husband is addicted to various vices and he has illicit relationships. It has been placed on record that the Husband is a reputable medical practitioner in the society having won various awards. Such allegations if unfounded are bound to cause mental cruelty to the Husband. The Wife, after making these allegations in the pleadings, did not follow up the same by leading cogent evidence. According to her she disclosed this fact only to her mother and not to any other person, but she did not examine her mother. Therefore except for bare uncorroborated words of the Wife there was hardly any cogent material to directly draw any conclusion. Therefore the learned District Judge rightly held that making such unfounded allegations itself an act of cruelty. It is an admitted position that the Wife left for Oman in the year 1998. As the learned counsel for the Husband pointed out the newspaper reports, which are part of the record will indicate that she had no intention to return

and she had closed her medical practice. Not only the Husband was deserted but also the children. The finding of fact therefore has been recorded by the Courts that the Wife left the Husband without a justifiable cause. As far as theory of the Wife that she had to leave because of illicit relationship of the Husband, it is not borne out by the record.

13. The Courts have also recorded a finding that the Wife applied for a loan for purchase of a car and the car was with her. In this application for loan the Husband was made as a guarantor. This was during the strained relationship and therefore the Courts have recorded a finding of fact that these documents were created. Letters were written by the Wife to the wife of the person with whom she is stated to have illicit relations were part of the record. Even assuming the learned counsel for the Wife is right in contending that the incident of food poisoning is not proved, that by itself will not alter the final outcome of the matter.

14. Thus both the Courts have recorded a concurrent finding of fact. Both the parties made various allegations against each other. The Wife did not examine any witness. The Husband produced documentary evidence on record. Considering this position and the age of the parties, both the Courts also took note of the fact that there is no possibility of any reconciliation. Even the attempts of mediations have failed. In these circumstances, as far as the decree of

divorce is concerned, I do not find that there is any reason to interfere with the concurrent findings of fact tendered by both the Courts.

15. As regards the Appeal filed by the Husband is concerned, it challenges the grant of permanent alimony of Rs.7,000/- at this stage of dictation. The learned counsel, on instructions submitted that now that the Appeal of the Wife is being dismissed, the Husband is not pressing this Appeal as regards the grant of permanent alimony.

16. In view of this position both the Second Appeals stand dismissed. The arrears, if any, be deposited within period of eight weeks from today, which the Wife will be entitled to withdraw. In view of the disposal of Second Appeals, the Civil Applications do not survive and are disposed of accordingly.

(N.M.Jamdar, J.)