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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***SECOND APPEAL NO.622 OF 2014
WITH
SECOND APPEAL NO.621 OF 2014
WITH
CIVIL APPLICATION NO.1474 OF 2014***

Gaurav Sanjeev Wattal,
Age: 33 years, Occ Service,
R/at Flat No.8018, Pocket C-8,
Vasant Kunj, New Delhi-110 071 ..Appellant.

V/s.

Mrs. Pallavi Gaurav Wattal,
Age about 28 years, Occu: Housewife,
R/at 111/2, Faculty Housing Tolani
Maritime Institute, Induri Talegaon,
Dabhade, Pune – 410 507. ..Respondent.

Mr.Kashinath Jadhav for the appellant.

Mr.Abhijit D.Sarwate for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : DECEMBER 4, 2017

ORAL JUDGMENT

Before dealing with the Appeals, it is worth to observe that these Appeals are pending admission since 2014. Various attempts for re-conciliation and settlement by the respective parties, including that of this Court and the trained mediator, remained unfruitful. The respondent-wife during the course of hearing was present before the Court. However, the appellant-husband remained absent. The re-conciliation or settlement between the parties is not possible as parties are unable to reach to any terms, including that of payment of one time alimony towards full and final settlement of the claims of the parties. In the aforesaid background, the Appeals are taken up for hearing.

2. Heard the respective parties.

3. The present appeals are arising out of the provisions of section 13(1)(ia) and section 9 of the Hindu Marriage Act, 1955 ('the Act' for short) for questioning the order of Restitution of Conjugal Rights and refusal to grant decree of divorce on the ground of cruelty.

4. The facts necessary for deciding both the appeals are as under:-

The appellant-husband was married to the respondent-wife on April 30, 2006. Both are highly educated. The appellant-husband is in the hospitality service whereas the respondent-wife at times has taken teaching jobs.

5. After the marriage in 2005, the couple was not blessed with any issue. In 2008, the parties, due to differences, started residing separately.

6. The proceedings in M.P. No.388/2008 is under section 13(1)(ia) of the Act seeking divorce on the ground of cruelty whereas the respondent-wife filed M.P. No.492/2008 under section 9 of the Act for Restitution of Conjugal Rights.

7. It is the case of the present appellant-husband that the suppression of material facts by the respondent-wife about her ailment, her eccentric behaviour resulted in cruelty whereas the respondent-wife has come out with a case that without reasonable excuse, the appellant-husband has withdrawn himself from the

company of respondent-wife.

8. The proceedings were initiated before the Civil Judge, Senior Division, Pune. He has framed the issues in the respective proceedings at Exhibits-16 and 21. The issue of Restitution of Conjugal Rights was answered in favour of the respondent-wife whereby the Court issued appellant-husband appropriate directions, whereas the claim of the appellant-husband under section 13(1)(ia) of the Act for divorce came to be rejected by common judgment dated April 7, 2012. The appellant herein, being aggrieved thereof, preferred two appeals before the learned District Judge, Pune. Regular Civil Appeal Nos.588/2013 was preferred against the order of granting Restitution of Conjugal Rights, whereas Regular Civil Appeal No.589/2013 was preferred for sustaining the refusal of grant of decree of divorce. Both these appeals are dismissed on July 9, 2014. As such, these two Second Appeals.

9. In Second Appeal No.622 of 2014, the appellant has questioned the decree for Restitution of Conjugal Rights whereas in Second Appeal No.621 of 2014 the judgment of refusal to grant

divorce is impugned.

10. Learned counsel for the appellant-husband while trying to establish his case by invoking the provisions of section 13 of the Hindu Marriage Act, would urge that both the Courts below committed an error, apparent on the face of record, in appreciating that since re-conciliation is not possible, should have granted decree for divorce. Learned counsel for the appellant would urge that if the proceedings for decree of divorce are appreciated, the fact remains that it is the respondent-wife who has practiced cruelty by suppressing the fact about her ailment and also failed to explain her unpredictable behaviour in the married life of the appellant-husband. So as to substantiate the claim, learned counsel has taken me through the observations made by both the Courts below. In addition, learned counsel would urge that if the decree for divorce on the ground of cruelty is allowed, automatically the decree for Restitution of Conjugal Rights would go.

11. Per contra, learned counsel for the respondent-wife would urge that the claim for Restitution of Conjugal Rights is

appreciated by both the lower Courts in the backdrop of section 9 of the Act. According to him, the burden to prove that the respondent-wife has practiced cruelty is on the appellant-husband, which he has failed to discharge. According to him, both these appeals are against the concurrent findings and as such are liable to be dismissed.

12. Considered the rival contentions of the parties, in the backdrop of the provisions of section 9 and section 13(1)(ia) of the Act, it is worth to observe that while claiming the relief under section 9 what is required to be established is, without reasonable cause, the opposite party i.e. husband in this case has withdrawn from the society of the spouse (in the present case the wife). The Court is required to be satisfied about the truth of the statement made as regards the withdrawal from the society without any reasonable excuse. The burden in such an eventuality is on the person who has withdrawn from the society of the applicant.

13. If we appreciate the requirement of section 9 of the Act, particularly the explanation provided therein, it is to be noted

that the scope of the defence while dealing with a claim under section 9 is restricted. The burden is on the respondent to demonstrate that he has not withdrawn himself from the company of the appellant.

14. In the present case, the respondent-wife has specifically come out with a case that in 2008, she started residing with her parents as the present applicant had withdrawn himself from the society of respondent-wife though she is willing to reside with the appellant-husband.

15. The evidence brought on record by the respective parties was appreciated and both the courts concurrently held that the appellant has apparently withdrawn from the society of respondent-wife without any reasonable cause. The wordings used in section 9 of the Act that such withdrawal from the society is permissible provided there is a reasonable excuse. However, in the present case, it is required to be observed that the appellant-husband failed to demonstrate any reasonable excuse for withdrawing from the society of the respondent-wife. Very trifling issues are sought to be relied so as to establish the case of

reasonable excuse such as insulting family members, etc.

16. In the wake of above referred observations, the decree for Restitution of Conjugal Rights passed by both the Courts below, in my opinion, does not call for any interference.

17. So far as refusal to grant decree of divorce on the ground of cruelty is concerned, the grounds which are placed by the appellant in service so as to prove improper behaviour of the respondent-wife, her complaining nature, etc., both the Courts below having appreciated the evidence of the respective parties has noted that the nature of the grounds and the eye problem of respondent-wife, it has hardly any bearing over the married life of the parties. Apart from above, it is to be noted that the respondent was taking treatment for the said health problem. The issues which are sought to be relied upon so as to prove cruelty did not appeal to both the Courts, so also this Court to infer that the appellant-husband has discharged his burden by proving cruelty.

18. This Court has also re-appreciated the findings recorded for refusal to grant divorce on the issue of cruelty.

However, there is hardly any material to infer that the requirement under section 13(1)(ia) of the Act was satisfied. The appellant-husband in this case has failed to demonstrate that he was treated with cruelty by the respondent-wife and he has made out a case for dissolution of marriage for ordering a decree of divorce.

19. In the backdrop of the above findings, in my opinion, no case is made out for interference in the second appellate jurisdiction. Both the appeals as such fails and as such stand dismissed.

20. In view of the disposal of the appeals, the civil application does not survive and hence is disposed of as such.

(NITIN W.SAMBRE, J.)