

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

FAMILY COURT APPEAL NO. 208 OF 2015

**Sanjeev Bhimashankar Janglagi
Age 35 years, Occ. Labour,
R/o. Swami Vivekanand Nagar No. 2,
Or No. 11/1, Safull, Vijapur Road,
Solapur.**

..Appellant.

Vs.

**Sau. Soloachana (Sonali) Sanjeev Janglagi,
Age 25 years, Occ. Housewife.
C/o. Layappa Sangappa Layne,
At Post Bhandarkawate,
Tal. North Solapur, Dist. Solapur.**

..Respondent.

Shri V.S. Tadke, for the Appellant.

Shri Rahul B. Vijaymane, for the Respondent.

**CORAM : R. M. SAVANT &
SMT.SADHANA S. JADHAV, JJ
DATE : 5th JULY, 2017**

JUDGEMENT (PER R.M SAVANT, J)

1 Admit. With the consent of the learned Counsel for the parties heard forthwith.

2 The above Family Court Appeal (FCA) takes exception to the Judgment and Order dated 17/8/2015 passed by the learned Principal Judge, Family Court, Solapur. By the said Order the Marriage Petition being A-431 of

2012 filed by the Appellant herein came to be dismissed.

2 The marriage between Appellant and the Respondent was solemnised on 4/12/2007 at Solapur. Out of the said wedlock, the couple has a baby girl who is named Shradha. The Appellant and the Respondent, it seems, cohabited together till the year 2012. Thereafter, the Marriage Petition came to be filed by the Appellant on the twin grounds of cruelty and desertion i.e. Section 13(1)(i-a) and Section 13(1)(i-b) of the Hindu Marriage Act. In the said Marriage Petition, the allegation of the Appellant was that the Respondent wife was insulting him in front of outsiders and that she had attempted to kill his mother. That she was refusing to do any work for his parents.

3 In so far as the ground of desertion is concerned, the case of the Appellant was that the Respondent-wife has deserted him without any cause.

4 In the said Marriage Petition, the Respondent-wife had filed a written statement and had taken the defence that the Petition is false and concocted. It was her case that the Appellant-husband treated her properly only for 6 months and thereafter, she was ill-treated by his mother. That the Appellant used to ill-treat her under the influence of liquor and that the family members were making unlawful demands on her.

5 On the basis of the pleadings of the parties, the learned Judge of the Family Court had framed the issues amongst which was the issue whether the Respondent wife had treated him with cruelty and deserted him and whether the Appellant i.e. the Petitioner is entitled to divorce. Both the issues were answered against the Appellant-husband.

6 In support of his assertion, the Appellant had examined as many as 3 witnesses i.e. he has examined himself, his friend one Vinod as P.W.2 and his mother Mallappa as P.W.3. Insofar as the Respondent-wife is concerned, the she had examined herself and her father Shri Lagappa.

7 It is on the basis of the material on record that the learned Judge of the Family Court rejected the case of the Appellant-husband based on desertion on the ground that it is only four months prior to the filing of the Petition that the couple was residing together and therefore, the case of desertion does not satisfy the requirement of the said sub-section.

8 Insofar as the ground of cruelty is concerned, the learned Judge of the Family Court has in depth considered the evidence which has come on record through the witnesses i.e. the Appellant himself, P.W. 2 and P.W.3. It is on consideration of the said evidence that the learned Judge of the Family Court held that the ground of cruelty has also not been proved by the

Appellant-husband.

9 The learned Judge of the Family Court has taken into consideration the fact that the Appellant-husband had gone to reside at village Bhadarkavthe, which is the parental house of the Respondent-wife and therefore, has cohabited with the Respondent at her parental house during the pendency of the case. The learned Judge of the Family Court observed that implicit in the said fact is the fact that the Appellant had denied the alleged cruelty of the Respondent. The Learned Judge of the Family Court also took into consideration the admission of the Appellant that the Respondent's father had purchased an old vehicle for him in the year 2013 and that in August 2013 he left the vehicle at the Respondent's parental house.

10 Insofar as the evidence of P.W.2 Vinod is concerned, the learned Judge of the Family Court noted that the said witness has no personal knowledge about the dispute between parties. Insofar as the evidence of P.W. 3 Mallamma who is the mother of the Appellant is concerned, the learned Judge of the Family Court has noted that the said witness has admitted that she has not lodged any complaint in respect of the alleged incident of pressing of her neck by the Respondent as also the incident when she tried to pour kerosene on her. The learned Judge of the Family Court further took into consideration the statement of the said witness that the contents of the examination-in-chief

were told by the Petitioner's Advocate.

11 In so far as the evidence of the Respondent-wife is concerned, she has adopted the fact that the Appellant was cohabiting with her at her parental house. In her cross-examination, nothing has come out which would support the case of the Appellant.

12 It is on cumulative consideration of the said evidence that the learned Judge of the Family Court, as indicated above, came to a conclusion that the ground of cruelty has not been proved. The learned Judge of the Family Court has taken into consideration the Judgments which were cited on behalf of the Appellant-husband i.e. the Petitioner and observed that the said Judgments can hardly help the Appellant as he had failed to prove the factum of cruelty by leading cogent evidence.

13 The learned Judge of the Family Court lastly observed that the Appellant-husband was behaving irresponsibly and could not take advantage of his own wrong and accordingly, dismissed the said Petition filed by him for divorce on the ground of cruelty and desertion.

14 The learned Counsel Shri Tadke appearing on behalf of the Appellant-husband would seek to reurge the case of the Appellant-husband

which was urged before the learned Judge of the Family Court. The learned Counsel would contend that it is on account of the conduct of the Respondent-wife by which the ground of cruelty is proved. The said conduct is as regards the attempt to kill his mother and meeting out insults to the Appellant-husband in front of outsiders.

15 Per contra, the learned Counsel for the Respondent would support the impugned Judgment and Order. It was the submission of the learned Counsel that having regard to the evidence on record, both the grounds of desertion and cruelty have not been proved by the Appellant-husband.

16 Having heard the learned Counsel for the parties, we have considered the rival contentions. As indicated above, the ground of desertion has been rejected on the ground that just four months prior to the filing of the Petition, the couple were residing together and therefore, the said case of the Appellant-husband does not meet the requirement of the party seeking divorce being deserted for a period of two years prior to the filing of the Petition as contemplated by Section 13(1)(i-b) of the Hindu Marriage Act.

17 Insofar as the ground of cruelty is concerned, we have perused the appreciation of the evidence of the three witnesses, which has been carried out by the learned Judge of the Family Court. From the said evidence, it can

hardly be said that the charge of cruelty can be said to have been proved against the Respondent-wife. The evidence on record in that regard cannot be said to be cogent and convincing, so as to bring home the charge of cruelty. In fact what put its shadow on the ground of cruelty is the fact that the Appellant i.e. the original Petitioner cohabited with the Respondent-wife at her parental house during the pendency of the proceedings. There was no explanation given by the Appellant for such conduct. The learned Judge of the Family Court, therefore observed that by such conduct, the Appellant can be said to have condoned the alleged cruelty.

18 In our view, the Family Court has rightly come to the conclusion that the Appellant-husband has failed to prove both the grounds. We do not find this a case for interference in our appellate jurisdiction. The Family Court Appeal is accordingly dismissed.

[SMT.SADHANA S. JADHAV,J]

[R.M.SAVANT, J]