

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 20 OF 2017

Sow. Sangita W/o. Rajesh More,
Age 29 years, Occu. Teacher,
C/o. Vishvnath Sahebrao Gaikwad,
Near Govt. Milk Dairy, Dhanegaon,
Nanded

.. Appellant
(Orig. Respondent)

VERSUS

Rajesh S/o. Panditrao More,
Age 30 years, Occu.: Service,
R/o. ND 42/D/18/7, Sambhaji Chowk,
CIDCO, Nanded, Tq. & Dist. Nanded

.. Respondent
(Orig. Applicant)

...
Mr. S.B. Bhapkar, Advocate for appellant
Mr. V.P. Kadam, Advocate for respondent
...

CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.
DATE : 15-01-2018

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Heard learned counsel for the appellant and learned counsel for the respondent.

2. The appeal is preferred against dissolution of marriage under decree of divorce by Family Court, Nanded dated 12-04-2017.

3. Learned counsel Mr. Bhapkar for appellant submits that the judgment and decree of Family Court has been in absence of evidence by appellant. He submits that opportunity be given to appellant to lead evidence in the matter, which hitherto could not be given for various reasons, including that there are several other legal matters pending between the parties.

4. On the other hand, Mr. V.P. Kadam, learned counsel for respondent submits that the appeal has been preferred to harass the respondent and to ruin his life and career. He submits that several opportunities which had come appellant's way, which have been deliberately skipped to be availed with a view to vex the appellant. He submits that there have been several instances of cruelty not only alleged against the appellant but those have been proved. He further submits that conduct of appellant in the matter had been imbued with *malafides* and cruelty.

5. He submits that after marriage in 2008, for about two months, appellant had behaved properly. However, thereafter, she had threatened to discontinue relationship with the respondent. She had been whimsical in nature. She had insulted petitioner on his looks. Respondent had been made to bear with every kind of cruelty including suspecting his character and respondent had not

been suitable for the family of appellant. She had been insisting upon to reside separately abandoning his parents and relatives. She caused mental and physical cruelty to respondent. Respondent had been abused and assaulted by her father and brothers. She had left the matrimonial house without any intimation in June, 2008 and had never resumed cohabitation. Efforts by his parents and relatives to bring her back to matrimonial home, had been futile. Her brother and his friends had been to the house of respondent. They had intimidated his mother and had demanded divorce. Information in respect of same had been lodged with police station. In the meeting thereafter, it was decided to have divorce by mutual consent by paying an amount of Rs. 3 Lakh and accordingly, the amount had been paid to father of respondent by demand draft. He submits that all aforesaid incidents have been brought before Court and Court had decided the issues, finding that appellant had deserted respondent for two years before petition and had treated him with cruelty.

6. Perusal of judgment shows that appellant had resisted the petition contending that there had been demand of Rs.5 Lakh for getting permanent service to respondent and since her father could not fulfill the demand, she was being harassed. She was kept outside the house. She was prohibited from having food and good

clothes. All sufferings were narrated by her to her parents. Her parents had tried to patch up the differences, however, to no avail. Efforts for reconciliation by appellant had failed. False report had been lodged against her brother. She thus, appears to have resisted the petition stating aforesaid.

7. Family Court has considered that the conduct of appellant in aggregate is an indication of mental cruelty being caused to respondent. Family Court has also referred to a case in this respect *Prakash Kalandari V/s Janvhi Kalandari AIR 2011 Bom. 119*.

8. Family Court has taken stock of the situation in paragraph no. 16 of its judgment, reading thus :

" 16. It would not be out of place to mention that the manner in which respondent has dragged this proceeding would also amount to causing mental cruelty to the other side. Record is self eloquent about the persistent efforts taken by respondent to prolong the petition. At every stage of trial she sought adjournments on different pretext. Even when the matter was pending for final arguments she sought adjournment on the ground of changing her advocate. It discerns from the record that she filed applications for interim maintenance on two occasions and both were dismissed for default. She sought several adjournments for cross-examination of petitioner and finally did not cross examine him. Despite seeking ample adjournments she did not adduce any evidence. At every stage of the petition adverse orders were required to be passed against the respondent. At the stage of arguments respondent filed applications at Exh.75, 76 and 77 for setting aside the adverse orders against her. By elaborate order dated 09/03/2017 the applications at Exh. 75, 76 and 77 were rejected. In my opinion, such conduct would also amount to mental cruelty to the other spouse."

9. The grounds in appeal even remotely do not suggest that appellant wants to lead evidence in the matter.

10. There is no reason coming forth for non-adducing any evidence in trial before Family Court.

11. It appears that the respondent had given his own evidence along with copies of certain documents viz. first information report, judgment in regular criminal case no. 585 of 2011, deposition of petitioner in said criminal case. Despite examination-in-chief of respondent, he had not been cross-examined and his evidence had been unchallenged. Appellant had not stepped into witness box. Family court found substance in the case put up on behalf of the respondent about desertion. The Court has also adjudged that although it has been pleaded by appellant that there had been attempts for reunion and reconciliation, the same is absolutely not borne out by any evidence on record. From the evidence, it appears, the Family Court found such efforts on behalf of respondent have been substantiated by evidence as given on behalf of appellant.

12. It may not be out of place to refer that before present proceeding had been initiated by respondent, there had been no

complaint by appellant in respect of any cruel treatment being given to her or about demand of money or of other allegations made resisting claim under the divorce petition. It also appears that the contention on behalf of respondent about ill-treatment particularly, suspecting his character and threats to abandon him or about him being not good looking, have gone un-rebutted. So is the case in respect of her dislike to keep physical relations with him.

13. The evidence further shows that appellant's brother and his friends were accused of abusing and intimidating respondent and criminal prosecution had been launched against them in respect of the incident.

14. Thereafter, the parties appear to have resolved in a meeting whereunder, it appears to have decided that appellant and respondent would get separated by obtaining divorce by mutual consent on the condition that a lumpsum amount of Rs. 3 Lakh would be paid by respondent to appellant towards future maintenance. Accordingly, the amount had been paid under bank demand draft.

15. It has been contended on behalf of respondent that in the meeting it was also agreed that the complaint against her

brother would not be prosecuted further in order to see that he is acquitted. Accordingly, it appears that the criminal prosecution has resulted into acquittal. Such term had been agreed is also evidenced in the deposition by respondent in the criminal case. The Court had thus adjudged that the acquittal would be required to be considered as outcome of the compromise.

16. The evidence does show that in August, 2015, a meeting had been held amongst family members of the parties in which dissolution of marriage had been contemplated and agreed upon. The fact is borne out by subsequent conduct by respondent by tendering an amount of Rs. 3 Lakh. Even conduct on behalf of appellant lends credibility to same since it appears that on 24-08-2015, an application had been filed by appellant and respondent for conversion of the petition filed by the respondent to the petition under section 13-B of the Hindu Marriage Act. Accordingly, affidavits were also filed by the parties and the matter had been posted for judgment. However, subsequently, it appears that appellant had resiled and purported to withdraw the consent for divorce by mutual consent.

17. While there is no denial of the factual position about respondent having paid Rs. 3 Lakh to appellant in furtherance of the

decision in the meeting that had taken place amongst the family members. This Court had, on three occasions, directed appellant to take instructions in respect of deposit of Rs. 3 Lakh in this Court, however, no instructions have been coming forth save and except contention by counsel for appellant that an amount of Rs. 50,000/- had been deposited pursuant to direction of Family Court, however, order shows that said amount had been directed to be returned to appellant.

18. The situation leads to that the appeal has not been preferred *bonafide*.

19. In the circumstances, the appeal is devoid of any substance and the same is dismissed.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/