

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.26 OF 2016

Sou.Ranjana w/o Chandrakant Dalvi,
Age 35 years, Occu. Household,
R/o. Kala Shantinagar, Peer Bazar,
Osmanpura, Aurangabad,
Tq. & Dist. Aurangabad,
c/o Kisan Sarode (father)

...Appellant
(Orig.Petitioner)

VERSUS

Chandrakant s/o Kisan Dalvi,
Age 38 years, Occu. Business,
R/o. Karajgaon, Tq. Newasa,
Dist. Ahmednagar.

...Respondent
(Orig. Respondent)

...
Mr. P.M.Gaikwad, Advocate, h/f Mr. G.K.Muneshwar,
Advocate, for appellant.
Respondent (sole) served.
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CORAM : SUNIL P. DESHMUKH & P.R. BORA, JJ.
Dated: January 17, 2018
...

P.C. :-

1. Heard learned Counsel for the appellant. Despite service twice on the respondent, no appearance has been caused on his behalf.

2. Learned counsel Mr. P.M.Gaikwad, holding for Mr. G.K.Muneshwar, counsel for appellant, contends that the Family Court had been in error in declining divorce sought in the proceedings between the parties. Appellant has suffered a lot under the marital tie. Initially, an amount of Rs.50,000/-

had been expended in giving to respondent. A B.Ed. Course, had to be arranged by her side for him. However, after some time, there had been harassment towards demand of money. Appellant continued residing with him with hope that some day there would be change in the attitude and behaviour of the respondent. Appellant and respondent were staying in rented premises at Aurangabad. In September, 2012, respondent had suddenly left the house and company of appellant and since then has not reverted to her. In the meanwhile, appellant had filed some proceedings for maintenance, however, a settlement had been mooted, which did not come through. The appellant had learnt subsequently that respondent had married twice earlier; one wife had left him because of harassment, and the other had committed suicide. As such, she had lost hope in the marital tie. Under the circumstances, matter had been withdrawn by the appellant.

3. He submits, the callous and careless conduct of respondent, coupled with reasons as aforesaid, had impelled appellant to approach Family Court seeking divorce. Appellant had tendered evidence in support of her pleadings, however, the Family Court had cursorily dealt with the matter and dismissed the proceedings.

4. He submits that the callous and carelessness of the respondent further emerges and stands established by the fact that despite service twice, the respondent has not bothered to attend the proceedings in the Family Court Appeal.

5. Perusal of the pleadings does show that appellant has unequivocally averred that respondent had abruptly left company of the appellant in September, 2012, and since then had not reverted to the appellant. Appellant has referred to this aspect in her deposition as well. The evidence of the appellant had been un-challenged. Her pleadings and evidence do vividly show that respondent had left company of the appellant in September, 2012 and since then had not reverted with a view to cohabit with appellant.

6. Respondent had not attended to the Family Court proceedings nor has responded to the notices issued to him by this Court twice.

7. In the circumstances, appreciation of the matter by the Family Court does not appear to be in tune with averments and evidence. Consideration, which has apparently weighed about appellant having not pleaded anywhere that she was interested in saving the marriage, in the facts and

circumstances of the case, does not appear to be proper, for, indeed, the petitioner had waited for two years and, thereafter, the proceedings have been initiated. Respondent's conduct shows that he has deserted appellant since September, 2012. Further looking at the averments, pleadings, and the evidence of the appellant, which have gone unchallenged, lends credibility to the grounds for divorce claimed by appellant, particularly the desertion. It emerges that respondent had deserted appellant in September, 2012, and has not reverted thereafter.

8. In the circumstances, we allow the Family Court Appeal granting decree of divorce as prayed for. Consequently, Divorce Petition bearing No.A-527/2014 is allowed in terms as prayed for. The marriage between appellant and respondent, as such, stands dissolved.

(P.R. BORA)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

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