

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.115 OF 2017
WITH
SECOND APPEAL NO.142 OF 2017
WITH
CIVIL APPLICATION NO.335 OF 2017

Smt. Sushma Deepak Bhosale ..Applicant.

V/s.

Deepak Ramchandra Bhosale ..Respondent.

Mr.Vaibhav R.Gaikwad for the applicant.

Mr.Nikhil Wadikar i/b. Nandu Pawar for the respondent.

CORAM : A.M.DHAVALÉ, J.

DATE : SEPTEMBER 7, 2018

P.C.:-

The report of the Mediator dated March 28, 2018 indicates that the mediation has failed. Matter is heard finally.

2. Heard Mr.Vaibhav Gaikwad, the learned counsel for the appellant and Mr.Nikhil Wadikar, the learned counsel for the respondent.

3. The appellant herein is original respondent-wife.

Respondent-husband Deepak had filed H.M.P. No.24/2007 in the Court of Civil Judge, S.D. Satara for divorce, dissolution of marriage while wife filed H.M.P.No.230/2007 for restitution of conjugal rights. It is not disputed that the parties have one daughter by name Mrunal, aged 17 years who is a student of Twelfth standard. By common judgment dated October 16, 2014, the Civil Judge, S.D., Satara dismissed the petition of wife for restitution of conjugal rights and partly allowed the petition of husband and instead of granting decree of divorce granted judicial separation in favour of the husband. The ground of cruelty was not accepted, but decree was passed on the ground of desertion since 2002. Both the parties preferred appeals against the decrees against them.

4. The learned District Judge, Satara by judgment dated November 21, 2016 dismissed the appeal of wife being Civil Appeal No.51/2016 and allowed the appeal of the husband being Civil Appeal No.9/2015 and converted the decree of judicial separation into divorce. He confirmed the findings of the learned trial Court that there was desertion by the wife for more than the statutory period. The learned District judge has not accepted the

finding of trial Court that there is possibility of the parties coming together for co-habitation.

5. Mr.Vaibhav Gaikwad, the learned counsel for the appellant argued that the wife is even now ready to resume co-habitation as both the Courts have expressed concern over the future of their only daughter. He also relied on the fact that there is admission by the husband that in 2012 he was visiting the house of the wife. He submitted that it was the case of the wife that they were having physical relations during that period and there was no continuous desertion.

6. The facts on record disclose that both, the husband and wife are residing at Satara but in separate houses. The wife had left the husband in the year 2002. Though there were meetings held for bringing the parties together, those have failed. The husband claims that he tried to make up with his wife but could not succeed. On October 29, 2015 the wife sent one of her employees Balwant Patil with a vehicle to his house and he took away all household articles from the house of husband thereby declaring her intention to break relations with her husband

permanently.

7. Though husband and wife are residing in the same city, they are residing separately. Considering the area of Satara city, it is not acceptable that they are residing separately by mutual consent. The petition filed by the wife for restitution of conjugal rights has been rejected by both the Courts below. So far as the issue of desertion is concerned, on appreciation of facts, there are concurrent findings of both the Courts. Merely because the husband was visiting the wife in 2012, it cannot be said that desertion on the part of wife was discontinued. The wife is residing separately in the same city along with her articles for the last 15 years. There is no possibility of co-habitation.

8. The first Appellate Court has properly appreciated the facts. I find absolutely no perversity. In fact, the view taken by the first Appellate Court is the most probable view. There is no case that inadmissible evidence was considered and admissible evidence was ignored. There is no material to show that there was physical relations by the parties at any occasion or time. It is also reported that proper arrangement has been made for maintenance

of the wife and considering the fact that no substantial question of law is involved, no interference is called for in the concurrent findings recorded by the lower Courts with regard to desertion (with only discrepancy in the finding of the learned trial judge that there were chances of co-habitation, whereas the Appellate Court has held that there are no chances of co-habitation). Therefore, the decree of judicial separation has been converted into divorce. I find nothing wrong or anything contrary to the provisions of law in the findings recorded by the learned trial Judge. No substantial question of law arises. Both the appeals are dismissed in *limini*.

9. In view of the dismissal of the appeals, the civil applications, if any, also stand disposed of.

(A.M.DHAVALA, J.)