

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.190 OF 2017

Mr. Mahesh Yashwant Ayare,
Indian Inhabitant, Hindu
Age-36 years, Occ: Business,
Residing at:- A/304, Shreeji Vihar,
Link Road, Vasant Nagari,
Vasai (East),
Thane-401209

.....Appellant
(Org. Respondent)

V/s.

Mrs. Megha Mahesh Ayare
Indian Inhabitant, Hindu,
Age:28 years, Occ: Service,
Presently residing at:-2/4, Sankalp
Siddhi Chawl, Mahatma Kabir Nagar,
M.C.Chagla Marg, Andheri (East),
Mumbai- 400 099

And

Permanent Residential Address
at:- A/304, Shreeji Vihar, Link Road,
Vasant Nagri, Vasai (East)
Thane-401209

.....Respondent
(Original Petitioner)

Mrs. Ketaki Datar, Advocate for Appellant.
Mr. P.G.Sawant i/by Shri V.V.Rankhambe, Advocates for
Respondent.

**CORAM : R.M.SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE : 23RD FEBRUARY, 2018.

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

This Appeal under Section 19 of the Family Courts Act, 1984 is preferred by the Appellant-Husband against the judgment and order dated 19.7.2017 passed by the learned Judge, Family Court, Bandra whereby the Petition for divorce filed by the wife was allowed and the marriage between the Appellant-Husband and the Respondent-Wife solemnised on 18.5.2005 was dissolved. The learned Judge directed the Appellant-Husband to pay Rs.5,000/- per month towards the maintenance of the son till he becomes major.

2 Respondent-Wife presented the Petition before the Family Court, Bandra for dissolution of marriage on the ground that she was treated by the Appellant-Husband with cruelty. It is her case that the sustained unjustifiable conduct of the husband coupled with the physical violence and persistent harassment on account of alleged extra-marital relationship had left her with no alternative but to seek dissolution of the marriage.

3 It appears from the record that the husband did not cross-examine his wife though enough opportunity was afforded to him by setting aside the 'No Cross' order dated 19.11.2014 passed by the learned Judge, Family Court, Bandra. It appears that the husband had intentionally avoided to cross-examine his wife and, therefore, finally on 5.2.2016, the learned Judge Family Court,

Bandra proceeded with the case, dissolved the marriage by the judgment and order dated 19.7.2017 but till then husband did not request the trial Court to afford the opportunity to cross-examine his wife.

4 That before dealing with the grounds urged in the Appeal, it may also be stated that one of the grounds is, that since he could not cross-examine his wife, parties may be relegated to the trial court by affording an opportunity to the husband to cross-examine his wife.

5 We have gone through the judgment and pleadings of the parties minutely. Record shows, wife had filed her affidavit- in-lieu of evidence, on 9.9.2014 and the husband was called upon to cross-examine her. He did not cross-examine and, therefore, the learned Judge was pleased to pass a 'No Cross' order on 19.11.2014. It appears that the said order was set aside but even thereafter, the husband did not cross-examine the wife and as such, the learned Judge proceeded with the Petition by passing the 'No Cross' order on 5.2.2016. In the given set of facts, we do not see any reason to hold that the husband was prevented by any unavoidable circumstances from cross-examining his wife and, therefore, we decline to relegate the parties to the trial Court by affording one more opportunity to the husband to cross-examine his wife. We, therefore, reject this ground.

6 It may be stated, that in the course of the hearing of the above Appeal, the learned counsel appearing for the Respondent-Wife has placed on record the judgment and order dated 24.7.2017 passed by the Assistant Sessions Judge No.1, Vasai in Sessions Case No.38 of 2014. We have taken the said judgment on record and perused the same.

7 This Sessions Case was arising out of the Crime No.I-506 of 2013 for the offences punishable under Sections 498A, 307 and 342 of IPC registered by the wife against the Appellant-Husband and he was tried for the same. It is disclosed in the said judgment that wife was examined as Prosecution Witness No.1 wherein she had narrated as to how her husband had physically assaulted her recurringly and brought on record circumstances to hold that she was subjected to physical assault since her marriage till 15.8.2013, a day on which crime was registered against Appellant-Husband. It appears from the judgment in the said Sessions Case, that the Appellant-Husband while cross-examining his wife had suggested, about her alleged extra-marital relationship with 'X'. It appears from paragraph 20 of the said judgment that Husband had suggested her in terms; "that packet of condoms was found near bed and that "Mr.'X' with whom his wife allegedly had relationship had visited the house in his absence."

Besides, it appears that the Husband had filed an affidavit in

lieu of his evidence in the Family Court and made scandalous, vulgar, derogatory, defamatory and baseless allegations against his wife. The said allegations relate to her alleged illicit relationship with Mr.'X'. The learned trial Judge in paragraph 12 of his judgment has dealt with such unfounded allegations which were not forming the part of the Written Statement. Thus, after perusing the pleadings of the parties and the evidence led in the trial Court as well as after perusing the judgment in Sessions Case No.38 of 2014, we see no reason to interfere with the impugned judgment and order dated 19.7.2017 passed by the Family Court, Bandra for the reasons which are more than one.

8 The Respondent-Wife in her evidence before the Family Court, Bandra has given a complete account of assaults and physical torture caused to her at the hands of her husband on different occasions soon after her marriage. She has elaborately stated various incidents which had taken place on the public road where she was assaulted by her husband and dragged to the residence mercilessly. She has stated about the incident of January, 2011, April, 2011, April, 2012. She has also stated about the intervention by police and her hospitalisation in January, 2011 after assault. In evidence, she would say that on 15.8.2013, she was brutally assaulted by the husband and had sustained as many as ten injuries. She was admitted in the hospital nearly for ten days.

This incident was reported to the police and the offence punishable under Sections 307 and 498A of the IPC was registered against the husband. We cannot ignore the fact that by judgment and order dated 24.7.2017, the husband came to be convicted for the offences punishable under Section 498A of IPC and was sentenced to undergo RI for two years. The husband is also convicted for the offence punishable under Section 323 of the IPC and sentenced to undergo RI for one year.

9 The learned counsel appearing for the Appellant-Husband submitted that the Appeal is preferred against the judgment and order passed in the Sessions Case No.38 of 2014 and, therefore, the findings recorded in the said judgment against the husband are not conclusive in nature. The learned counsel would, therefore, urge that the finding recorded in the said judgment may not be considered while dealing with the present Family Court Appeal. She would, further, urge that since evidence of his wife has gone unchallenged, the Appellant-Husband may be granted an opportunity to cross-examine his wife and , therefore, parties may be relegated to the trial Court. She would, therefore, urge that the judgment and order may kindly be set aside.

10 The Petition was filed by the Wife under Section 13(1) (ia) of the Hindu Marriage Act as she was subjected to not only physical assault but also inflicted with mental cruelty alleging

infidelity by making reckless, baseless allegations against her character. She was put to harsh and baseless suggestions in the course of cross-examination in the said Sessions Case as could be seen from paragraph 20 of the said judgment. All such allegations were made by giving baseless suggestions which itself constitute cruelty. Besides in the Family Court, Husband had ventured to make scandalous, vulgar and baseless allegations against his wife relating to alleged illicit relationship with Mr.'X' which were admittedly not part of the Written Statement.

11 Thus, on consideration of the evidence on record, we are of the view that the Appellant-Husband treated his wife-respondent with all possible humiliation and rendered her life miserable. That such sustained unjustifiable conduct of the Appellant-Husband has affected her physical and mental health.

12 In the circumstances, after going through the evidence on record and the judgment in the Sessions Case whereby the husband has been convicted as aforesaid, we see no reason to interfere with the impugned judgment and order passed by the Judge of the Family Court, Bandra. The above Family Court Appeal is, accordingly, dismissed.

(SANDEEP K. SHINDE, J)

(R.M.SAVANT, J)