

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 110 OF 2012

Hemant Ramchandra Kadu ... Appellant
Vs.
Sou. Vaishali Hemant Kadu ... Respondent

Mr. Anand S. Patil, Advocate for the appellant.
Ms. Priyanka Thakur, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 10th April, 2018.

P.C.:

The appellant/husband has filed Marriage Petition No. 86 of 2005 for decree of nullity and alternatively for divorce under sections 12 and 13 of Hindu Marriage Act. The marriage took place on 28th December, 2002. It was an arranged marriage. After marriage, the appellant could not establish any physical relationship with the respondent, as she did not have any desire to have sexual relations with the appellant/husband. It was alleged by the appellant that the respondent was having various ailments and therefore, she was not ready to have physical relationship and avoided him.

2. After notice, the respondent/wife appeared. She filed written statement and contested the petition wherein she denied all the

allegations. Both the parties examined their witnesses. The learned Civil Judge Senior Division, Panvel by its judgment and order dated 25th September, 2008 dismissed the Petition with costs. The said judgment and order was challenged by the appellant/husband in Civil Appeal No.167 of 2008 before the District & Sessions Judge-3, Raigad-Alibag. The said Appeal was dismissed with costs and the judgment and order in H.M.P. No. 86 of 2005 passed by the learned Civil Judge Senior Division, Panvel was confirmed. Hence, this Second Appeal.

3. At the outset, the learned counsel for the appellant and the learned counsel for the respondent both have submitted that the appellant and respondent have now remarried during the pendency of this Second Appeal, though the marriage is in existence. The learned counsel for the appellant submitted that the appellant remarried in the year 2013. The learned counsel for the appellant submitted that the parties have been staying separately for more than 12 years, as they performed their marriage in the year 2002. He submitted that there was no consummation of marriage and the appellant was entitled to decree of nullity.

4. The learned counsel for the respondent submitted that the respondent remarried in the year 2017, however, she submitted that she do not have any other instructions, as the respondent cannot be contacted.

5. The substantial question of law is as under:

“Whether the trial Court and First Appellate Court have failed to appreciate the ground of non-consummation of marriage and refusing the decree of nullity.”

6. Perused both the judgments. The trial Court and the First Appellate Court both have mainly discussed the evidence on the ground of cruelty and have stated that the mental cruelty is not proved by the husband. The appellant/husband has tendered evidence specifically that there was continuous denial on the part of respondent to have sexual relationship and the marriage was not consummate. This particular fact is not properly taken into account by the First Appellate Court.

7. In view of the facts of the case and the subsequent events, I am of the view that there is no point in keeping the wedlock in tact

but grant of decree of nullity will meet the ends of justice. Hence, Second Appeal is allowed and the decree of nullity of marriage under section 12 of Hindu Marriage Act is to be drawn accordingly.

(MRIDULA BHATKAR, J.)