

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.15 OF 2019

Ratnamalabai w/o Sunil Sadashive,
Age 40 years, Occu. Household,
R/o Milindnagar, Besides the house of
K.V. More, Ex-Corporator, Osmanpura,
Aurangabad

... **APPELLANT**

VERSUS

Sunil s/o Magan Sadashive,
Age 50 years, Occu. Labour,
R/o Ramnagar, Galli No.1,
Taluka and District Aurangabad

... **RESPONDENTS**

.....
Shri P.S. Shinde, Advocate for appellant
Mrs. K.P. Mutatkar, Advocate for respondent
.....

**CORAM: SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.**

DATE : 5th April, 2019.

JUDGMENT (PER : R.G. AVACHAT, J.):

1. The challenge in this appeal is to the judgment and decree dated 25.5.2016, passed by the Principal Judge, Family Court, Aurangabad in Petition No.A-84/2011 for dissolution of marriage, by decree of divorce. By the impugned judgment and decree, the petition has been dismissed. The Appellant (Petitioner) has, therefore, preferred this appeal.

2. Heard Mr. Shinde, learned counsel for the appellant and Mrs. Mutatkar, learned counsel for the respondent.

3. The appellant is the wife of the respondent. Their marriage took place way back in May 1989. The couple had happy married life for first ten years. Thereafter fights between the two ensued over trifles. The couple has no issue. As it had become difficult to pull on together, both started living away from each other. In September 2012, the couple even executed a deed of divorce and got it registered. For about 15 years the couple had been staying away from each other next before institution of the petition for divorce.

4. The appellant/ petitioner claimed dissolution of her marriage by decree of divorce on the ground of cruelty and desertion. Before the Family Court, the respondent/ husband did not appear in response to the notice of the petition. He was proceeded ex parte. The petitioner wife gave her evidence, reiterating the averments in the petition. A copy of the registered deed of divorce has also been tendered in evidence. The averments therein suggest that the petitioner and the respondent had realised that it would not be in their interest to continue to have their marital relations in view of there being frequent quarrels over petty issues.

5. On appreciating the evidence, the Family Court dismissed the petition mainly on the ground that the parties to the petition have been living separately by consent of each other.

6. We do not find the approach of the trial Court to be in consistent with legal position. We are, however, inclined to allow the petition in peculiar facts and circumstances of the case.

7. The averments in the petition undoubtedly indicate the petitioner wife to have sought for decree of divorce on the ground of cruelty and desertion. The respondent/ husband consciously preferred to allow the petition decided ex parte. The conduct of the respondent / husband suggests that, he admits the grounds on which the decree of divorce has been sought. Before us also, the Advocate for respondent submitted for passing necessary orders. As such, the grounds on which the dissolution of marriage has been sought for, went unchallenged. The parties have been residing away from each other for over 15 years. It is a case of irretrievable breakdown of the marriage. True, it is not a ground for granting the decree of divorce. Fact, however, remains that, the respondent/ husband tacitly admits the grounds on which decree was sought for.

8. In the aforesaid factual backdrop, we are inclined to allow the appeal in terms of the following order :

ORDER

- (i) Family Court Appeal No.15/2019 is allowed.
- (ii) The order/ decree dated 25.5.2016, dismissing the marriage petition is hereby set aside.
- (iii) Marriage Petition No.A-84/2011 is allowed.
- (iv) The marriage between the appellant/ petitioner and the respondent stands dissolved by decree of divorce.
- (v) No costs.

**R.G. AVACHAT
JUDGE**

**SUNIL P. DESHMUKH
JUDGE**

fmp/