

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.48 OF 2017

Ajay s/o Govindrao Ankush,
Age 34 years, Occupation Advocate,
R/o. Krishinagar, AUSA Road, Latur.

**..Appellant.
(Ori.petitioner)**

VERSUS

Sow. Rukmin @ Anjali w/o Ajay Ankush,
Age 30 years, Occupation Household,
R/o. C/o. Baburao Gangaram Kolase,
At Post : Tagarkheda Tq. Nilanga
Dist. Latur.

**..Respondent.
(Ori.Respondent)**

.....
Advocate for Appellant : Mr. S. S. Panale.
Advocate for Respondent : Mr. M. B. Kolpe.
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**[CORAM : SUNIL P. DESHMUKH AND
SMT. VIBHA KANKANWADI, JJ.]**

DATE : 14th NOVEMBER, 2019.

JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Present appeal has been filed by the original petitioner/ husband who had filed petition seeking dissolution of marriage between him and respondent wife under Section 13 (1) (i-a) (i-b) of Hindu Marriage Act 1955, in Petition No. A-56 of 2017. The Judgment and decree of dismissing the said petition was passed by learned Judge of the Family

Court, Latur on 29-04-2017.

2. Before considering the disputed facts it is necessary to consider the admitted facts. (Parties are referred to as 'husband' and 'wife hereinafter'). The couple got married as per Hindu rites and customs on 24-03-2008. They have been blessed with son. The husband is a practicing lawyer at Latur. He resides with his parents and brother. The parents of the wife reside at Tagarkheda Tq. Nilanga Dist. Latur. It is further an admitted position that, the husband had filed petition for restitution of conjugal rights bearing Hindu Marriage Petition No.97 of 2012 before Civil Judge, Senior Division, Latur and the said petition was decreed on 15-06-2013. The said decree has achieved finality. It is also not in dispute that, since prior to the said petition for restitution of conjugal rights the parties are residing separately and the son is with the husband.

3. With the aforesaid background the husband had contended that, the wife was never interested in leading a happy matrimonial life. She resided with him for first three to four months at Latur but then thereafter started to visit her parents house frequently and on many occasions even without informing the husband. The wife was then insisting the husband to take separate residence and used to

quarrel with him as well as his family members. Due to her adamant and cynical attitude, the husband was required to undergo several incidences of insult and humiliation in front of his friends, parents and relatives. It is stated that, the wife used to get violent and uncontrollable on many times. She used to get angry and loose temper, and therefore, she was referred to Dr. Pratap Panhale, a psychiatrist at Latur. He had prescribed medicines to her. According to the husband, her behaviour with him as well as with his relatives was cruel and rude. The parents, brother and brother-in-law of the wife used to instigate her. A meeting was held in January 2010 when the wife had abruptly gone to her parents house without informing the husband. But thereafter, the respondent went to her parents house in February 2010 for delivery. After the delivery i. e. on 08-04-2010, the wife did not return to her matrimonial home. The several attempts made by the husband and his family members, were in vain. The husband therefore sent a legal notice to her on 16-09-2010 calling upon her to join his company, but there was no response from the wife. Again with the negotiations husband has to accept the hard condition put forward by the wife and he started residing separately with wife and son in a rented premises from 03-10-2010. This adjustment by the husband also could not have

positive effect on the wife and her behaviour with the husband continued. Her parents used to call her even for petty reasons and without informing and taking care of the husband and child, the wife used to go. On 17-02-2012 she left the house by representing that, her mother is ill and she did not take even her little son with her. It was promised by her that she would return in two days, but then again she refused to join the company of the husband. The husband is looking after the upbringing of the child single handedly. He as well as his parents again tried to bring the wife back but again it did not yield any positive response. As the wife had left the husband, he had joined his parents with the son and again due to the talks of settlement, because of the insistence by the wife and her relatives, accepted the condition of residing separately. He took house on rent from 03-03-2012, but on 27-03-2012 the brother-in-law of the wife abused the husband, and therefore, the husband was compelled to file a complaint with police station in Latur. The wife used to raise quarrels with him for no reason at all. She had started giving threats that she would commit suicide and implicate the husband and his family members in a crime. She was not performing any household work. She left the house of the husband on 11-04-2012 with gold ornaments and money. This time also she did not take the

son along with her. She did not positively respond to the requests of the husband thereafter. Again a legal notice was issued by the husband on 23-04-2012 through advocate which was not replied by the wife. It was resulted in filing the petition for restitution of conjugal rights by the husband and in spite of passing the decree in his favour and against the wife; the wife did not join the company of the husband as per the order. On these grounds the husband has prayed for dissolution of the marriage with the respondent.

4. The wife has filed written statement and contested the petition. She has denied all the allegations levelled against her and her relatives. It is denied by her that, she was never interested in cohabiting with the husband and leading a happy married life. She denied that, she used to go to visit her parents house on trifle grounds also. All the other allegations about her behaviour as rude, adamant, anti matrimonial etc. have been denied specifically. It is denied that, every time the husband had compromised with her and brought her back to matrimonial home. It is also denied that, due to her insistence, the husband had taken houses on rent. It has been contended that, the decree in the petition for restitution of conjugal rights has been obtained by the husband by fraud. The written

statement was not filed on record and she did not cross-examine or put forward any evidence challenging the said Judgment and decree. It is stated that, since the husband is practicing advocate at Latur Bar and she as well as her family members are very poor, she could not give fight to the husband in the said legal battle. It is stated that, the husband was ill-treating her on the ground of disliking and it was his say that, he has performed the marriage due to the pressure from the parents. The wife has contended that, the husband has a girlfriend, and she had given threat to her on mobile phone and asked to take divorce. It is stated that, the husband wants to get divorce only to marry with that girlfriend.

5. Taking into consideration the rival contentions, issues were framed. It will not be out of place to mention here that, initially it was the matter filed before the Civil Judge, Senior Division, however after the establishment of the Family Court at Latur, the matter has been transferred. Taking into consideration the evidence on record and hearing both sides, the learned Judge of the Family Court has dismissed the petition and hence the present appeal has been filed.

6. Heard learned advocate Mr. S. S. Panale for appellant-husband and learned advocate Mr. M. B. Kolpe for respondent-wife.

Taking into consideration the submissions, following points arise for determination, findings and reasons for the same are as follows ;

(i) Whether the husband had proved that, the wife had subjected him to cruelty as contemplated under the Act ?

(ii) Whether the wife had deserted the husband without any sufficient cause ?

(iii) Whether the Judgment and decree passed by the learned Judge, Family Court, Latur deserves interference ?

7. The pleadings in respect of ground of cruelty as well as desertion raised by the husband are common, and therefore, they are taken up together for discussion. At the outset it is to be noted that, a court of competent jurisdiction had passed the Judgment and decree in Hindu Marriage Petition No.97 of 2012 on 15-06-2013 directing the wife to resume cohabitation. Admittedly the wife has not filed any appeal challenging the said Judgment and decree nor it has been got set aside from the competent Court on any other ground. Perusal of the said Judgment would show that, it was held by the said Court that, the husband has proved that the wife has deserted him without any reasonable cause. While dealing with this

point, the learned Judgment of the Family Court has unnecessarily taken the point to be proved by the husband that, since 11-04-2012 the wife has deserted him without any reason. When the decree was passed on 15-06-2013 it had covered the period from 11-04-2012. Hence, now in this petition it ought to have been considered by the learned Judge, as to whether in spite of having decree of a competent Court in respect of restitution of conjugal rights, since the wife has not joined the company of the husband, whether it amounts to desertion or not. It appears that, the said point has not been properly considered by the learned Judge. The written statement as well as the examination in chief of the wife is very much silent on the point as to why she did not join the company of the husband after 15-06-2013. It was expected by the learned Judge of the Family Court that, after the decree was passed in the said petition i.e. Hindu Marriage Petition No.97 of 2012, the said decree ought to have been brought to the notice of the wife by the husband. This is on the assumption by the learned Judge that, till May 2013 the wife was residing with the husband. This conclusion has been drawn by the learned Judge on the basis of prescription issued by Dr. Pratap Panhale dated 02-05-2013, and his advice to hospitalize the wife from 17-05-2013. Important point to be noted is that, the said

document was unexhibited and by using provisions of Section 14 of the Family Courts Act 1984, the same has been exhibited by the learned Judge. No doubt Section 14 of the Family Courts Act 1984 gives power to the Family Court to consider the document though it remained unexhibited, but before doing so the learned Judge ought to have sought an explanation from the parties in respect of the said document. Abruptly the said document ought not to have been so exhibited at the time of Judgment and then to be interpreted as per his own wish, though there was absolutely no background laid by the wife supporting the said document. It was not even pleaded by the wife that she was residing with the husband on 02-05-2013 or 17-05-2013. At the cost of repetition it can be said that, the written statement is nothing but only the denials and no special pleadings have been raised by the wife. Under such circumstance, the document which was then exhibited at the time of pronouncement of Judgment cannot be interpreted in absence of any pleadings supporting to the wife. What was important was, as to whether any explanation has been given by the wife for not resuming her cohabitation with the husband after the decree for restitution of conjugal rights passed against her. As aforesaid she has not explained it in any way. Under such circumstance, it will have to be

accepted coupled with the concluded finding in that proceeding that the wife has deserted the husband without any sufficient reason for more than two years.

8. Desertion for more than two years as contemplated under Section 13 (i-b) of the Hindu Marriage Act will also amount to cruelty, and therefore, on this ground also the husband deserves decree for divorce. The grounds of cruelty raised in the petition by the husband have been narrated by the learned Judge of the Family Court in para No.21 from (A) to (N). We do not want to repeat those grounds but all those grounds have been brushed aside by the learned Judge of the Family Court on the ground that the husband has not given specification of any single incident in the plaint. The dates of the incident have not been given and according to the learned Judge, all those allegations are vague and general in nature. It is to be noted that, the husband has stated that the wife used to go frequently to her parents house. Under such facts, it was not expected from the husband that, he would give dates on which the wife left home to her parents house and returned back. Such expectations are not there under law when it take place many times. However, from the plaint which has then been supported by the

husband on oath would show that, many times the wife used to go to her parents house by leaving their small child with the husband. Except denial there is nothing in the testimony of the wife. It is not in dispute that, the son is in the custody of the husband. In her cross-examination the wife has categorically admitted that, when she went to her parents house on 11-04-2012, she had not taken the son with her. Her son was hardly two years of age at that time. Then what could have been the reason for her to leave her small child with the husband is a question which has absolutely not been answered in her examination-in-chief. She has not even taken care to make inquiry where her son is taking education. By improvising her stand she has stated in her cross-examination that, the husband was not allowing her to meet the son. If that would have been the fact then the mother within her would not have kept quite. She has not given details of efforts, she had made to shower her love and affection on her son at his young age, or to obtain his custody.

9. Another fact to be noted from the testimony of the husband as well as wife is, twice the husband had taken house on rent, and only the husband and wife, and later on the son were residing in the said house. The wife has not explained as to under which circumstance

they had started residing separately from the other family members. Again at the cost of repetition it can be said that, except denial there is nothing. Therefore, taking into consideration the testimony of the husband which is partially supported by the wife that they were residing separately, it supports the contention of the husband that, it was due to the insistence by the wife the said step was taken by the husband. In spite of accepting her terms, it appears that the wife was not co-operating the husband and was not leading her marital duties.

10. The wife has made wild allegations against the husband in the written statement as well as in the examination-in-chief in respect of the fact that the husband had girlfriend. But in her cross-examination she has admitted that, she had never seen the lady nor she was aware about her name and address, and in clear terms she admitted that, it was her hearsay information. The learned Judge of the Family Court did not consider these allegations as wild or baseless. Then the question arises that, what more is expected ? When there was absolutely no information, yet on the basis of some hearsay statement, whether questions can be levelled against the character of a person ? Under those circumstances, when she had

not even made any inquiry nor made any complaint with her parents about the alleged girlfriend, then it will have to be held that, those allegations were wild and baseless. The ratio laid down in Dr. N. G. Dastane V. Mrs. S. Dastane, reported in A.I.R. 1975 S.C. 1534, were applicable in this case. In fact, the list of allegations made by the husband from "A" to "N" given by the learned Judge of the Family Court in his judgment, which were the grounds on which the husband was seeking divorce, have been brushed aside by saying that, those allegations are vague and general. But then when it came to specific allegation about having a girlfriend, and for her, the husband wanted divorce from the wife, were found by the learned Judge of the Family Court as not wild and baseless. This is the perversity in the Judgment. When the wife left the home on 11-04-2012 admittedly, leaving the small child of two years, and is not assigning any reason, then definitely such act on the part of the wife amounted to cruelty for the husband, so also the other acts referred above amounted to cruelty. Even if for the sake of arguments it is accepted that, some of the grounds from "A" to "N" might not have been strictly proved by the husband yet the aforesaid circumstances amounting to cruelty have been proved by the husband entitling him to get a decree of divorce. The learned Judge of the Family Court

has not appreciated the evidence properly, and it appears that unnecessary sympathy has been shown in favour of the wife. Therefore, the said Judgment and decree deserves to be interfered with. Hence, following order.

ORDER

- (1) The appeal is hereby allowed.
- (2) The Judgment and decree passed in Petition No. A-56 of 2017 (Old Hindu Marriage Petition No.186 of 2015) by Family Court Latur, dated 29-04-2017, is hereby set aside. The said petition stands decreed.
- (3) It is declared that, the marriage between the petitioner and the respondent is hereby dissolved by this decree of divorce.
- (4) No order as to costs.

**[SMT. VIBHA KANKANWADI]
JUDGE**

**[SUNIL P.DESHMUKH]
JUDGE**

vjg/-.