

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 SECOND APPEAL NO.89 OF 2020
WITH
CIVIL APPLICATION NO.2442 OF 2020

DILIP JIJABAPU ZINJURDE

VERSUS

SAVITA DILIP ZINJURDE

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Mr. S.S. Chapalgaonkar, Advocate for the appellant

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th AUGUST, 2021.

ORDER :

1 Present appeal has been filed by the original petitioner to challenge Judgment and Decree passed by learned District Judge-1, Kopargaon, Dist. Ahmednagar in Regular Civil Appeal No.08/2012, thereby the appeal filed by the present respondent-original respondent came to be allowed on 04.12.2019 and thereby the decree of divorce passed by the Trial Court came to be set aside by dismissing the petition.

2 Present appellant-original petitioner filed Hindu Marriage Petition No.28/2004 before Civil Judge Senior Division, Kopargaon for

divorce on the ground of cruelty and desertion. The said petition came to be allowed on 05.12.2011 and, as aforesaid, the appeal filed by the original respondent-wife came to be allowed by the First Appellate Court, thereby setting aside the Judgment and Decree passed by the Trial Judge. Hence, this Second Appeal.

3 Heard learned Advocate Mr. S.S. Chapalgaonkar for the appellant. In order to cut short, it can be said that he has argued in support of his contentions.

4 It is not necessary to issue notice to the respondent, unless the appellant shows that substantial questions of law are arising in this case, as contemplated under Section 100 of the Code of Civil Procedure, 1908, requiring admission of the Second Appeal.

5 It is not in dispute that the marriage between the parties i.e. husband and wife got solemnized on 19.01.1995, as per Hindu rites and they have three children out of the wedlock.

6 The petitioner-husband had contended that the acts of the wife, that is, quarreling on petty issues, leaving him oftenly, insulting him, filing criminal cases against him and staying away from him since prior to 04.03.2003 amounted to cruelty and desertion. The respondent denied all

the averments and she submitted that the petitioner addicted to liquor and used to ill-treat her. She as well as children were beaten by the petitioner on 03.03.2002 and were driven out of the house. Notices were sent for creating of evidence. She had replied one of the notices. She started cohabitation with the petitioner for the betterment of the children, however, again there was harassment by the petitioner under the consumption of liquor. When she was beaten mercilessly, she had to file report with Rahta Police Station. So also, she had filed petition for getting custody of the children.

7 The learned Trial Judge found that evidence led by the petitioner is sufficient to prove that the respondent had behaved with cruelty with the husband and there is desertion by the wife. However, the same facts and evidence has led to the First Appellate Court to give the findings in the negative. Merely because the findings are not concurrent, that does not *ipso facto* lead to the admission of the case and framing of substantial questions of law, as contemplated under Section 100 of the Code of Civil Procedure 1908.

8 It appears that only two proceedings were filed by the wife against husband; one was the case under Section 498-A of the Indian Penal Code, wherein he was acquitted and another was Miscellaneous Application No.2/2005 before Kopargaon Court for getting custody of the children. Per se, acquittal from that case under Section 498-A of the Indian Penal Code will

not conclude that the wife was making false allegations. In order to show that those allegations were false, more than some oral evidence was required. Since the things happen within the four walls of the house between husband and wife, the more possibility is in respect of oral evidence against oral evidence. The question arises, who is then to be believed. Taking into consideration the Indian scenario, when there are three children born from the wedlock, the wife may not resort to filing of false cases. Definitely, she would be having the point of betterment of the children in her mind. The cross-examination of the husband, therefore, would be the crucial point for assessment of evidence. Here, in this case, the learned First Appellate Court has considered the entire cross-examination and the admissions given by the husband. He has admitted that after the report was filed against him, he had gone to have some talks about bringing the wife back for cohabitation. That means, no such attempt was made by him prior to that. Further, there was a prompt reply by the wife to the notice issued by the husband. If, according to the wife, the custody of the children was forcibly taken from her, then her attempt to resort to the legal mode of obtaining custody by filing application before Judicial Magistrate First Class cannot be viewed with suspicion and it cannot amount to cruelty. No doubt, frequent filing of criminal cases with knowledge that contents therein are false may amount to cruelty, but evidence to that effect has to be brought on record by the husband. Here,

that faith in the evidence is lacking. In fact, there was absolutely no attempt by the husband to take the wife back for cohabitation. The wife, on the contrary, has even stated in her written statement that she is ready to resume cohabitation. Under such circumstance, the assessment of the evidence done by the First Appellate Court and the conclusion drawn is correct. No substantial question of law is arising in this case. Second Appeal, therefore, stands dismissed. Civil Application No.2442 of 2020 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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