

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO.912 OF 2018
WITH
CIVIL APPLICATION NO.14420 OF 2018
IN SA/912/2018**

BANDU UTTAM ANARSE
VERSUS
SOU. JANABAI @ ANITA BANDU ANARSE

...
Advocate for Appellant : Mr. N. V. Gaware
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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 24-08-2021.**

ORDER :

1. Present appeal has been filed by original petitioner husband challenging the reversal of the decree of divorce by learned District Judge-9, Ahmednagar in Regular Civil Appeal No.429 of 2011 on 11-01-2018. The appellant/petitioner had filed Hindu Marriage Petition No.66 of 2008 before Civil Judge Senior Division, Shrigonda, District Ahmednagar, for divorce on the ground of cruelty i.e. under Section 13(1) (1-A) of the Hindu Marriage Act, 1955. It came to be allowed on 02-11-2011 and the marriage between the appellant and the respondent was dissolved.
2. Heard learned Advocate Mr. N. V. Gaware for appellant.

3. At the outset, unless the appellant shows framing of substantial questions of law is possible in the present second appeal, it need not be admitted.

4. It is not in dispute that the original petitioner and the respondent got married on 19-05-1997 and they have two children out of wedlock. It is also not in dispute that the husband was residing in a joint family.

5. The husband had come with a case that the wife was behaving in such a manner that it amounted to harassment mentally as well as physically to him and his parents. She was not giving proper honour to his parents and also to him but she used to insult them as well as used to give continuous threat to commit suicide. In spite of trying to give a word of advice, her behaviour had not changed. It is also alleged that she was not looking after the children properly and used to assault them on trifling grounds. She used to give a phone call from the telephone from the house of his uncle on a mobile number which has been provided in the pleadings and it is noted that in one month there were about 35 to 40 calls. The name of the person holding the mobile was revealed and when she was asked

about that person, the wife told that she has no desire to cohabit with the petitioner and started demanding a divorce. There was a dispute in the house on 10-10-2007. When the children had gone to school, the petitioner had gone to his office, his parents had gone to the field, the wife took away documents, other movables and clothes. Husband gave notice through Advocate to the wife on 08-11-2007 and called her for cohabitation, she replied the same, however did not join. Hence, the husband filed the petition.

6. The wife denied all the allegations and it is her contention that since the beginning there was pressure from the husband and in-laws that she should bring an amount of Rs.2,00,000/- to purchase land. She was harassed mentally and physically. She sustained the same as in the meantime she gives birth to children. Later on, the behaviour of the husband started to change and he was raising suspicion over her character. She was driven out of the house in October 2007. On the next day, she went along with her mother and brother with a request that she should be allowed to cohabit, however, they were abused and the husband flatly refused by saying that since he is in service, he would get more wives. When he did not make any arrangement for her maintenance, she filed a petition

for maintenance before Judicial Magistrate First Class, Karjat.

7. As aforesaid, the Trial Court held that the wife had behaved with cruelty to the husband and, therefore, the husband is entitled to get a decree of divorce, however, the said decree of divorce has been reversed by the Appellate Court.

8. At the outset, it is to be noted that the husband is levelling allegations of adulterous behaviour of the wife only on the point that she had called on a mobile number from the landline of his uncle. Such kind of allegations are beyond imagination. Only frequent calls given to a particular number will not amount to adultery. Further, the uncle, who has been examined in this case, clearly admits in his cross-examination that he had not noted the numbers on which she had called and he has not heard the conversation. Further, it has also come on record that the husband was living in a joint family and some members of their family used to be at home all the time. They have not seen the person whose name has been given coming to their house or they have not seen the lady meeting that person at any place, then how such dirty allegations can be levelled against the character of a lady. In fact, this itself amounts to the cruelty by the husband to the wife.

9. Another allegation is that the wife used to give frequent threats to commit suicide. The husband is not explaining as to what action he had taken. He has not filed any complaint against the wife for giving unnecessary threats to him nor he had taken her to a respectable person or tried to advise her through police or proper authority that she should not give such kind of threats. It is hard to believe that a mother of two children would give a threat to commit suicide unnecessarily. It was tried to be contended by the learned Advocate for the appellant that she left the house in 2007 and till today she has not even made inquiry about her children. The important point to be noted is that this was not the ground raised in the petition by the appellant. Merely because now much time has elapsed, we cannot say that her silence or inaction to take custody of the children, is an act of cruelty to the husband.

10. In the written statement, the wife has clearly stated that she has a desire to cohabit with the husband, but the husband has passed a pursis during the course of the trial itself that he has no desire to take her back for cohabitation. This explains the attitude of the husband that he will not settle less than divorce. There are words against words as to the alleged attempts to settle the dispute,

but a fact is required to be noted is that the husband had initially sent notice to the wife asking her to resume cohabitation, however, instead of filing a petition for restitution of conjugal rights, he files a petition for divorce. Then as aforesaid, in the petition, when the wife says that she would cohabit with the husband, the husband refuses. Under such circumstances, the reversal of the decree by the First Appellate Court is perfectly correct. The First Appellate Court has rightly considered the oral evidence and the aspects of law involved. No substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case, hence, the second appeal is dismissed at the threshold. Pending civil application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.08.26
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