

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 SECOND APPEAL NO.299 OF 2021
WITH
CIVIL APPLICATION NO.6731 OF 2021

KANCHAN W/O TEJAS DESHMUKH
VERSUS
TEJAS SUBHASHRAO DESHMUKH

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Mr. Sachin S. Deshmukh, Advocate for the appellant

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th JULY, 2021.

ORDER :

1 Present appeal has been filed by the original respondent challenging the Judgment and Decree passed by learned Principal District Judge, Nanded in Regular Civil Appeal No.23/2015 on 05.02.2020, thereby allowing the appeal by reversing the Judgment and Decree passed by learned Joint Civil Judge Senior Division, Nanded on 09.01.2015 in Hindu Marriage Petition No.104/2013. By the said Decree the learned Principal District Judge, Nanded has devolved the marriage between appellant and the respondent.

2 Before turning to the disputed facts, what is admitted is that the marriage between the original petitioner and respondent was solemnized on 21.04.2006 as per their custom and usage. After the marriage the respondent-wife cohabited at village Balegaon with petitioner. They have son out of the wedlock born on 05.07.2007.

3 The petitioner-husband filed the petition for divorce on the ground of cruelty levelling allegations in particular that the wife refused to cohabit with him, on the ground that he is not having Government job and not a rich person. Wife left the matrimonial home on 02.11.2007 under the pretext of Diwali festival but did not show readiness to join the company. According to the husband, the wife has deserted him willfully, and therefore, he prayed for the dissolution of the marriage.

4 The petition was resisted. She denied the allegations about desertion of the husband by her willfully and her insistence about taking up of a Government job by the husband as a condition for cohabitation.

5 Parties have led oral as well as documentary evidence. The petition was rejected by learned Joint Civil Judge Senior Division, Nanded on 09.01.2015. However, as aforesaid, the learned Principal District Judge, Nanded allowed the petition holding that the desertion by the wife is willfully

and it amounts to cruelty.

6 Learned Advocate appearing for the appellant vehemently submitted that the learned Principal District Judge, Nanded failed to consider the evidence in proper perspective and wrongly held that the wife has willfully deserted the husband. He failed to consider that the appellant has filed application under Section 18 of the Hindu Adoption and Maintenance Act as well as under Section 125 of the Code of Criminal Procedure, 1973. Those proceedings were properly considered by the learned Trial Judge and it has been rightly observed by the learned Trial Judge that when such proceedings have been filed, adverse inference can be drawn against the husband that in fact, the wife is a helpless lady, who was constrained to file the proceedings, against the husband, for maintenance. It was the husband, who had neglected and refused to maintain the appellant-wife, and therefore, the decree, that has been granted by the learned Principal District Judge, Nanded is illegal. The Second Appeal deserves admission as substantial questions are raised.

7 At the outset, it can be seen that in respect of matrimonial matters there are certain allegations which are word against word. In this case, admittedly, the wife is not residing with the husband since 2007. Even prior to that it has come on record that she had cohabited with him for about

18 months. It was the husband, who had given notice to the wife calling upon her to join his company, but he had not received any response. It has also come on record that he had filed Hindu Marriage Petition No.24/2010 for restitution of conjugal rights, but that petition was dismissed in default. No doubt, there was no attempt on his part to restore that petition but thereafter he has filed the petition for divorce. That is a piece of evidence in favour of the husband to show that he had tried his level best to bring back the wife for cohabitation. However, it appears that there was no such attempt on the part of the wife. He has not given any plausible reason for staying separately from the husband. Merely because she has filed the petitions for maintenance under Code of Criminal Procedure and Hindu Adoption and Maintenance Act, that cannot be taken as a proof. It has been rightly observed by the learned Principal District Judge, Nanded that the learned Trial Judge was swayed away with apathy on the ground that wife had filed the two petitions. The observation of the learned Trial Judge that because of those petitions adverse inference is required to be drawn against the petitioner itself is wrong and has no legal base. When a Court can draw adverse inference is specifically laid down. It is not in dispute that when the learned Trial Judge took up the matter for hearing and till the Judgment was pronounced, the other two petitions for maintenance were still pending and they had not achieved any finality. There was no concrete findings that the

wife has been refused or neglected to be maintained by the petitioner-husband. When there was no concrete findings to that effect, then learned Trial Judge ought to have taken that task and ought to have appreciated the evidence from that angle also, which he has not done and on this count also his observation about drawing adverse inference against the husband is baseless.

8 When the wife has not given any reasonable ground for staying separately from the husband, for such a long period, it allows us to infer that she has not done her duty as wife, and therefore, it amounted to cruelty. A well reasoned Judgment has been given by the learned Principal District Judge, Nanded, which requires no interference. No substantial question of law is arising in this case, as contemplated under Section 100 of the Code of Civil Procedure, 1908. Hence, the Second Appeal is dismissed at the admission stage. Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)