

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

**SECOND APPEAL NO.387 OF 2017**  
**WITH**  
**SECOND APPEAL NO.417 OF 2017**

TUSHAR ANIL GUJRATHI  
VERSUS  
PRITI TUSHAR GUJRATHI

...  
Mr. Girish S. Rane, Advocate for the appellant.  
...

**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 05.08.2021**

**ORDER :-**

- . Both the appeals are between same parties. Notices were served to the respondent, however, the respondent has not appeared.
2. Heard learned Advocate Mr. G. S. Rane for the appellant.
3. Both the parties are husband and wife. Their marriage took place on 08.12.2001. They have daughter born on 15.09.2002. It is not in dispute that since 03.11.2002, they are not residing together.
4. The appellant – husband had filed Hindu Marriage Petition No.134 of 2010 before the learned Civil Judge Senior Division, Amalner on the ground of cruelty and desertion. The petition was resisted. After

considering the evidence of both sides, the petition was dismissed on 16.03.2012. The appellant - husband filed Regular Civil Appeal No.17 of 2012 before the learned District Judge-2, Amalner. After hearing both sides, the said appeal came to be dismissed on 14.07.2016. Those judgments and decrees are challenged in Second Appeal No.387 of 2017. Further, it appears that the wife filed Hindu Marriage Petition No.104 of 2011 before the learned Civil Judge Senior Division, Amalner for restitution of conjugal rights and after considering the evidence, it was also dismissed by the same judge on 17.04.2012. Wife went in appeal by filing Regular Civil Appeal No.71 of 2012. It was also heard by the same judge i.e. learned District Judge-2, Amalner and on the same day i.e. on 14.07.2016, he allowed that appeal and granted the decree of restitution of conjugal rights by allowing the original petition. That decree is under challenge in Second Appeal No.417 of 2017.

5. Learned Advocate for the appellant has stated that the learned Trial Judge, in fact, erred in dismissing the petition for divorce filed by the husband as well as dismissing the petition filed for restitution of conjugal rights by the wife. Those two contrary judgments could not be kept in existence. In appeal, though the Appellate Court reversed the decree dismissing the petition of the wife, yet, the Court erred in granting that decree as well as confirming the decree of dismissal of the

petition for divorce filed by the husband. It is stated that the ground of cruelty stated by the husband is the incident of usual wear and tear in the matrimonial life and it does not amount to cruelty and the same is not sufficient to grant decree of divorce. Both the Courts below have failed to consider that admittedly since 03.11.2002, the wife has not resumed the cohabitation. Even after the decision of the first Appellate Court, she has not resumed and, therefore, substantial questions of law are arising.

6. At the outset, it is to be noted that both the Courts below on the facts had arrived at the conclusion that whatever incidents have been given by the husband to seek decree for divorce are trifle in nature or the usual wear and tear in the matrimonial life. Those facts cannot be considered once again in detail because only one incident appears to have been stated by him. It is stated that the wife used to give threat to commit suicide and also was demanding money from him. Money might have demanded for running the house, because the husband has not stated how much money was demanded by her and even if once in another, if she had stated something about committing suicide that does not amount to continuous threat amounting to cruelty to the husband. Both the Courts below have considered the evidence as well as law on the touchstone of the judgments of the Appellate Court and, therefore, it

does not give rise to any substantial questions of law in this case. Whatever anomaly was created due to the dismissal of the petition for restitution of conjugal rights by the learned Trial Judge has been set right by the first Appellate Court. When there is reasonable ground for the wife to stay separate from the husband and in spite of decree, the appellant is not explaining as to why he had not brought her for cohabitation, rather in his testimony he has refused to take her for cohabitation, though that expression was given by the wife, the decree does not require any interference. Both the appeals deserve to be dismissed as they are not raising any substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure. Accordingly, both the second appeals stand dismissed.

**[SMT. VIBHA KANKANWADI, J.]**

scm