

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FAMILY COURT APPEAL No. 37/2015

Murlidhar s/o Dattuji Thote,
aged about 46 years, Occ: Service,
R/o Mile No.1, Saoner, Tah. Saoner, Distt. Nagpur

APPELLANT

.....VERSUS.....

Pushpa w/o Murlidhar Thote,
Aged about 45 years, Occ: Household,
R/o Galli No.4, Nandanwan Zopadpatti,
I/f Mate's House, Rajendra Chowk, Nagpur.

RESPONDENT

**WITH
FAMILY COURT APPEAL NO. 64/2015**

Murlidhar s/o Dattuji Thote,
aged about 46 years, Occ: Service,
R/o Mile No.1, Saoner, Tah. Saoner, Distt. Nagpur

APPELLANT

.....VERSUS.....

Pushpa w/o Murlidhar Thote,
Aged about 45 years, Occ: Household,
R/o Galli No.4, Nandanwan Zopadpatti,
I/f Mate's House, Rajendra Chowk, Nagpur.

RESPONDENT

**WITH
FAMILY COURT APPEAL NO.65/2015**

Murlidhar s/o Dattuji Thote,
aged about 46 years, Occ: Service,
R/o Mile No.1, Saoner, Distt. Nagpur

APPELLANT

.....VERSUS.....

Pushpa w/o Murlidhar Thote,
Aged about 45 years, Occ: Household,
R/o Galli No.4, Nandanwan Zopadpatti,
I/f Mate's House, Rajendra Chowk, Nagpur.

RESPONDENT

Smt. M.N. Hiwase, counsel for the appellant.
Shri R.R. Rathod, counsel for the respondent.

CORAM : A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.

DATE : 22ND JANUARY, 2021

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

All these appeals can be conveniently decided by this common judgment especially in view of the fact that the Family Court by its common judgment dated 26.12.2014 has decided the proceedings together.

2. The facts giving rise to the present proceedings are that the appellant and the respondent were married on 23.06.1989. According to the appellant-Husband, the behaviour of the respondent-Wife was not good and she was not performing her marital duties as required. She used to leave the matrimonial house without informing her husband. It was alleged that the wife used to go to the house of one Gangadhar Dhoble by stating that he was her relative. The wife started maintaining illicit relations with him and this fact was stated by the persons in the vicinity of their house. Further according to the appellant, the character of the wife was not good and he had heard that the people in the locality were talking about his wife having illicit relations with a police constable. On 24.05.1990 when the husband had come home without going for his duty, he noticed that the wife and the said police constable were together at their house. It was further the grievance of the husband that the wife had deserted him since long and he could not live with her because of her

adulterous life. Both of them were living separately from 24.06.1990. Thus, on the ground that the marriage between the parties had broken down and there was no hope of reconciliation the husband on 22.09.2009 filed petition bearing No.A746/2009 seeking dissolution of the marriage under the provisions of Sections of 13(1)(ia)(ib) of the Hindu Marriage Act (for short 'the said Act').

3. The wife in turn initiated proceedings bearing No.C-34/1993 for enhancement in the amount of maintenance while the husband filed petition bearing No.C-103/2008 for cancelling the order granting maintenance..

4. Before the Family Court, the parties completed their pleadings after which they led evidence in respect of their stands as taken. The learned Judge of the Family Court by his common judgment dated 26.12.2014 recorded a finding that the husband had failed to prove that the wife had treated him with cruelty after solemnization of the marriage. He had also failed to prove that the wife had deserted him for a period of not less than two years immediately before presentation of the petition. Accordingly petition No.A-746/2009 came to be dismissed. This adjudication was challenged in Family Court Appeal No.37/2015. In the proceedings for enhancement in the amount of maintenance the Family

Court directed payment of amount of Rs.5,000/- per month as maintenance from the date of filing of the petition. This adjudication is challenged in Family Court Appeal No.64/2015. Similarly, the proceedings for cancelling the grant of maintenance came to be dismissed and that adjudication has been challenged by the husband in Family Court Appeal No.65/2015.

5. Smt. M.N. Hiwase, learned counsel for the husband submitted that the husband had led sufficient evidence on record to prove that the conduct of the wife was of such a nature that it resulted in cruelty to the husband. It was the specific case of the husband that the wife had illicit relations with Gangadhar Dhoble and he had led evidence in that regard to prove that on many occasions his wife and said Gangadhar Dhoble were seen together. Similarly the allegations as made against the wife and her illicit relations with the police constable had also been substantiated. On 24.05.1990 the husband had returned home without going for his duty when he had witnessed the presence of said police constable at his residence along with his wife. It was submitted that besides amounting to adultery such conduct also resulted in cruelty by the wife. On that basis, the husband ought to have been granted a decree for divorce on the ground of cruelty. The Family Court was not justified in giving importance to the non-joinder of Gangadhar Dhoble or the police

constable as respondents in the proceedings. Moreover, the husband had taken steps to implead them as parties but for want of their correct address they could not be served in the proceedings. It was then submitted that from 24.06.1990 wife had been residing separately and had deserted the husband. For a period of almost nineteen years, the wife had not cohabited with the husband and on that ground also the Family Court ought to have granted a decree of divorce on the ground of desertion. The evidence on record was not appreciated in the proper perspective thus causing prejudice to the case of the husband.

On the aspect of enhancement in the amount of maintenance it was submitted that the husband was getting salary of about Rs.10,000/- per month and therefore grant of maintenance at Rs.5,000/- was not justified in the facts of the case. The Family Court had proceeded to enhance the amount of maintenance without any justifiable reason. It was submitted that by setting aside the impugned judgment, the decree for divorce on both counts was liable to be passed and the amount of maintenance as granted ought to be reduced.

6. On the other hand Shri R.R. Rathod, learned counsel for the respondent-Wife submitted that the allegations as made in the proceedings were not substantiated by the husband. The wife had specifically stated that Gangadhar Dhoble was her maternal cousin and

was thus related to her. There was no evidence on record to indicate any illicit relations with the police constable. On the contrary, the wife on 24.05.1990 had filed a complaint with Police Station Saoner and the said police constable was attached to that police station. In fact on 24.05.1990 the husband had been arrested by the police authorities and on that count such wild allegations had been made against the wife. He further submitted that the witness examined by the husband had clearly admitted in his cross-examination that the contents of his affidavit were dictated by the husband to his counsel. His evidence was therefore not credible. He further submitted that it was on account of the conduct of the husband that the wife was required to reside away from him. Moreover the wife had brought on record substantial material to indicate that the husband had contracted marriage with one Laxmibai and thereafter with one Jaya. The husband could not be permitted to take advantage of his own wrong and the Family Court therefore rightly held that the allegations made were not proved. On the quantum of maintenance the learned counsel submitted that there was no reason to modify the amount of maintenance granted by the Family Court. It was thus submitted that there was no reason to interfere with the impugned judgment and the appeals were liable to be dismissed.

7. In the light of aforesaid submissions, the following points

arise for determination:-

- (a) Whether the appellant has proved that the respondent has treated him with cruelty?
- (b) Whether the appellant has proved that the respondent had deserted him without any reasonable cause?
- (c) Whether the respondent is entitled to claim maintenance from the appellant and whether quantum of maintenance deserves to be modified?

8. We have heard the learned counsel for the parties at length and with their assistance we have also perused the records of the case. Insofar as the prayer for grant of divorce on the ground of cruelty under Section 13(1)(i-b) of the said Act is concerned, it was the specific case of the husband that the wife was living an adulterous life by maintaining illicit relations with one Gangadhar Dhoble and thereafter with a police constable named Pali. It was further pleaded that on account of such behaviour of the respondent the appellant underwent cruelty and hence was entitled for a grant of decree of divorce. Perusal of the evidence led by the appellant indicates that except for making these allegations, there is no evidence brought on record to indicate that there was any basis in the said allegations. In his cross-examination the appellant admitted that Gangadhar was the maternal cousin of the respondent and that he was married and had children. The appellant admitted that he had not mentioned the names of his relatives and neighbours who had allegedly

seen the respondent residing with Gangadhar as his wife. The appellant examined one Prashant Chaudhari to substantiate his stand but the said witness in his cross-examination admitted that the contents of his affidavit were dictated by the appellant after which it was reduced in writing. It is seen that the allegations as made by the appellant with regard to the adulterous behaviour of the respondent were vague and no details whatsoever were given of the same. On the contrary, the respondent in her deposition stated that on 24.05.1990 the appellant was arrested by Saoner police station and said Pali was attached to that police station. Since the appellant had levelled allegations about the adulterous behaviour of the respondent it was necessary for the appellant to have proved the same at least on the touchstone of preponderance of probabilities. On considering the entire material on record, the learned Judge of the Family Court found that the same was insufficient to conclude that the appellant had proved his case that on account of such behaviour of the respondent the appellant had undergone cruelty. Moreover reference has been made to the provisions of Section 23(1)(d) of the said Act in the light of the pleadings of the appellant that the cause of action for seeking relief according to the appellant arose on 24.06.1990 while the proceedings for divorce had been filed after about nineteen years in the year 2009. We do not find any reason to interfere with this finding recorded by the

Family Court.

9. As regards the aspect of desertion it is the case of the appellant that from June-1990, the respondent had left the matrimonial home. In this regard if the evidence of the respondent is perused the same indicates that on 24.05.1990 she had filed a complaint against the appellant with Police Station Saoner after which the appellant came to be arrested. It was further pleaded by the respondent that the appellant used to suspect the character of the respondent and the appellant had contracted marriage with three different ladies. In his evidence the appellant was confronted with the voters list of Ward No.2 at Exhibit 35 to indicate that in the said voters list at Serial Nos.829 and 830 the names of appellant and his wife Aruna were mentioned. Similarly he was also confronted with the marriage invitation card of the appellant with one Laxmibai. Yet another document at Exhibit 37 showing one Jaya as his wife was also brought on record. Though it is true that the appellant denied the suggestion of having contracted three marriages, this material on record is sufficient to infer that the respondent did not desert the appellant on her own but it was the appellant who was doubting the respondent because of her alleged adulterous life which was not duly proved. On consideration of this material on record it was found that the appellant was not entitled to a decree for divorce on the ground of desertion. We do not find any reason

to interfere with that finding.

10. Insofar as the direction to pay maintenance which was thereafter enhanced to Rupees Five Thousand per month, it is found that this order was passed on 26.12.2014. There is no exceptional reason made out to set aside that order or to reduce the quantum of maintenance. Though it was urged on behalf of the appellant that the appellant had retired from service, it is found that the amount of maintenance of Rupees Five Thousand per month as granted is not so exorbitant to reduce the same. The points as framed are answered accordingly.

11. As a result of the aforesaid discussion, the common judgment of the Family Court dated 26.12.2014 in Petition No.A-746/2009, Petition No.C-34/2013 and Petition No.C-103/2008 is confirmed. Family Court Appeal Nos.37/2015, 64/2015 and 65/2015 accordingly stand dismissed leaving the parties to bear their own costs.

(N.B. SURYAWANSHI, J.)

(A.S. CHANDURKAR, J.)

APTE

**Rohit
Apte**

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