

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

FAMILY COURT APPEAL NO.23 OF 2014

Smita Ajit Deshmukh,
aged about 45 years, Occupation Service,
resident of 12, Prakash Building,
Behind State Bank of India, Ravi Nagar Chowk,
Amravati Road, Nagpur ... Appellant

-vs-

1. Ajit s/o Haribhau Deshmukh
(since dead) Through LRs

i. Devyani Onkar Wazalwar,
aged about 35 years, Occ. Private Service
r/o D-1, Shivam Apartments, Mahashabde Galli,
Behind Axis Bank, Mahal, Nagpur 44 00 32 (daughter)

ii. ~~Rajani Haribhau Deshmukh~~
(Deleted) ... Respondents

Shri Vinay Dahat, Advocate for appellant.
Shri A. R. Patil, Advocate for respondents.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
DATE : February 23, 2021

Oral Judgment : (Per : A. S. Chandurkar, J.)

This appeal filed under Section 19 of the Family Courts Act, 1984 takes exception to the decree for divorce granted by the Family Court on the ground of desertion in the proceedings initiated by the original respondent-husband.

2. The appellant and the original respondent were married on 04/05/1982. In the year 1984 a daughter was begotten from the said

wedlock. From 23/07/1986 the parties started residing separately. Various proceedings were filed by either of them for seeking restitution of conjugal rights, grant of maintenance as well as divorce. Since the wife was residing separately from 23/07/1986 despite having secured a decree of restitution of conjugal rights, the husband filed the present proceedings for grant of divorce under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (for short, the said Act). These proceedings were opposed by the wife by alleging that false grounds had been raised by the husband for seeking divorce. The parties led evidence before the Family Court and by the judgment dated 29/03/2004 the divorce petition was partly allowed. The marriage between the parties was dissolved by passing a decree for divorce on the ground of desertion. Being aggrieved the wife has filed the present appeal.

2. During pendency of the appeal the husband expired on 01/09/2018 and the legal heirs were permitted to be brought on record as the cause of action survived. Accordingly the mother of the husband and thereafter the daughter of the present appellant are on record.

3. Shri Vinay Dahat, learned counsel for the appellant submitted that the Family Court was not justified in passing the decree for divorce

on the ground of desertion. There was no sufficient evidence to prove that it was the wife who had deserted the husband. On the contrary despite passing the decree for restitution of conjugal rights it was the husband who refused to abide by that decree and the wife was compelled to live separately. He referred to the evidence on record and submitted that the husband could not be permitted to take benefit of his own wrong under Section 23 of the said Act. He therefore submitted that the impugned decree of divorce be set aside.

4. Shri A. R. Patil, learned counsel for the original respondent in this appeal supported the impugned judgment. According to him though the decree for restitution of conjugal rights was passed in favour of the wife she did not take any steps to execute the same. The wife had left the matrimonial house voluntarily and her evidence indicated that she was not desirous of returning to the matrimonial house. Since the parties were residing separately from 1986 the husband was left with no option but to seek divorce on the ground of cruelty and desertion. He therefore submitted that since the Family Court had considered the entire evidence on record and had granted divorce on the ground of desertion, no interference was called for.

5. In the light of aforesaid submissions the following point arises

for determination :

“ Whether the judgment of the Family Court deserves to be interfered with ? ”

6. We have heard the learned counsel for the parties at length and we have also perused the records of the case. The facts indicate that after the parties were married on 04/05/1982 they resided together for a short period. A daughter was born in the year 1984 and within two years that is from 23/07/1986 the parties started residing separately. Despite decree for restitution of conjugal rights being passed in favour of the wife no steps were taken to execute the same. Perusal of the evidence of both the parties indicates that the wife in her cross-examination admitted that when the earlier proceedings for divorce filed by the husband were withdrawn she was ready to live with the husband. However after withdrawal of those proceedings she admitted that she did not go back to stay with him. It is further admitted by her that she came from well-to-do family as her father was having servants and a car at his residence. These facilities were not available at the matrimonial house. She further admitted that for more than twelve years she was residing separately and that she did not make any effort to return the matrimonial house. The husband in his deposition has reiterated the averments as made in the divorce petition. He has denied

the suggestion that he was not willing to take back the wife at the matrimonial house.

7. The learned Judge of the Family Court after considering all this evidence on record found that the wife had no desire to return to the matrimonial house. *Animus deserendi* is clear from consideration of the evidence of the parties. It was also found that there was no material on record even to infer that the husband was opposing the attempts of his wife to resume cohabitation. Despite the decree for restitution of conjugal rights there was no resumption of cohabitation thereafter between the parties for which the judgment-debtor could not be blamed. It is found that the Family Court has considered all the evidence on record and has thereafter proceeded to grant decree for divorce on the ground of desertion. Moreover the husband has now expired. We do not find any exceptional case made out to interfere with the well reasoned judgment of the Family Court. The point as framed is accordingly answered by holding that no interference is called for in the impugned judgment. Consequently the judgment of the Family Court in Petition No.A-514/1999 stands confirmed. The Family Court Appeal stands dismissed with no order as to costs.

JUDGE

JUDGE

Asmita

Asmita
Bhandakkar

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Asmita Bhandakkar
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