

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

FAMILY COURT APPEAL No. 25/2016

Rupali Rajendra Jumale,
Aged about 40 years, Occu: Nil,
R/o Plot No.2A, Mire Layout, Near
Bhande Plot, Dist. Nagpur.

APPELLANT

.....VERSUS.....

Rajendra Babarao Jumale,
Aged about 40 years, Occu: Business,
R/o Plot No.2A, Mire Layout,
Near Bhande Plot, Dist. Nagpur.

RESPONDENT

Mrs. Amruta Ghonge, counsel for the appellant.
Shri S.M. Nafde, counsel for the respondent.

CORAM : A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.
DATE : 28TH JANUARY, 2021.

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

The appellant is the wife of the respondent who is aggrieved by the judgment dated 21.12.2013 in Petition No.A-883/2012. By that judgment the marriage between the parties has been dissolved by a decree of divorce.

2. The appellant married the respondent on 24.06.2009. It is her case that within a short period, the respondent started ill-treating her and subjected her to physical abuse. There were quarrels between the parties and it became impossible for the appellant to reside with the respondent. On that premise, the appellant filed proceedings under

Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 (for short, 'the said Act') on 31.08.2012 praying that the marriage be dissolved by passing a decree of divorce.

3. The respondent filed his written statement at Exhibit 14 and denied the allegations made by the appellant. The prayer as made for grant of divorce was also opposed.

4. The appellant filed her affidavit in lieu of evidence at Exhibit 18. She reiterated the stand taken in the divorce petition. The respondent cross-examined the appellant but the suggestions given to her were denied. The respondent filed pursis at Exhibit 21 on 06.09.2013 in which it was stated as under:-

“That, the petitioner has filed present petition u/s. 13(1)(1A)(1B) of the Hindu Marriage Act. The Respondent has appeared and filed written statement and denied allegation. The Respondent is admitted prayer clause, for divorce and other prayer is denied. The written statement is filed on solemn affirmation by the Respondent.

The petitioner has examined herself and cross-examined by the respondent. The respondent does not want evidence, as he has admitted prayer for divorce.”

5. The learned Judge of the Family Court held that the appellant had led evidence to indicate instances of cruelty which had gone unchallenged. Filing of pursis at Exhibit 21 by the respondent was accepted. On that count, the marriage between the parties was dissolved by passing a decree of divorce on the ground of cruelty. The prayer made for granting an amount of Rupees Ten Lakhs towards marriage and litigation expenses came to be rejected. The appellant being aggrieved by that part of the order refusing to grant marriage and litigation expenses has filed the present appeal.

6. The learned counsel for the appellant submitted that the learned Judge of the Family Court was not justified in refusing to grant the relief with regard to marriage and litigation expenses. The reasons assigned in the impugned judgment by relying upon Section 13 of the said Act were not in accordance with law. The learned counsel referred to the document at Exhibit 24 in which the appellant had made a prayer for grant of permanent alimony and return of gold ornaments. Even this prayer was not considered by the learned Judge of the Family Court. It was thus submitted that the relief denied by the Family Court ought to be granted in the appeal.

7. The learned counsel for the respondent on the other hand submitted that the document at Exhibit 24 was insufficient to grant any relief to the appellant. No details whatsoever were given therein and no evidence in support of that prayer for grant of marriage and litigation expenses was brought on record. The said relief was rightly refused by the Family Court. It was then submitted that the pursis at Exhibit 21 filed by the respondent has been misconstrued by the Family Court. The respondent had consented for dissolution of marriage and not for granting a decree of divorce on the ground of cruelty. It was therefore submitted that to that extent liberty be granted to the respondent to challenge the findings regarding the acts of cruelty.

8. In the light of aforesaid submissions, the following point arises for adjudication:-

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

9. We have heard the learned counsel for the parties at length and we have perused the records of the case. It is not in dispute that the appellant was seeking divorce on the ground of cruelty. The instances of cruelty were pleaded and then evidence was led by her in the form of her affidavit at Exhibit 18. The respondent in his written statement denied

the said allegations but thereafter filed a pursis at Exhibit 21 admitting the prayer clause for grant of divorce. Perusal of this pursis indicates that it is unconditional insofar as the prayer for grant of divorce is concerned. The prayer for grant of monetary relief has been denied. It was further stated that since the respondent admitted the prayer for divorce, he did not want to lead evidence. The learned Judge of the Family Court was therefore justified in accepting the said pursis submitted by the respondent. If the respondent was aggrieved by the decree for divorce on the ground of cruelty, it was open for him to challenge the same but the same has not been done. Neither any appeal nor any cross-objections have been filed for challenging the decree on that count. In that view of the matter, no liberty can be granted to the respondent to independently challenge the finding recorded that the decree for divorce on the ground of cruelty was bad in law.

10. Insofar as the prayer for grant of marriage and litigation expenses is concerned the appellant has sought to rely upon Exhibit 24 in that regard. In that document which is written by the appellant herself, prayer for payment of alimony and return of gold ornaments was made. Under Section 25 of the said Act, the Court has jurisdiction to consider the prayer for grant of permanent alimony. We find that though such application was moved at Exhibit 24, the Family Court has not passed any

order thereon. The interests of justice would be served by permitting the appellant to make a prayer for grant of permanent alimony and maintenance under Section 25 of the said Act before the Family Court. This would give an opportunity to the respondent to contest such prayer and lead evidence if necessary. The prayer for marriage and litigation expenses can also form part of such application if made by the appellant. To that extent, the impugned judgment is liable to be modified. The point as framed is answered accordingly.

11. Hence, for aforesaid reasons, the decree for divorce passed in Petition A-883/2012 stands confirmed. The appellant is at liberty to initiate proceedings under Section 25 of the said Act for grant of permanent alimony and maintenance. If such proceedings are initiated, the same shall be decided in accordance with law on their own merits without being influenced by any observations in this order. The Family Court Appeal is partly allowed with no order as to costs.

The Record & Proceedings be sent to the Family Court forthwith.

(N.B. SURYAWANSHI, J.)

(A.S. CHANDURKAR, J.)

APTE

**Rohit
Apte**

Digitally signed by
Rohit Apte
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