

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

**FAMILY COURT APPEAL NO. 28 OF 2017**  
**WITH**  
**FAMILY COURT APPEAL NO. 27 OF 2017**

Mrs. Lourdmay W/o Arick Thomas,  
Aged about 32 years, Occ. Household,  
R/o. C/o. Rubin Daniel, Near Manavata  
High School, Rameshwari Road, Nagpur.

.... **APPELLANT**

// **VERSUS** //

Arick S/o Anthanidas Thomas,  
Aged about 36 years, Occ. Private Service,  
R/o. Ramngar, Pandharabodi, Nagpur.

.... **RESPONDENT**

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Shri. N.S. Deshpande, Advocate for appellant.  
Shri Masood Shareef, Advocate for respondent.  
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**CORAM** : **A.S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.**  
Date on which the arguments were heard : 10<sup>th</sup> FEBRUARY, 2021.  
Date on which the judgment was pronounced : 12<sup>th</sup> FEBRUARY, 2021.

**JUDGMENT: [PER: A.S. CHANDURKAR, J.]**

Since both these appeals filed under Section 19 of the Family Courts Act, 1984 take exception to the common judgment of the Family Court dated 02/05/2017 thereby allowing the petition for divorce filed by the respondent herein and dismissing the

petition for restitution of conjugal rights filed by the appellant herein they are being decided together by this common judgment.

2. The facts in brief that are relevant for adjudication of these appeals are that on 24/10/2007 the respondent-husband married the appellant-wife. Out of that wedlock a daughter was born on 28/03/2009. It is the case of the husband that in the initial period after marriage they resided together along with the mother of the husband and his two younger brothers. The wife however was not interested in living with the entire family and she used to frequently visit her parents' house. On 22/07/2008 the wife filed a false complaint with the police Authorities. At the intervention of the Mahila Cell they started residing together. After the birth of the child on 28/03/2009 the wife again returned to her parents' house and despite efforts taken by the husband she was not willing to return. Ultimately the husband through his counsel issued a legal notice to the wife on 26/09/2009 calling her to resume cohabitation. Thereafter with the intervention of his relatives the wife returned to the matrimonial house on 14/04/2010. A Samzotapatra (Deed of understanding) was prepared and signed by both the parties in which they agreed to reside together. The wife further agreed that

she would not leave the matrimonial house and would take care of the husband and his family members. However, in view of the reluctance of the wife to reside with other family members of the husband he was required to make alternate arrangements for residence. Despite that the wife continued quarreling with the husband which resulted in mental and physical cruelty to the husband. Hence on 27/01/2012 the husband filed the petition under Section 10 (1)(x) of the Divorce Act, 1869 (for short “the Act of 1869”) seeking divorce on the ground of cruelty.

3. In the written statement filed by the wife she denied all the allegations as made by the husband. On the contrary she pleaded that it was the husband and his family members who were illtreating her resulting in cruel treatment. Despite efforts taken by her to reside happily with her husband the same was not possible. According to the wife it was the husband who was not interested in continuing to reside with her and he was interested in severing the matrimonial ties.

4. In July 2013 the wife filed a petition under Section 32 of the Act of 1869 seeking restitution of conjugal rights. It was

pleaded that despite her sincere effort to resume co-habitation the husband was not interested in doing so.

The husband filed his written statement in those proceedings and denied all adverse allegations. It was pleaded that the wife had herself left the matrimonial house and she was reluctant to reside with the husband. Considering the cruel treatment inflicted by the wife the husband stated that the chances of reconciliation were remote.

5. Both the aforesaid proceedings were tried together. The parties led evidence with the husband examining himself and another witness Vimalbai to substantiate his prayer for grant of divorce. On the other hand the wife examined herself as well as her mother to substantiate her stand. After considering the aforesaid evidence the learned Judge of the Family Court recorded the finding that the husband had proved that the wife had treated him with cruelty. It held the husband entitled to grant of decree of divorce on that count. Consequently the petition for restitution of conjugal rights came to be dismissed. Being aggrieved the wife has preferred the aforesaid two appeals.

6. Shri N.S. Deshpande, learned counsel for the wife submitted that the evidence on record brought by the husband was insufficient to grant divorce on the ground of cruelty. The said evidence was in general terms which reflected normal wear and tear of marital life. Referring to the deposition of witnesses he sought to urge that whenever the husband and wife resided separately from other family members there were no quarrels amongst them. It was only when they resided with other family members that some disputes arose. There were no specific instance brought on record by the husband to prove his allegation that the wife was treating him with cruelty. According to him by filing proceedings for restitution of conjugal rights the wife indicated her intention to continue living with the husband and she was not interested in severing the marital ties. Placing reliance on the decision in the case of *Sanjana Sandip Pednekar Vs. Sandip Sitaram Pednekar 2014 (3) Mh.L.J. 781* and *Shraddha w/o Prasad Ganu Vs. Prasad s/o Nilkanth Ganu 2018 (6) Mh.L.J. 432*, it was submitted that on the basis of the evidence on record no decree for divorce on the ground of cruelty could have been passed. He therefore submitted that while setting aside the decree for divorce passed by the Family Court the petition for restitution of conjugal rights was liable to be allowed.

7. On the other hand Shri Masood Shareef, learned counsel for the husband supported the impugned judgment. According to him there was sufficient evidence on record to justify the prayer for grant of divorce on the ground of cruelty. Since inception it was the husband who was willing to reside with the wife despite their differences but the wife was not interested in doing so. When the wife left the matrimonial house initial notice dated 26/09/2009 was issued by the husband which is at Exhibit-19. It was further submitted that again by executing the samzotapatra at Exhibit-23 the parties decided to reside together but the wife after some period did not abide by the statements made therein. He referred to various complaints filed by the wife against the husband and his family members which indicated that on one count or the other the wife was merely interested in harassing the husband and his family members. Despite attempts of reconciliation it was the wife who saw to it that the same was not successful. He therefore submitted that the learned Judge of the Family Court after considering the entire evidence on record rightly found that the case for grant of divorce had been made out. In support of his submissions the learned counsel placed reliance on the decisions in

the case of *Smt. Mayadevi v. Jagdish Prasad AIR 2007 SC 1426* and *Vishwanath Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal AIR 2012 SC 2586*. It was thus submitted that both the appeals were liable to be dismissed.

8. We have heard the learned counsel for the parties. In the light of the respective submissions the following points arise for determination:

“A) Whether the husband has proved that he was entitled to grant of divorce on the ground of cruelty under Section 10(1)(x) of the Act of 1869?

B) Whether the wife has proved that the decree for restitution of conjugal rights ought to be passed?

and

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

9. The material on record indicates that after the parties were married on 24/10/2007, within a short period disputes arose amongst them especially in the light of the fact that the wife could not continue residing with the husband and his family members. She used to leave the matrimonial house time and again after which the husband was required to bring her back. After the birth of the daughter on 28/03/2009 the wife again left the matrimonial house.

She returned back only in June 2009. Thereafter on 09/08/2009 she again went back to her parents' house and hence on 26/09/2009 the husband issued a legal notice at Exhibit-19 calling upon her to resume cohabitation. Thereafter when she returned back on 14/04/2010 a mutual understanding document- Samzotapatra came to be executed between the parties. The same is at Exhibit-23 and it has been scribed in Hindi. Its perusal indicates that the wife undertook to reside with the husband and his grand-mother and take care of them. Similarly whenever she desired to visit her parents' house she would do so after informing the husband. In her cross-examination the wife admitted that after understanding the contents of the deed at Exhibit-23 it was signed by her. The evidence on record indicates that even thereafter when the parties started residing separately there arose disputes and various complaints were filed by the wife against the husband. One such complaint is at Exhibit-77. It is also seen that thereafter on 08/03/2015 the parties started residing in a rented premises but there too on account of quarrels between them that place was required to be left. The Trial Court has considered the evidence of Vimalbai at Exhibit-30 who was residing near the husband's house. It has accepted that evidence being one of an independent witness. It is after considering the

entire evidence on record that the Family Court arrived at a conclusion that the behaviour of the wife of constantly quarrelling with her husband and lodging reports and complaints resulted in causing mental harassment to her husband. She was also frequently leaving the matrimonial house and the husband was required to take efforts to bring her back.

10. On a re-appreciation of the entire material on record we find that the evidence led by the parties does not indicate that the discord between them was on account of normal wear and tear of marital life. The behaviour of the wife was such that the husband could not be reasonably accepted to continue to reside with her. After examining the entire material on record in the light of the ratio of the decisions relied upon by the learned counsel for both the parties we find that the learned Judge of the Family Court was justified in recording the finding that the behavior of the wife was of such nature that the same resulted in causing mental cruelty to the husband. The view as taken by the Family Court is after appreciation of the entire evidence on record and the same cannot be said to be perverse. That view is a reasonably possible view and we do not find any justifiable reason to take a different view of the matter. On that

count the decree for divorce has been rightly passed and consequently the prayer for restitution of conjugal rights has been refused. We therefore find that the impugned judgment does not call for any interference. The points as framed are accordingly answered by holding that the husband has proved that he is entitled for grant of divorce on the ground of cruelty under Section 10(1)(x) of the Act of 1869. Consequently decree for restitution of conjugal rights cannot be passed.

11. As a result of aforesaid discussion the common judgment of the Family Court dated 02/05/2017 in Petition No.A-102 of 2012 and Petition No.A-720 of 2013 stands confirmed. Both the Family Court Appeals stand dismissed leaving the parties to bear their own costs.

**JUDGE**

**JUDGE**