

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

FAMILY COURT APPEAL NO.32 OF 2016

Rajiv s/o Samadhan Helge,
Aged 45 years, Occ. Service
Resident of "Parikshit", Raut Wadi
Akola, Tq. And Dist. Akola

... Appellant

-vs-

Deepali w/o Rajiv Helge
((Nay-Deepali d/o Shaligram Kale)
Aged 41 years, Occ. Household,
R/o C/o Shaligram Kisan Kale,
Bawanbir, Tq. Sangrampur,
Dist. Buldhana

... Respondent

Shri B. H. Tekam, Advocate for appellant.
Respondent served.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI, JJ.
DATE : January 21, 2021

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

This appeal under Section 19 of the Family Courts Act, 1984 has been preferred by the husband as he is aggrieved by the judgment of the Family Court in Petition No.95/2014 dated 27/10/2014 thereby dismissing the said proceedings that were filed for obtaining a decree of divorce on the grounds of cruelty and desertion.

2. The facts in brief giving rise to the present appeal are that the appellant and the respondent were married on 22/05/1997. From the said

wedlock they had three issues. According to the husband the initial days of the marriage were spent happily however with passage of time the wife started quarreling with the husband which resulted in causing mental cruelty to the husband. In January 2012 the wife without any justifiable reason quarreled with the husband and left the matrimonial home to reside with her parents. The wife did not return to the matrimonial house. The children continued residing with the husband. On this basis the husband on 17/07/2014 filed the present proceedings seeking a decree for divorce under provisions of Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (for short, the said Act).

3. Despite service the wife did not contest the said proceedings which therefore proceeded ex-parte against her. The husband examined himself at Exhibit-8 and reiterated the pleadings as made in the petition. He was not cross-examined. The husband also examined his cousin brother at Exhibit-9 who was also not cross-examined by the wife. After considering this evidence on record the learned Judge of the Family Court held that there was no evidence on record to establish cruelty at the hands of the wife thereby making it impossible for the husband to cohabit with the wife. As regards desertion it was held that though the wife had left the matrimonial house, there was no evidence to indicate that this was done with a view not to return back. No attempts were made by the husband to bring the wife

back. On that count by the impugned judgment the petition for divorce came to be dismissed. Being aggrieved the husband has come up with this appeal.

4. Shri B. H. Tekam, learned counsel for the appellant submitted that the conduct of the wife clearly indicated that she was not happy residing with the husband. She was quarreling with him on small issues as a result of which they could not cohabit happily. The behaviour of the wife resulted in causing mental distress to the husband and therefore a case for grant of divorce on the ground of cruelty was made out. Similarly since January 2012 the wife had left the matrimonial house without any justifiable reason. Despite attempts made for bringing her back she did not return to the matrimonial house. It was thus clear that the wife did not intend to cohabit with the husband. There was no justifiable reason to leave the matrimonial house and hence desertion by her was proved. Moreover the evidence led by the husband and his witness was unchallenged. In that view of the matter the learned Judge of the Family Court ought to have passed the decree for divorce. In support of his submissions the learned counsel placed reliance on the decisions in *Asha Gomes vs. Arthur Gomes 2002(2) ALL MR 687* and *Suman vs. Subhash 2015(2) R.C.R.(Civil) 267*. He therefore submitted that the impugned judgment was liable to be set aside.

5. As stated above the wife has not chosen to contest the present proceedings. However with the assistance of learned counsel for the appellant we have perused the records and we have given due consideration to the submissions of the learned counsel.

6. On perusal of the divorce petition filed by the husband and the evidence led on his behalf it is seen that the husband has made allegations of a general nature against the wife. These allegations are in the nature of general wear and tear of marital life and are of not such a degree that they can be termed to result in cruelty. To constitute cruelty for the purposes of Section 13(1)(i-a) of the said Act the conduct of the spouse should be of such nature that the other spouse is unable to cohabit with the spouse. Except for stating that the wife was indulging in small quarrels and was not in a position to listen to her husband nothing further has been stated. The allegations as made are in general terms and the affidavit as filed is merely a repetition of the divorce petition. In absence of any substantial evidence on record to indicate cruelty we find that the learned Judge of the Family Court was justified in refusing to grant decree for divorce on the ground of cruelty.

7. On the aspect of desertion it is seen that except for pleading that in January 2012 the wife left the matrimonial house there is no further material on record to indicate that the matrimonial house was left by the

wife with a view to desert the husband. In fact it is the case of the husband that on account of a small misunderstanding his wife left the matrimonial house. No attempts have been made by the husband to bring back the wife to the matrimonial house. Except for stating that the wife left the house in January 2012 there is no material on record to indicate that the husband had taken efforts to bring back his wife. The ingredients of desertion to enable passing of a decree on that count are missing. Even on this count we find that the learned Judge of the Family Court was legally correct in refusing to pass decree for divorce on the ground of desertion under Section 13(1)(i-b) of the said Act.

8. Though the learned counsel for the appellant sought to rely upon the decisions in *Asha Gomes* and *Suman* (supra) we find that in the facts of the present case and in the light of evidence on record there is no reason to interfere with the adjudication of the Family Court. Consequently Family Court Appeal No.32/2016 stands dismissed leaving the parties to bear their own costs.

JUDGE

JUDGE