

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

**SECOND APPEAL NO.567 OF 2017
WITH CA/2482/2022 IN SA/567/2017
WITH CA/3762/2019 IN SA/567/2017**

Vasant Punju Chavan,
Age : 48 years, Occu: Service
R/o. Atale, Taluka Amalner,
District Jalgaon.

APPELLANT

VERSUS

Sarala Vasant Chavan,
Age: 43 years, Occu: Private Job,
R/o. C/o. Vikas Uttamrao Patil,
Balaji Pura, Near Trikoni Garden
Amalner, Taluka Amalner,
District Jalgaon.

RESPONDENT

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Advocate for Appellant : Mr. Chandrakant P. Patil h/f. Mr. Paresh B. Patil
Advocate for Respondent : Mr. Girish S. Rane

...

WITH

**SECOND APPEAL NO.11 OF 2016
WITH CA/168/2016 IN SA/11/2016 WITH CA/3761/2019
IN SA/11/2016 WITH CA/2481/2022 IN SA/11/2016**

1. Sow. Sarala Vasant Chavan,
Age: 46 years, Occu: Household
2. Kum. Nikita Vasant Chavan,
Age : 19 years, Occu : Education,
Both R/o. Balajipura, Near Trikoni
Bagicha, Amalner, Taluka Amalner,
District Jalgaon.

APPELLANTS

VERSUS

Vasant Punju Chavan,
Age : 50 years, Occu: Service as Teacher,
R/o. Pandit Nehru, Sahakari Sheti Madhayamik,
Vidyalaya, Navalnagar, Taluka District Dhule.

RESPONDENT

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Advocate for Appellants : Mr. Girish S. Rane

Advocate for Respondent : Mr. Chandrakant P. Patil h/f. Mr. Paresh B. Patil

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CORAM : MANGESH S. PATIL, J.

Reserved on : 16.03.2022

Pronounced on : 13.04.2022

JUDGMENT :

These second appeals arise out of two different litigations between the same couple arising out of matrimonial dispute.

2. The Second Appeal No.567/2017 is preferred by the husband who filed a petition for divorce under Section 13 (1) (i-a) and 13 (1) (i-b) of the Hindu Marriage Act, 1955. The trial court allowed his petition but by the judgment and order under challenge in this Second Appeal, the district court has quashed and set aside the trial court's judgment and dismissed the petition.

3. The Second Appeal No.11/2016 is filed by the wife and the daughter of the couple who filed a suit for enhancement of maintenance awarded to them under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 initially. While the application was allowed to the extent of daughter, the wife was refused any such increase in the maintenance on the ground that in the intervening period the husband had succeeded in obtaining a decree for divorce which is the subject matter in the other second appeal.

4. In view of such peculiar state of affairs, since fate of the Second

Appeal No.11/2016 would depend upon the decision in Second Appeal No.567/2017, with the consent of both the sides they have been heard finally and both the appeals are being disposed of by this common judgment.

5. Shorne of verbiage the averments of the husband in the divorce proceedings or to the effect that the couple was married on 23.05.1994 and a daughter was born who is the appellant No.2 in Second Appeal No.11/2016. However, the wife never cohabited with him peacefully. Because of her insistence she was sent for D.Ed training. But thereafter she started insulting his relations and never used to discharge daily chores. Even she insisted that he should pay for securing her a job. She started going back to parental home clandestinely. In 1996 she indulged in quarrel and went back to her parental home. After he secured a job he brought her back in January 1997 but there was no change in her behavior. She used to insist that he should hand over all his salary to her. She disliked staying in a village and in June 1997 on her own she left his company.

6. He then averred that thereafter she filed a proceeding for maintenance and without sufficient cause and reason stayed back at her parental home and deserted him. She filed various proceedings against him and his relatives. He had filed a proceeding for restitution of conjugal rights but she opposed it and later on it was dismissed. By passage of time the bitterness between them has grown. There is no likelihood of resumption of matrimonial tie. She had subjected him to cruelty. She caused him to be

arrested in a maintenance proceeding. He prayed for dissolution of marriage on the ground of cruelty and desertion.

7. The wife contested the divorce proceeding by her written statement. She admitted the relation and the daughter having been born out of the wedlock but denied the rest of the allegations. She denied about having misbehaved with him or his relations or to have subjected him to cruelty. She also denied to have left his company without any cause or reason. She contended that he insisted her to bring money from her parents and on that count subjected her to cruelty. She then contended that during Diwali of the year 1997 when her father had been to her matrimonial home to fetch her back, the husband demanded money to her father and drove him out. Again he along with his relations had been to her parental home to take her back and assured not to demand money but he changed his stand and started demanding money and because of all such ill treatment she had no alternative but to return back to the parental home. She then contended that due to the intervention of relations an amicable settlement was arrived at on 17.02.2003. It was decided that both of them would withdraw all the proceedings initiated by them against each other but he refused to allow her to cohabit, when she tried to resume cohabitation and had reached his house with her brother. Lastly, she alleged that during pendency of various proceedings between the parties he solemnized second marriage on 06.01.2005 with a daughter of one Babulal Patil resident of Deshmukhwadi, Chalisgaon about which she filed a criminal case.

8. With such allegations and counter allegations the couple went to trial. The trial court concluded that she had subjected him to cruelty and even had deserted him without sufficient cause and allowed the petition and dissolved the marriage on 17.10.2011.

9. As is mentioned earlier, the proceeding for enhancement of maintenance under the Hindu Adoptions and Maintenance Act was dismissed on 17.12.2011 to the extent of the wife on the ground that during pendency of that proceeding the husband had succeeded in obtaining divorce and being a divorcee she was not entitled to claim maintenance.

10. Aggrieved by both these decisions, wife preferred appeals before the district court. In the appeal arising from the divorce proceeding the district court disagreed with both the conclusions drawn by the trial court. By referring to catena of decisions it was concluded that merely because the wife had initiated number of proceedings that in itself was not sufficient to reach a conclusion about she having treated him with cruelty. If the law permitted her and gave right to enforce the rights by filing different proceedings, no inference was deducible on that basis. There was no evidence of cruelty or even desertion. It was concluded that going by the dispute between the parties, there was sufficient ground for her to go back to her parental home and it did not constitute desertion.

11. In the appeal against the judgment and decree refusing enhancement of maintenance, the district court allowed the appeal and granted some enhanced maintenance to the daughter but it confirmed the

decision of the trial court to the extent of refusing maintenance to the wife in view of the decree of divorce.

12. The Second Appeal No.567/2017 was admitted by formulating following substantial question of law :

Whether the lower Appellate Court has committed an error apparent on the face of record, in reversing the finding on the issue of desertion of the appellant by the respondent, recorded while passing decree of dissolution of marriage by the learned Trial Court ?

The Second Appeal No.11/2016 has been admitted by framing following substantial questions of law :

- i) Whether both the courts below erred in ignoring the income of the respondent while granting meager enhancement in maintenance to the daughter ?
- ii) Whether the courts below erred in refusing to grant enhancement to maintenance to the wife on the ground of divorce when the decree of divorce had not attained finality and whether the matter is required to be remanded in view of the reversal of the decree of the divorce ?

13. It is necessary to note that in both the proceedings, the husband has filed separate civil applications under Order XLI Rule 27 seeking permission to adduce additional evidence in the form of a marriage invitation card of the daughter of the couple and to allege that though the marriage was solemnized he was not invited and it constitutes an additional

ground to conclude that the wife had treated him with cruelty. Some additional document is also sought to be produced in the form of decision in a criminal proceeding to demonstrate that it has ended in his favour.

14. The learned advocate for the husband would vehemently submit that there was ample evidence before the trial court to demonstrate that the wife had deserted him on her own without there being sufficient cause. There was also evidence to demonstrate that while she was cohabiting with him her behavior was objectionable. She never happily resided in the house and subjected him to mental cruelty. There was also evidence to demonstrate that after the couple got separated she filed several proceedings against him and his relations and subjected them to mental and physical harassment. Even in a maintenance proceeding instead of seeking recovery of money by attachment of his salary she saw to it that he was sent behind the bars. All such conduct was demonstrative of the fact that she was bent upon to harass him. In addition, as is being sought to be demonstrated by leading additional evidence, even the daughter's marriage was solemnized behind his back. This being a supervening circumstance its cognizance be taken to substantiate the allegations regarding cruelty. In support of his submission he would place reliance on following decisions:

1. **Geeta Jagdish Mangtani Vs. Jagdish Mangtani;**
AIR 2005 Supreme Court 3508
2. **Vishwanath Sitaram Agrawal Vs. Sau. Sarla Vishwanath Agrawal ;**
AIR 2012 Supreme Court 2586
3. **Jagwati Vs. Gajender Kumar ; 233 (2016) DLT 318**

15. Per contra, the learned advocate for the wife and the daughter would submit that there was absolutely no evidence before the trial court to reach a conclusion which it has. The ground of cruelty and desertion were not proved. Mere filing of various proceedings in different courts was relied upon by it to conclude that the wife was intending to harass the husband. The lower appellate court has rightly pointed out by referring to various judgments that when she was given certain rights by law, no further inference was deducible merely because she had taken recourse to the law by filing different proceedings to ventilate her grievances. There was no evidence to show that any of such proceeding was false or vexatious. Apart from that there was no other evidence available to prove the ground of desertion and cruelty. The learned advocate would further point out that in fact after the parties had amicably settled the dispute and had sought to withdraw the proceedings, instead of withdrawing the proceeding which the husband had lodged for restitution of conjugal rights he obtained a decree *ex parte* which had to be challenged by the wife and get it set aside. The learned advocate would further submit that the trial court had grossly erred in appreciating all the facts, circumstances and evidence and had recorded a perverse finding which error has been corrected by the lower appellate court.

16. I have carefully gone through the papers and the rival submissions. Obviously, the husband is coming with two grounds to seek dissolution of marriage. One of 'cruelty' under Section 13(1)(i-a) and the

other 'desertion' under Section 13(1)(i-b) of the Hindu Marriage Act. Admittedly, the couple was married in the year 1994 and stayed together till 1997 during which period the daughter was born. However, except the highly interested testimonies of the husband and his brother there was no corroboration about any behavior of the wife while she was cohabiting with them in the matrimonial home muchless to demonstrate that she had treated the husband and his relations with cruelty. True it is that no strict proof of all these facts and circumstances can be insisted for since it is a matrimonial dispute happening in the four walls of the matrimonial home. However that does not dispense with a proof sufficient to the satisfaction of the court to reach a conclusion regarding any behavior of either spouse towards the other. It appears that the trial court had readily accepted the testimonies of the husband and his brother in respect of wife's behavior, while she was cohabiting in the matrimonial home.

17. It is apparent that in substance, the trial court had relied upon the fact that various proceedings were initiated by the wife in different courts against the husband and his relations, to reach a conclusion that she was intending to harass them and to reach a conclusion that she had treated the husband with cruelty. This is precisely where the learned judge of the lower appellate court has correctly remarked that when the law provided several rights to the wife and she intended to prosecute those by lodging different proceedings, that per se was not sufficient to reach to a conclusion that the wife was intending to harass the husband and his relations.

18. In my considered view, the approach of the lower appellate court was sound and is unassailable. When admittedly, for whatever reason, there was a marital discord and the wife had started residing with the infant child at her parental house barely within three years of her marriage, it cannot be expected of her not to prosecute whatever rights and remedies she has under the law. Filing of a maintenance proceeding, a criminal case for harassment cannot per se be said to be sufficient to jump to a conclusion that by filing such proceedings she was intending to harass the husband and his relations.

19. True it is that in a given case, levelling false allegations and filing fictitious complaint may constitute cruelty and desertion as has been held in the case of **Jagwati** (supra) and the false allegations regarding in chastity as laid down in the case of **Vishwanath Sitaram Agrawal** (supra) would constitute cruelty. However, though the documents which are now sought to be produced in the form of decision of a criminal proceeding as an additional evidence, it would at the most demonstrate that complaint filed by the wife under Section 494 read with Section 109 of the Indian Penal Code against the husband was dismissed and her challenge to that dismissal did not bear any fruit since her application for Leave to Appeal filed under Section 378(4) of the Code of Criminal Procedure was dismissed by this Court. However, mere acquittal or dismissal of the complaint per se would not be sufficient to reach a conclusion that the complaint was false or fictitious. At least the court has not recorded any such finding and none has

been demonstrated. Therefore merely because the complaint filed by the wife was dismissed, no inference is deducible of it being false and fictitious. Consequently even it cannot be said that it was filed just to harass the husband and his relations. Merely because the lady with whom he allegedly solemnized the marriage could not be served in that criminal proceeding also cannot be a ground to reach a conclusion that the complaint was false and fictitious. This is precisely where the learned judge of the trial court had gone astray in reaching a conclusion that filing of such proceedings over a period of time was nothing but an act of harassment to the husband and his relations giving rise to the ground of cruelty. The lower appellate court rightly appreciated that the observations and the conclusions of the trial court were perverse and not sustainable in law.

20. The decisions in the matter of **Geeta Jagdish Mangtani** (supra), **Jagwati** (supra) and **Vishwanath Sitaram Agrawal** (supra) will have to be understood in the context in which the decisions were rendered.

21. True it is that as has been tried to be pointed out by producing the marriage invitation card, the husband is now attempting to demonstrate that he was not invited to the marriage of the daughter and it being a supervening event its cognizances should be taken to conclude that the conduct of the wife amounts to his harassment.

22. Admittedly, the couple has been separate since the year 1997. Bitterness has developed between them which has perpetuated for last more than 24 years. The wife had to file maintenance proceeding. It was

dismissed by the trial court as also the lower appellate court and she could get it only in a proceeding before this Court. In view of some sort of amicable settlement, instead of withdrawing the proceeding for restitution of conjugal rights he did not withdraw it and got an *ex parte* decree. Again she had to challenge it wherein the matter was remanded and subsequently it was dismissed in default. She even had to strive for getting the maintenance by putting the order to execution and even requiring her to send him to jail that too in spite of the fact that since before marriage he has been in the employment as a teacher. All these circumstances are indicative of the fact that the couple has reached a stage where one cannot expect them to have any cordial or even peaceful relation. Even the trial court has recorded such an observation. I am pointing out this just to demonstrate that if the relationship has become so strained and bitter, assuming for the sake of argument that the wife has solemnized the marriage of the daughter of the couple even behind his back it cannot be said to be a ground demonstrative of any attitude muchless amounting to cruelty.

23. Therefore in spite of allowing all the applications for production of additional evidence under Order XLI Rule 27 the husband has been unable to demonstrate and justify the ground of cruelty, a conclusion drawn by the trial court which apparently was not founded on sufficient and cogent evidence. The lower appellate court has meticulously observed the reasoning given by the trial court and the evidence and has recorded a plausible conclusion which cannot be said to be either perverse or arbitrary

without which, I am afraid, this Court in Second Appeal cannot undertake a fresh scrutiny and replace its own views in view of the limitations on its powers.

24. In the matter of **Gurdev Kaur and Ors. Vs. Kaki and Ors.**; AIR 2006 Supreme Court 1975 it has been laid down that even a wrong or grossly inexcusable finding of fact cannot be interfered with in a second appeal. In the case of **Hero Vinoth (minor) Vs. Seshammal**; (2006) 5 SCC 545, para 19 and **Narayanan Rajendran and Ors. Vs. Lekshmy Sarojini and Ors.**; (2009) 5 SCC 264, para 64 the scope and ambit of Second Appeal has been elaborately considered in following words :

“ 19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

64. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

- (i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;
- (ii) The substantial question of law to precisely state such question;
- (iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;
- (iv) Another part of the Section is that the appeal shall be heard only on that question. ”

25. In view of such legal position, the substantial question formulated in Second Appeal No.567/2017 deserves to be answered in the negative and I answer it accordingly.

26. As a logical and legal corollary, since the decree for desolation of marriage has been set aside by the lower appellate court which decision is

now being confirmed, the decision in the proceeding under Hindu Adoptions and Maintenance Act refusing to increase the maintenance to the extent of the wife, on the ground of passing of the decree for divorce would not be sustainable.

27. Consequently, the Second Appeal No.567/2017 is dismissed with costs. Second Appeal No.11/2016 is partly allowed. The decision of the trial court and the lower appellate court refusing to enhance maintenance to the wife are quashed and set aside. That suit is remanded to the trial court for decision afresh to the extent of the wife. The parties shall appear before the concerned court on 06.06.2022 and there shall be no need for it to issue notices to them.

28. Pending civil applications are disposed of.

(MANGESH S. PATIL, J.)