

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

SECOND APPEAL NO. 315 OF 2022

Bharti Ashwini Mohabe __ Vs. __ Ashwini Nandkishor Mohabe
AND

SECOND APPEAL NO. 06 OF 2020

Ashwini Nandkishor Mohabe --vrs. – Bharti Ashwini Mohabe

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. S.PDhotre, Advocate for appellant in S.A.No. 315/2022 and for respondent in S.A. No.06/2020.

Ms. S.O.Tapadiya, Advocate for respondent in S.A.No. 315/2022 and for appellant in S.A. No.06/2020.

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/09/2022

1] Heard Mrs. Dhotre, learned counsel for the appellant in SA No. 315/2022 and for respondent in SA No.6/2020 and Ms. Tapdia, learned counsel for the respondent in SA No. 315/2022 and for appellant in SA No.6/2020.

2] By the judgment dated 16.4.2015, the learned Civil Judge, Senior Division, Bhandara in HMP No.48/2010 dissolved the marriage between the appellant and the respondent dated 11.3.2004 under Section 13-1(ia) and (ib) of the Hindu Marriage Act, by holding that the appellant/wife had treated the respondent/husband with cruelty and so also had deserted him. The appellate Court in RCA No.55/2015 has dismissed the appeal, however has directed the

respondent/husband to pay maintenance of ₹.3,500/- per month to the appellant/wife from the date of the decree of the trial Court, which after two years is to stand enhanced to ₹.4,500/- per month with a further direction that if the wife was receiving maintenance in any other proceedings, the same shall be adjusted with this amount.

3] Mrs. Dhotre, learned counsel for the appellant/wife take exception to the judgment and decree for divorce and submits that there is no material on record to demonstrate cruelty and desertion and therefore, the impugned judgments are one without evidence and therefore a substantial question of law arises in this regard.

4] Ms. Tapadiya, learned counsel for the respondent/husband opposes the same and submits that evidence of PW-2 and PW-3 examined before the trial Court indicates availability of the material and therefore, there is no substantial question which arises for consideration.

5] The marriage between the appellant/wife and the respondent/husband was performed on 11.3.2004 at Bhandara, consequent to which the wife went to reside at the matrimonial house at Tumsar. The family of the respondent/husband comprises of his aged mother and father as well as a blind sister. The record

indicates that the appellant/wife was not inclined to reside jointly with the parents and blind sister of the husband and on this ground used to pick up quarrels. Ultimately, she left the matrimonial home on 3.3.2005 along with her minor son, who was born on 8.2.2005. Attempts to bring her back having proved futile, the respondent/husband filed HMP No. 48/2010 seeking divorce on the ground of cruelty and desertion. What is material to note is that in this proceeding, the brother of the wife namely, Vijaykumar Narpati Pashine was examined as the witness for the husband (PW-2) at Exh.43, who has categorically narrated that since March 2005 the appellant/wife had left the company of the respondent/husband voluntarily, since which date she was residing with her parents at Bhandara. In spite of number of attempts by PW-2 to convince her to return to her matrimonial house, she has refused to go there saying that she was not willing to reside with the joint family comprising of the husband, his aged parents and blind sister. PW-2 has further deposed that even during the period of a year from the date of the marriage, till the date she left the matrimonial home, the appellant/wife used to constantly quarrel with the respondent/husband on the ground that she was not willing to reside with him along with aged parents and blind sister of the husband. He further deposed that since the income of the respondent/husband was not sufficient to maintain two households, he was not willing to do so. In the cross

examination, nothing has been brought out to support the appellant/wife.

6] One more witness namely, Gopika Baban Meshram, a neighbour was also examined as PW-3 at Exh. 49, who has deposed that since the date of the marriage the appellant/wife used to constantly quarrel with the respondent/husband on the ground that she did not want to reside jointly with the aged parents and blind sister of the husband and the appellant/wife herself had told PW-3 in this regard and she was not willing to take care of the aged parents of the husband as well as the blind sister. She has further deposed that for this very reason, even during the period of one year between 2004 to 2005, she had on various occasions left the matrimonial home and on each of such occasions, the respondent/husband used to get her back. This evidence clearly indicates that the appellant/wife has gone away from the matrimonial home in March 2005 itself and has been residing separately since then.

7] What is also material to note is that though an application under Section 9 of HM Act was filed, bearing HMP No. 49/2008 by the appellant/wife, the same has been withdrawn by her on 14.3.2009. The non-prosecution of the HMP under Section 9 of the HM Act would clearly indicate that it was filed merely for the sake of filing and the appellant/wife was never serious in prosecuting the same. Even in HMP No. 48/2010, no

evidence has been led by her to indicate that she was willing to resume the matrimonial ties. In my considered opinion when the respondent/husband has aged parents to look after and so also a blind sister, of which position, the appellant/wife was already aware of, since prior to the marriage, refusing to cohabit with the husband on the ground that she was not interested in taking care of the aged parents and the blind sister of the husband after the marriage would clearly amount to cruelty within the meaning of the expression, as the respondent/husband was not expected to desert his aged parents and blind sister after the marriage, as that was a moral obligation upon him to look after them, of which the wife was aware of even before the marriage. That apart, the evidence of PW-2, the brother of the appellant/wife herself indicates that in March 2005 itself, the appellant/wife had left the matrimonial home and has not returned there till the passing of the judgment and decree by the trial Court or even thereafter even till date, in spite of the PW-2, her brother, trying to convince her for the same, which would indicate substantiation of the plea of desertion. I therefore do not see any substantial question being made out for me to interfere in the impugned judgments in so far it dissolves the marriage under Section 13-1(ia) and (ib) of the HM Act.

8] In so far as the direction as contained in the judgment of the appellate Court dated 12.7.2019, it has merely granted maintenance of ₹.3,500/- per month to

the appellant/wife from the date of the decree, which after two years was to stand enhanced to ₹. 4,500/- per month and ₹.4,000/- per month to the son which was to stand enhanced to ₹.5,000/- per month after two years, which was considering the salary of the respondent/husband which was ₹. 25,000/- at that point of time. The enhancement was after two years, during which time there was obviously increase in the salary of the respondent/husband. The contention that the maintenance which the appellant/wife and son have been awarded in proceedings under Sections 125 and 127 of Cr.P.C. in Misc. Criminal Case No. 292/2017 have not been taken into consideration, is clearly misconceived for the reason that the judgment of learned District Judge, dated 12.7.2019 specifically directs that if the maintenance is being received by the appellant/wife and son in any other proceedings from the respondent/husband, the same shall be adjusted in the amount as being directed to be paid on account of maintenance by the learned appellant Court, considering which on that ground also I do not see any reason to interfere in the impugned judgments, in Second Appeal No. 6/2020, there is no substantial question of law involved in the second appeals. The same are dismissed.

JUDGE

Rvjalit

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VASANTRAO JALIT
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