

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.4/2021

RUPESH MAHADEV NAIK,
s/o late Mahadev Naik, aged
about 33 years, married, Indian
National, R/o H.No.35, Village
Guleli, Tal: Sattari Goa.

... APPELLANT

Versus

ANITA RUPESH NAIK, D/o
Shri Bablo Govind Sawant, aged
about 30 years, married, Indian
National, C/o Shri Bablo Govind
Sawant, Village Bhironda, Tal.
Sattari, Goa.

... RESPONDENT

Mr. Nigel da Costa Frias with Mr. Vishal Sawant and Ms. B.
Kukalekar, Advocates *for the Appellant*.
Mr. Ashwin Bhobe, Advocate *for the Respondent*.

CORAM: M. S. SONAK, J.

DATED: 20th January 2023

ORAL JUDGMENT:

1. Heard Mr Nigel da Costa Frias for the appellant and Mr Ashwin Bhobe for the respondent.

2. This appeal challenges the concurrent decree made by the Trial Court and affirmed by the First Appellate Court granting divorce to the respondent.

3. Mr Costa Frias, the learned counsel for the appellant proposes the following substantial questions of law:

1) Whether the impugned judgment is vitiated on account of non-furnishing of reasons and lack of findings on the aspect of ill-treatment allegedly meted out by the appellant to the respondent warranting grant of a decree of divorce in her favour?

2) Whether the impugned judgment of the first appellate court is vitiated on account of noncompliance with the mandatory provisions of section 96 read with order 41 Rule 31 of C.P.C?

3) Whether the finding of the first appellate court that from the admissions made by the parties, the petitioner (respondent herein) has established her case is perverse and contrary to the record as there are no admissions by the appellant as regards any of the allegations made by the respondent?

4. The Trial Court in this case framed detailed issues and answered them in the following manner:

ISSUES

FINDINGS

- | | |
|--|-----------------------|
| 1. Whether the petitioner proves that she was ill-treated by the respondent and his family for money and she was sometimes forced to stay hungry? | .. In the affirmative |
| 2. Whether the petitioner proves that the respondent and his family members treated her with cruelty and gave ill-treatment since second day of her marriage i.e. from 3.12.2012? | .. In the affirmative |
| 3. Whether the petitioner proves that from 22.12.2011 she is residing separately as she was forcibly dragged out of the matrimonial house by the respondent and therefore is not staying in the conjugal house? | .. In the affirmative |
| 4. Whether the petitioner proves that she is entitled for Judgment and decree declaring their marriage to be dissolved by divorce, and that directions to the Sub Registrar-cum-Civil Registrar of Sattari Taluka to cancel the entry of marriage in his office registered under entry no. 492/08 dated 25.11.2008 of the marriage registration book of the year 2008? | .. In the affirmative |

What relief ? What Order ?

... As per order

5. The First Appellate Court may not have framed specific points for determination regarding each of the instances of the ill-treatment or cruelty but the First Appellate Court did frame a point for determination as to whether the respondent had proved that she was ill-treated by the present appellant. Since that was the main issue involved in the appeal, it cannot be said that there was a breach of the provisions of Order 41 Rule 31 of the Code of Civil Procedure. This rule mandates that the judgment of the Appellate Court must state points for determination, decision thereon, reasons for the decision and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. From the perusal of the Judgment of the Appellate Court, all these aspects appear to have been covered. The First Appellate Court has discussed the facts on the aspect of cruelty and ill-treatment and upon evaluating the same has agreed with the findings recorded by the Trial Court. The reasons have also been recorded for the same, even though, the reasons may not be quite elaborate.

6. At one stage, the Appellate Court does say that in view of the admission made by the parties, the respondent herein has established her case. This may not be a very elegant manner of

stating the position. There are no admissions as such made by the parties on the aspect of the ill-treatment or cruelty. However, from the context, it is quite clear that the First Appellate Court refers to the evidence on record and the inferences drawn by the Trial Court from such evidence. Therefore, based on the singular sentence the Judgment and Decree of the Appellate Court referring to the admissions of the parties, no case is made out to interfere with the concurrent findings of fact on the aspect of ill-treatment and cruelty recorded by the two Courts.

7. In *Santosh Hazari vs. Purushottam Tiwari – (2001) 3 SCC 179*, the Hon'ble Supreme Court has held that the Appellate Court agreeing with the view of the Trial Court need not restate the effect of the evidence or reiterate the reasons given by the Trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice. For this, the Hon'ble Supreme Court referred to its earlier decision in *Girijanandini Devi vs. Bijendra Narain Choudhary – AIR 1967 SC 1124*. At the same time, the Hon'ble Supreme Court cautioned that the expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it.

8. Therefore, merely because the Judgment of the Appellate Court may not be a very elaborate one, the same warrants no interference in the Second Appeal. There is no perversity in the concurrent record of findings of fact. Based on the evaluation of the evidence on record, both the Courts have concurrently recorded the findings about the cruelty and ill-treatment perpetrated by the appellant on the respondent.

9. Unless a case of perversity is made out typically, the Second Appellate Court does not re-appreciate or re-assess the evidence on record. Since no such case is made out, this Second Appeal will have to be dismissed.

10. The substantial questions of law proposed by Mr Costa Frias neither arise nor can they be answered on merits favouring the appellant. There are several instances about which there is evidence. These instances would constitute ill-treatment or cruelty entitling the respondent for a decree of divorce.

11. Mr Bhobe, the learned counsel for the respondent states that after the decree of the Appellate Court, the respondent has re-married on 23.06.2022. Though this circumstance may not be very relevant, the Second Appeal warrants dismissal because there

is no substantial question of law whether as proposed or otherwise.

12. This appeal is accordingly dismissed without any order for costs.

13. The civil applications, if any, do not survive and the same are also disposed of.

M. S. SONAK, J.

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