



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

Family Court Appeal No. 29 / 2024
With
Civil Application No. 5563 / 2024

Chetan Shital Pardeshi,
Age 36 years, Occu. Nil
1/2/133, Prithvi Park, Colony,
Padegaon, Chha. Sambhajinagar,
Tq. & Dist. Chha. Sambhajinagar.

...Appellant

Versus

Harshali w/o Chetan Pardeshi,
Age : 29 years, Occ.- Household,
R/o at present Shri. Rajendra Ganpat Borse,
Kotwalwada, Chandwad,
Tq. Chandwad, Dist. Nashik.

...Respondent

Mr. Shrimant R. Kedar, Advocate for the Appellant.

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ..**

DATE : 12 July 2024

FINAL ORDER [*Per: Shailesh P. Brahme, J.*] :

. Heard learned Counsel for the appellant.

2. Appellant is challenging judgment and decree dated 13.02.2024 passed by learned Family Court Judge in petition no. A/162/2023, dismissing the proceeding for dissolution of marriage filed by the appellant on the ground of cruelty and desertion.

3. The marriage between the parties was solemnized on 29.04.2016. They

have a male child born out of the wedlock. It is the case of the appellant that respondent humiliated and insulted appellant and his family members. She failed to perform the household chores. She was abusive and disliked the appellant. It is further case of the appellant that she voluntarily left his company from 01.08.2017 and started residing at her parent's place. The appellant is stated to have issued notice on 09.08.2019 for cohabitation and thereafter filed petition no. A-592-2019 under Section 9 of Hindu Marriage Act. She failed to appear in the proceeding. She resorted to criminal complaint under Sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code and case no.99/2019 under the provisions of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) Act.

4. The respondent despite service of summons, did not appear before the Family Court and did not contest the petition. Appellant filed affidavit of examination-in-chief but he was not cross-examined by the respondent. Appellant produced documentary evidence of copies of the proceeding of petition no. A-592/2019 and case no.99/2019 alongwith FIR.

5. Despite there being no contest learned Family Court Judge proceeded to dismiss the petition, holding that the allegations of cruelty were not serious in nature and were merely examples of ordinary wear and tear. It is further held that the appellant himself failed to prosecute the proceeding under Section 9 of Hindu Marriage Act. It is further held that though there was a separation, there could not be inference of intention to desert.

6. Learned Counsel for the appellant would submit that respondent failed to appear before the Family Court despite service of summons and the case of the appellant should have been accepted. It is further submitted that affidavit of appellant was uncontroverted. He was not cross-examined and therefore case of cruelty and desertion was made out. It is further submitted that there was adequate evidence on record in the form of various

proceedings filed by respondent and affidavit of examination-in-chief for passing a decree for dissolution of marriage. According to appellant the learned Judge has committed perversity.

7. Appellant filed proceeding for dissolution of marriage on the ground of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of Hindu Marriage Act. Before that respondent filed FIR under Sections 498A, 323, 504, 506 read with 34 of the Indian Penal Code on 20.09.2019 and case no.99/2019 under the provisions of PWDVA Act. The appellant even resorted to petition no. A-592/2019 under Section 9 of Hindu Marriage Act. It appears that the parties are separate since 01.08.2017. The respondent preferred not to appear before the Family Court despite service of summons.

8. It is a matter of record that a child is born out of the wedlock. The respondent was required to file FIR against the appellant and his family members. She also filed case no.99/2019 under PWDVA Act. The fact that respondent was required to resort to the proceeding is indicative of the fact that the appellant and his family members are not on good terms with the respondent. As the proceedings are pending, it would not be appropriate to comment upon their merits.

9. From the facts narrated in the impugned judgment and the copy of decree, it can be gathered that the allegations of the appellant against respondent that she was not taking care of his mother, was not cooking food and was insulting appellant and his family members are not that serious in nature. The allegations and the material on record would not constitute cruelty as contemplated by Section 13(1)(ia) of Hindu Marriage Act. As has been rightly held by the learned Judge there are usual bickering in any family. We do not find any perversity or illegality in dismissing the petition. Though appellant has not been cross-examined, it is inconsequential.

10. It reveals from the orders passed in petition no.A-592/2019 filed by the appellant against respondent for restitution of conjugal rights that appellant failed to prosecute the matter and it was dismissed. The appellant appears to be disinterested in cohabiting with the respondent. We do not see any illegality in the findings recorded by the learned Judge in this regard.

11. We do not find any substance in the submissions of learned Counsel for the appellant. The allegations are not serious in nature and there is no cogent evidence on record. We do not find any error of jurisdiction. Learned Judge has taken reasonable and possible view. No case is made out even to call upon the respondent to answer the challenge in this petition. Hence we pass the following order :

ORDER

- i The Family Court Appeal is dismissed.
- ii The Civil Application is disposed of.
- iii. There shall be no order as to costs.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

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