



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.37 OF 2022
WITH
CIVIL APPLICATION NO.8605 OF 2022

Shri Jitendra Anil Sonar,
Age-33 years, Occu:Tea Stall,
R/o-Teli Chowk, Holewada, Jalgaon
Taluka and District-Jalgaon

...APPELLANT

VERSUS

Ketki alias Jayshree W/o Jitendra Sonar,
Age-29 years, Occu:Household,
R/o-C/o- Rajendra Pandit Sonar,
In front of Datta Temple, Kusumba,
Taluka and District-Jalgaon.

...RESPONDENT

...
Mr. S.V. Deshmukh Advocate for Appellant.
Ms. S.T. Kazi Advocate for Respondent.
...

CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.

DATE : 16th JANUARY, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed under Section 19 of the

Family Courts Act, by the appellant – husband to challenge the decree for divorce passed by the learned Judge, Family Court, Jalgaon in Petition No.A-395/2019 on 5th April 2022 which was filed by the present respondent – wife.

2. It is not in dispute that marriage between the appellant and respondent was solemnized on 27th May 2011 at Jalgaon.

3. The Petition was filed by the wife on the ground of cruelty. Though the learned Advocate for the appellant submits that the perusal of the Petition would show that it has been stated that the Petition has been filed under Section 13(1)(ib) of the Hindu Marriage Act, 1955, which according to him is a wrong section, however we are of the considered opinion that the entire contents are required to be considered to arrive at a conclusion under which provisions of law the relief has been sought. Mentioning a wrong section in the title of the Petition will not affect the jurisdiction and power of the Court to consider it under appropriate provision.

4. We have heard learned Advocate Mr. Deshmukh appearing

for the appellant – husband and learned Advocate Ms. Kazi appearing for the respondent – wife and perused the documents produced.

5. It has been vehemently submitted on behalf of the appellant that though the marriage was solemnized on 27th May 2011, there was absolutely no complaint by the wife regarding ill-treatment. Now, at the time of Petition, wife came up with the story that the husband is addicted to alcohol and then ill-treated her. The learned trial Court ought not to have believed in the same. The wife has admitted in the cross-examination that she has left the company of the husband on her own and it has also been confirmed by her father, who has been examined as a witness. In fact the husband had sent notice for restitution of conjugal rights, which shows that he had desire to cohabit with the respondent but for some obvious reasons it appears that the wife has left the house. Now, though the Appeal has been filed within limitation and respondent had notice of the same, still she has performed second marriage, which is in violation. Learned Advocate for the appellant has relied on the decision in *Anurag Mittal vs. Shaily Mishra Mittal*, (2018) 9 SCC 691, wherein it has

been observed that the Hindu Marriage Act is a social welfare and beneficent legislation and must be interpreted in manner which advances object of legislation since it intends to bring about social reforms. Court cannot interpret socially beneficial legislation on basis as if words therein are cast in stone. Object of Section 15 of the Hindu Marriage Act is to provide protection to persons who have filed appeal against decree of dissolution of marriage and to ensure that said appeal is not frustrated. The learned Advocate therefore, submits that taking into consideration the subsequent events also the Appeal deserves to be admitted.

6. Per contra, the learned Advocate for the respondent submitted that the trial Court has not erred in appreciation of evidence and merely because there was no complaint filed under Section 498-A of the Indian Penal Code it cannot be said that everything was going smoothly. The wife specifically stated that the husband was addicted to liquor and other vices as well as he was addicted to gambling. Under the influence of liquor the husband used to assault the wife. They have no issue out of the marriage and therefore, she was insulted for not bearing child.

This allegation has been then supported when offence came to be registered against the appellant. Copy of the charge-sheet has been produced on record, which shows that husband was involved in offence under Section 12-A of the Maharashtra Prevention of Gambling Act. Even non-cognizable offence came to be registered on 14th August 2019 when wife was threatened by the appellant. After the decree was passed, which is a Judgment in rem, the respondent has performed marriage on 14th May 2022. The notice of the Appeal was received by the respondent in July 2022 and thereafter she caused appearance in the matter. No stay was granted by this Court when notice was issued. Now respondent is totally settled in her life after performing the marriage.

7. At the outset, we would say that if the material is found to admit the Appeal then only the question of the second marriage during the appeal period and interpretation of Section 15 of the Hindu Marriage Act will come into play. Here, it appears that both the parties have led oral evidence as well as documentary evidence. We agree with the statement on behalf of the wife that merely because no complaint has been filed about the ill-

treatment, that does not mean that the relationship was good or there was no cruelty to the wife. When the wife had come to the Court seeking decree for dissolution of marriage on the ground of cruelty, the burden was on her to prove the same. The ill-treatment was on the count, as per the contention of the petitioner – wife that the husband was addicted to liquor, gambling and also consuming *Bhang*. Secondly, the cruelty was on the count of insulting the wife on the ground that she has not begotten a child and therefore calling her as 'infertile'. She is specific in stating that she left the matrimonial home, initially about four months prior to the Petition but she was asked by her father to resume the cohabitation and therefore she returned to the matrimonial home. But again the husband started acting in the same way and therefore, since about 1½ months prior to the Petition she was staying with her father. It is to be noted that in the cross-examination, wife has admitted that her father is residing nearby to the matrimonial home. Father also used to visit her matrimonial home and she was also visiting the house of her father. But the cross-examination does not indicate that she used to stay with her father for longer times. Visit to father's house is, therefore, natural. Wife has specifically denied that

when she was residing with her father, husband had come to fetch her 3 to 4 times for cohabitation. She has specifically stated that husband had come under the influence of liquor to quarrel with her.

8. Now objection has been taken regarding the charge-sheet under the Maharashtra Prevention of Gambling Act against the husband, as it is the even after the presentation of the Petition and therefore, it could not have been considered. We do not agree with the said submission. The charge-sheet was filed to support the allegation that husband was addicted to gambling. Though the alleged event has taken place later on, yet it supports contention of the respondent and for that purpose the copy of charge-sheet was filed. It also further appears that wife had filed complaint against the husband for threatening her and case has been registered vide Crime No.769 of 2019 for offence under Sections 294, 323, 506 of the Indian Penal Code and the said fact is admitted by the husband.

9. Objection has also been taken for not appreciating the admission given by the wife and her father that the wife is

residing with father on her own wish and has no intention to resume cohabitation. The alleged admission cannot be read in isolation. The wife as well as her father have specifically explained that since there was fear in the mind of the wife about her life, she was not resuming cohabitation. As regards addiction to liquor is concerned, except denial or word against word there is nothing. But the question still remains as to why the wife would raise the said point after eight years of marriage. Her sufferance in silence cannot be considered against her. The cross-examination of the wife taken on behalf of the husband also makes a mention that the husband had asked for pardon. The question then arises, for what purpose he had asked for pardon. It can also be seen from the examination-in-chief of the husband that he has also raised allegations against the wife, mainly in respect of her behaviour. It is alleged that the wife was not doing any work or rather used to sleep, used to use mobile continuously and that she was short tempered and used to quarrel on petty issues. It can then be said that the husband is also making these allegations after eight years of marriage. Therefore, the appreciation of evidence as done by the learned Judge of the Family Court appears to be correct. Merely because

a second view is possible, we need not go into those allegations. Therefore, the Appeal deserves to be dismissed at the admission stage itself.

10. When the Appeal is not worth admission also, we need not go into the aspect of interpretation of Section 15 of the Hindu Marriage Act. No doubt, it can be certainly said that the wife ought to have waited for the appeal period to over for performing the second marriage, but then when the notice was issued, there was no stay to the operation and implementation of the decree that was passed. Of course, the notice has been issued when present respondent had already performed the marriage and it appears that it was not known to the husband. Before parting, we would like to say that there was an attempt by this Court to have some settlement between the parties, taking into consideration the fact that the respondent has already married. However, a compromise could not take place and therefore, we had taken up the matter for hearing at the stage of admission itself by giving an opportunity to both the sides.

11. For the aforesaid reasons, the Appeal stands dismissed at the admissions stage.

12. In view of the dismissal of the Appeal itself, nothing survives for consideration in the Civil Application. The Civil Application, therefore, stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN24