



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.99 OF 2023**

Ramdev Chintaman Badgujar,
Age: 44 years, Occu: Service,
R/o: Kalmsare, Tal. Amalner,
Dist. Jalgaon.

..Appellant

Versus

Vaishali Ramdev Badgujar
Age: 39 years, Occu: Household,
C/o: Madhavrao Baburao Badgujar,
R/o: Islampura (Subhashpura)
Amalner, Tal. Amalner,
Dist. Jalgaon.

..Respondent

...

Mr. P. R. Sancheti, Advocate for the Appellant.
Mr. Girish S. Rane, Advocate for Respondent.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED 04th DECEMBER, 2024.**

ORDER:-

1. The appellant/original petitioner impugns judgment and order dated 23.02.2011 passed by Civil Judge Senior Division, Amalner in H.M.P. No.7/2010, which has been confirmed by order dated 07.04.2016 passed by Ad-hoc District Judge-1, Amalner, District Jalgaon in Regular Civil Appeal No.45/2011. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The petitioner/husband instituted H.M.P. No.7/2010 seeking decree of divorce under Section 13 of the Hindu Marriage Act, particularly on the ground of cruelty and desertion. It was contention of the petitioner that he married with respondent on

04.05.1993. Since 26.09.2005, respondent is residing at her maternal home. The respondent dislike to reside in matrimonial home. She was reluctant to take care of petitioner's parents. She used to frequently leave matrimonial home. When petitioner's father was on deathbed and suffering from cancer, respondent left house without informing petitioner. Although there were several attempts for reconciliation, those were unsuccessful. The respondent used to raise quarrel with petitioner and insult him in presence of his students. Further, she made several attempts to lodge false criminal cases against him. She always threatened him to commit suicide. She made false allegations against maternal uncle of petitioner that he was having ill eye on her. On 13.06.2008, respondent, her brother and two companions gave threats to petitioner and his old mother. In that incident, petitioner's mother suffered bleeding injury with rib fracture. The petitioner lodged complaint regarding incident. Accordingly, offence has been registered against respondent's brother and others under Sections 325, 323, 504, 506 r/w 34 of the Indian Penal Code.

3. The respondent-wife refuted aforesaid allegations by filing written statement. She states that petitioner and her mother-in-law used to harass her on account of demand of dowry. The maternal uncle of the petitioner was instigating them. He wanted that his daughter shall marry with petitioner. The petitioner had

raised demand of Rs.1,00,000/- for construction of house, which could not be fulfilled, that was main cause of ill-treatment towards her. The maternal uncle of the petitioner was having ill eye on her. The petitioner had caused mediation through Dr. Badgujar and Gotu Seth to breach the matrimonial tie. The petitioner was suspecting her character. He compelled her to abort pregnancy thrice. She was time and again driven out of home. She disclosed harassment to her parents. On 01.10.2006, the petitioner abused her and made demand of cash amount. She had lodged report of such incident to Marvad Police Station. She further states that petitioner had previously filed H.M.P. No.50/2006 alleging desertion against her. The said petition has been dismissed. The decree is confirmed in Appeal. She had also filed maintenance application under Section 125 of the Criminal Procedure Code, wherein finding is recorded that petitioner has deserted respondent without sufficient cause. The Revision filed against said order has been dismissed. The present proceeding has been filed during pendency of Civil Appeal No.25/2007 filed by respondent against rejection of his claim for restitution of conjugal right.

4. The Trial Court framed issues based on pleadings of parties and recorded finding that petitioner failed to prove his case of cruelty or desertion against respondent. Consequently, dismissed

the petition. The Appellate Court concurred with the findings recorded by Trial Court and dismissed the Appeal.

5. Mr. Sancheti, learned Advocate appearing for appellant would submit that conduct of respondent, which can be gathered on the basis of evidence on record is sufficient to make out case of cruelty and desertion, which entitles petitioner to decree of divorce. He would submit that respondent left the matrimonial home in the year 2005, when petitioner's father was being treated for cancer. She made wild allegations against maternal uncle of the petitioner that he keeps ill eye on her. She had filed several proceedings in the Court against the petitioner. She never resume company of petitioner till filing of proceeding for divorce and even till this date. According to him, marriage between petitioner and respondent broken beyond repair. It has been wrecked beyond the hope of salvage. The matrimonial tie remained just for the sake of name. The *de facto* separation of petitioner and respondent needs *de jure* declaration. Hence, he urges that concurrent judgment and decrees are liable to be quashed and set aside and petition seeking decree of divorce needs to be allowed.

6. Per contra, Mr. Rane, learned Advocate appearing for the respondent submits that Courts below have recorded concurrent findings of fact holding that petitioner failed to prove his case of cruelty and desertion against respondent. He would further point

out that petitioner had filed Hindu Marriage Petition No.50/2006 seeking decree of restitution of marriage under Section 9 of the Hindu Marriage Act. The Trial Court recorded finding that petitioner was not having bonafide intention to cohabit with respondent, although she had shown her willingness to continue cohabitation with the petitioner. Consequently, said proceeding was dismissed. Even Regular Civil Appeal No.25/2007 has been dismissed. According to him, aforesaid findings would definitely operate as *res-judicata* in the claim of the petitioner for divorce on the ground of alleged desertion against wife. Mr. Rane would submit that instances of cruelty pleaded in the petition and evidence tendered into service are mere instances of trifle differences between husband and wife. It cannot be approved to be instances of cruelty. He would, therefore, urge that there is no substance in the Appeal and seeks its dismissal.

7. Having considered submissions advanced, it can be observed that admittedly petitioner had filed H.M.P. No.50/2006 under Section 9 of the Hindu Marriage Act alleging desertion against respondent-wife. In the said proceeding, Trial Court concluded that in fact it is petitioner, who was not having bonafide intention to cohabit with respondent. Consequently, his application for restitution of conjugal right was dismissed. The Appellate Court has confirmed the said decree. Another ground raised by the

petitioner is that brother of respondent and his two companions raised assault on him and his mother due to which his mother suffered fracture of rib and bleeding injury. Pertinently, petitioner had filed complaint in R.C.C. No.334/2009. The incident in that complaint is dated 13.06.2008. No medical record in respect of alleged injury suffered by him or his mother has been placed on record. The petitioner has not examined any witness in support of his contention. Therefore, that incident itself cannot be treated as cruelty by respondent against petitioner.

8. So far as allegations made by the respondent against maternal uncle of the petitioner, there cannot be denial that indeed such allegation was made. However, there is nothing to infer that it was patently false allegation. No other glaring incident of cruelty has been brought on record. The Courts below have duly considered aforesaid aspects of the matter and concurrently recorded finding that such allegations cannot be treated as instances as cruelty against petitioner. The Supreme Court of India in case of *Shobha Rani Vs. Madhukar Reddi*¹ held that cruelty may be mental or physical, intentional or unintentional. If it is mental, the problem presents difficulty. The Courts must find out nature of cruel treatment and impact of such treatment in the mind of spouse. The Court has to find whether it caused reasonable apprehension that it would be harmful or injurious to

¹ (1988) 1 SCC 105.

live with the other. Ultimate inference has to be drawn by taking into account the nature of the cruelty and its effect on the complaining spouse. Further, there may be incident where the conduct complained of, itself is bad enough and per se unlawful or illegal, by which inference of cruelty can be drawn without entering into formal enquiry. Keeping in mind the aforesaid exposition of law, when allegations or stipulations in the petition are considered, there are no such serious instances that would be harmful or injurious for petitioner to live with respondent-wife. The trifle disputes were easily conciliable. However, in previous proceeding for restitution of marriage, the Court has drawn conclusion that petitioner himself had no bonafide intention to cohabit with respondent. Therefore, finding recorded by Courts below on the point of cruelty and desertion does not require interference in the second appeal.

9. Mr. Sancheti, learned Advocate appearing for the appellant lastly submits that marriage has been irretrievably broken down. Since 2005, the couple is separated. There appears to be substance in the contention of the learned Advocate for the appellant. However, that itself may not constitute ground of divorce under Hindu Marriage Act. Although it is alleged that wife has instituted several Court proceedings against petitioner, bare reading to the nature of such proceeding would show that she has instituted

proceeding for maintenance, which is legal right provided to the deserted wife. There is nothing to show that wife has instituted any criminal proceeding against husband or his family member. On the other hand, it is petitioner, who has instituted criminal proceeding against respondent's brother. If husband himself has created circumstances, by which wife was compelled to have separate residence, husband cannot be permitted to take benefit of his conduct. Even otherwise, grant of decree of dissolution of marriage only on the ground that marriage is irretrievably broken would be beyond jurisdiction of this Court while sitting in statutory appeal.

10. Consequently, there is no merit in the Second Appeal and same stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE