



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

FAMILY COURT APPEAL NO.69 OF 2024

Tukaram S/o Vishwanath Joshi,
Age 50 years, Occu. Nil,
R/o Bajaj Nagar, Aurangabad,
Tal. & Dist. Aurangabad

.. Appellant
(Orig. Respondent)

Versus

Sau. Bhagyashree W/o Tukaram Joshi,
Age 41 years, Occu. Temporary Service,
R/o C/o Tanaji Vinayak Datir,
House No. 5/34/4, CIDCO,
12th Scheme, Shivajinagar,
Aurangabad, Dist. Aurangabad
R/o. Golapangri, Tal. & Dist. Jalna

.. Respondent
(Orig. Petitioner)

WITH
CIVIL APPLICATION NO. 10581 OF 2024
(Tukaram Vishwanath Joshi Vs. Bhagyashree Tukaram Joshi)

...
Advocate for appellant / applicant : Mr. S.B. Solanke
...

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

DATE : 30 SEPTEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

This is an appeal under section 19 of the Family Courts Act by the husband, challenging the decree for divorce passed at the instance of the respondent – wife on the ground of cruelty, under section 13(1)(i-a) and desertion, under section 13(1)(i-b), of the Hindu Marriage Act, 1955.

2. We have heard the learned advocate for the appellant.

3. After narrating that the couple got married on 17.11.2005, being blessed with a son Vipul born on 18.07.2009, learned advocate would submit that no ground was made out by the respondent by leading cogent and convincing evidence but the learned Judge has readily accepted her lopsided version and the judgment and order is perverse and arbitrary. He would submit that except the bare statements of the respondent, there was nothing to substantiate her allegations and still the learned Judge did not insist for corroboration. He has perfunctorily discarded the appellant's version and evidence. There was no clear proof about cruelty or desertion. No heed has been paid to the answers elicited from the respondent during her cross-examination. He even ignored the inconsistent stand of the respondent in respect of the alleged cruelty. She tried to demonstrate that he had never called her for resuming cohabitation but at the same time alleged about he having abused her during telephonic conversation and even by sending messages. The learned Judge also ignored the fact that no attempt was made by the respondent to resume cohabitation by calling upon the appellant by issuing any notice. The appellant has a strong case to make out. The impugned judgment and order is liable to be quashed and set aside.

4. We have considered the submissions and perused the papers. The petitioner is challenging the judgment and order, whereby, the family court has granted divorce to the respondent - wife on the ground of cruelty and desertion as contemplated under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act respectively.

5. A careful reading of the reasoning assigned by the learned Judge of the family court would revealed that after extending opportunity of leading evidence to both the sides, it could notice that though the appellant was taking a spacious stand of his willingness to resume marital tie, it was apparently a convenient plea without any intention to obey it. Admittedly, as has been submitted by his learned advocate on our query, the appellant never filed any petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. If really he was willing to resume the marital tie. This would demonstrate hollowness in his stand and which has been correctly remarked by the learned Judge.

6. Conspicuously, in spite of having taken a specific stand in his written statement, the appellant had expressly given consent for dissolution of the marriage. His stand during the testimony of his willingness to resume marital tie was correctly remarked by the learned Judge as contradictory stand to what was actually pleaded.

7. The learned Judge has also correctly demonstrated as to how his improvised stand during testimony to take exception to what was actually pleaded in the written statement regarding consent for dissolution of the marriage, by explaining that it was an error was clearly unsustainable. The

learned Judge has also pointed out that if really it was an error he would have certainly sought amendment of the written statement but it was never requested.

8. The learned Judge has also pointed out by referring to application (**Exhibit-8**) moved by the appellant on 06.05.2022 styling it as a 'Complaint Application' and again repeating therein that there was no possibility of reconciliation and he had already given consent for dissolution and the respondent - wife was wasting the precious time of the Court and seeking initiation of criminal action and even a contempt proceeding against her. The application was rejected by the learned Judge. Indeed the learned Judge has correctly appreciated such conduct of the appellant in reaching the conclusion that he was never really interested in resuming marital tie.

9. The learned Judge also noted that the couple was not staying together since 01.11.2017, for more than two years next before filing of the divorce petition on 03.12.2021.

10. At no point of time since the couple got separated had the appellant taken care even to provide some maintenance to the respondent and their child. Such conduct was sufficient for the learned Judge to reach a plausible conclusion about appellant having treated the respondent with cruelty and without their being any reason had made her to desert him for more than two years next before the petition.

11. The learned Judge has correctly appreciated the evidence in the proper perspective in concluding that the respondent-wife had established

both the grounds and was entitled to dissolve the marriage by way of a divorce decree.

12. There are no cogent reasons and sufficient grounds to cause any inference in the judgment and order under challenge.

13. The appeal is dismissed *in limine*.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

habeeb