



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 133 OF 2017
WITH CIVIL APPLICATION NO. 15911 OF 2022

SUBHASH KASHINATH PATIL
VERSUS
SUREKHA SUBHASH PATIL

Mr. R. R. Kazi, Advocate h/f Mr. P. R. Katneshwarkar, Advocate for the
appellant
Mr. C. P. Patil, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 22nd JANUARY, 2024

P.C. :-

1. This appeal takes exception to the judgment and decree passed in Hindu Marriage Petition No. 179/2003 dated 27/03/2008 dismissing the petition filed by husband seeking divorce against wife under Section 13 of the Hindu Marriage Act and the judgment and decree in RCA No. 134/2014 passed by First Appellate Court by judgment dated 29/09/2014 confirming the order passed by the Trial Court.

2. Undisputedly petitioner and respondent were married in the year 1986. It is the case of the petitioner that respondent had started living adulterous life. It is allegation that since time of marriage respondent was abusing and assaulting him. She also used to leave matrimonial home without intimation to the petitioner and was staying away for 2-3

days. There is also specific allegation that the had illicit relations with other person. After petitioner got knowledge about the same they started residing at Bhusawal. It is alleged that even then respondent continued with her acts. Allegation is made against Anil Sapkale who used to visit the house of the petitioner that he had established illicit relations with respondent. It is also alleged that respondent performed marriage with him in a temple. With these allegations decree of divorce is sought under Section 13 of the Hindu Marriage Act.

3. Respondent appeared before the Trial Court and denied the allegation in the petition. It is alleged by the respondent against the petitioner that the petitioner is addicted to liquor and he used to abuse and beat her. She claims that considering these circumstances she was forced to leave matrimonial home. It is specifically averred that she is ready to resume cohabitation with the petitioner.

4. Issues were framed by the Trial Court and burden was cast upon the petitioner to prove that the respondent had sexual intercourse with other person to entitle to him to get decree of divorce. Petitioner examined himself however was not able to give any particulars with regard to the allegations made by him in terms of date, time etc. He also examined Shaikh Bhuru who claims to be resident of nearby area where

the petitioner and respondent were staying. This witness though deposes on the line of the petitioner however, in the cross-examination it has come on record that there is absolutely no evidence in order to hold that this witness is residing in the neighborhood in order to be witness to any of the incident regarding allegations against the respondent. Even otherwise his evidence indicates that he has no personal knowledge about any of the incident which are raised in the petition by the husband.

5. The Trial Court has refused accept the testimony of petitioner as well as witness examined by him. In the facts and circumstances of the case where serious allegations likely adultery levelled against the wife, it was incumbent part of the petitioner husband to prove the said allegation by leading substantive evidence. Hence, evidence led by the husband is not at all sufficient to prove the respondent establishing illicit relations with any other person.

6. In this appeal the petitioner has filed Civil Application No. 5044/2023 seeking leave to produce on record documentary evidence in order to substantiate made in the petition. Perusal of the said application shows that the document sought to be relied upon pertain to the period prior to filing of the suit. There is absolutely no justification provided by the petitioner for not placing the said documents before the Trial Court.

No due diligence is pleaded or shown in order to permit him place such document at the stage after trial is over. He also submits that there are two documents which are dated after the filing of the suit however in this regard too there is absolutely no averment in the application to show as to why they were not produced during trial or at least before First Appellate Court.

7. Learned counsel for the petitioner also sought to argue that since the petitioner and respondent are admittedly staying separately for not less than 20 years. The marriage between them irretrievably broken down. This ground is not available for dissolution of marriage under provision of Hindu Marriage Act. The only ground on which the dissolution was sought is that respondent No.1 living adulterous life which has been not proved.

8. This Court finds no perversity in the findings recorded by both Courts and as such no substantial question of law is involved in this appeal. Resultantly, appeal stands dismissed. Pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)

ssp