



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.94 OF 2023

Bhaurao S/o Namdev Hirve,
Age-45 years, Occu:Agriculture,
R/o-Toramba, Taluka and
District-Osmanabad.

**...APPELLANT
(Ori. Petitioner)**

VERSUS

Shalu W/o Bhaurao Hirve,
Age-43 years, Occu:Household,
R/o-Toramba, Taluka and
District-Osmanabad,
At Present: Vikas Housing Society,
In front of Mauli Hospital,
Bhalshankar Apartment, Rupi Nagar,
Talwade, Tq-Haveli, District-Pune.

**...RESPONDENT
(Ori. Respondent)**

...
Mr. P.D. Dadpe Advocate for Appellant.
None present for Respondent though served.

...

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

DATE : 08th JANUARY, 2024

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

1. Present Appeal has been filed by the original petitioner – husband, whose petition for divorce came to be dismissed i.e.

Petition No.A-233 of 2021 on 24th July 2023 by the learned Judge, Family Court , Dharashiv (Osmanabad).

2. The respondent - wife has been served in this matter but she failed to cause appearance. Since all the documents were filed including the copies of depositions, matter is heard finally with the consent of the learned Advocate for the appellant, at the stage of admission.

3. It is not in dispute that original petitioner - husband and respondent - wife got married on 23rd June 2003 at Padoli (Akubai), Taluka and District-Osmanabad as per Buddha customs and rituals. Initially they resided at village Toramba but thereafter they shifted to Pune where appellant - husband used to take plumbing work on contract basis. They have three children, i.e. two daughters and one son. It is also not in dispute that appellant - husband suffered serious injury in an accident in January 2018.

4. The appellant had come with the case that in the said accident, he had suffered injuries to his head, brain, right hand and leg and thereby he has been disabled to do any work.

Appellant has taken treatment for about 1½ years at Solapur and Pune. Appellant alleges that thereafter the respondent - wife started quarreling with him. He has also made allegations that one of the relative of the wife started coming frequently to their house, which was not approved by the appellant - husband. In spite of the fact that the wife was aware about the physical condition of the husband, still she was insisting that he should do labour work or any other work. Wife used to say that unless he does work he should not reside in the house. She was not providing meals to the appellant. She used to call her sister, brothers to give threats to the appellant. Appellant then started saying that they should shift to Toramba where they will earn for their livelihood but the wife refused. According to the appellant, due to physical and mental harassment given by the wife, he is residing separately from her since 2nd February 2021 and on the ground of said cruelty, he had sought divorce.

5. The respondent - wife had filed written statement and denied the allegations. She says that the original petitioner - husband is still doing work of plumbing. He is having 12 acres of land at village Toramba. She says that as appellant was driving the vehicle under the influence of liquor, he was responsible for

the accident. She says that her children are taking education at Pune and therefore, it is not possible for them to stay at Toramba. She has stated that she is ready to cohabit with the petitioner for the future of her children.

6. Issues came to be framed. Parties have led oral evidence and after considering the evidence on record, the learned trial Judge has dismissed the petition.

7. The learned Advocate appearing for the appellant has submitted that the learned trial Judge has not appreciated the evidence properly. It has not been considered that the appellant had suffered major accident and he was unable to do any work still the wife was insisting that he should work and on that count the wife has harassed the appellant.

8. Following points arises for my determination and the findings and reasons for the same are as follows :

Sr.No.	POINT	FINDING
01	Whether the appellant had proved that wife has treated him with cruelty ? If yes, whether appellant was entitled to get decree for divorce?	In the negative.

REASONS

9. The most important point that can be seen from the evidence that was adduced by the appellant – husband that he has not produced any document to show that he had taken treatment for a long period and he was advised to take rest. No doubt the wife is admitting that the husband suffered accident but she has disputed the fact projected by the husband that he has incurred physical disability. For that purpose it was necessary for the husband to examine the treating doctor, the doctor from whom he received the follow-up treatment. If we consider his cross-examination, at the initial stage appellant has stated that he was admitted in Solapur for about 3 to 4 months. Thereafter, he corrected himself by saying that he was admitted for about 14 to 15 days. Then he says that after 15 days he was taking bed rest for about one year. But then appellant says that during the said period of one year he was at Pune with his wife. Without any reason if he was not doing any work to earn when he had four members in his family to support, apart from himself, and if the wife insists upon husband to do some work, then it cannot be said that it amounts to cruelty. Appellant has intentionally

suppressed as to who was earning during the said period when he was taking bed rest.

10. It appears that the appellant has voluntarily left the company of the wife though he has tried to say that it is due to the cruelty. He has not examined any of his relative to whom he would have shared his plight. It appears that on the basis of some vague contentions he wants divorce and therefore, the learned trial Judge was justified in refusing the decree for divorce. There is no merit in the Appeal which has to be dismissed at the threshold.

11. Accordingly, the Appeal stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN24