



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.622 OF 2017
WITH
CIVIL APPLICATION NO.492 OF 2019

Mrs. Nutan Nilkantha Patil

... Appellant.

Versus

Mr. Nilkantha Fakirrao Patil

... Respondent.

Mr. Rajan Pawar a/w. Ms. Diksha Patil for the Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : May 06, 2024.

P. C. :

1. By this Appeal, the original Respondent-wife is before this Court, being dissatisfied by the judgment dated 26th April, 2016 passed by the 1st Appellate Court dismissing the Appeal and confirming the dissolution of marriage solemnised between the parties on 13th March, 2000.

2. The facts of the case are that Hindu Marriage Petition No.352 of 2006 came to be filed by the Respondent-husband for divorce on the ground of cruelty as well as desertion. In the year 2008, a petition came to be filed under Section 9 of the Hindu Marriage Act, 1955 by the Appellant-wife seeking restitution of the conjugal rights. By judgment dated 19th August, 2009, the Trial Court decreed the husband's petition and dismissed the wife's petition and as such the

marriage solemnised between the parties came to be dissolved by decree of divorce.

3. Being aggrieved, Civil Appeal No.209 of 2009 was preferred by the Appellant-wife. The Appellate Court on re-appreciation of the evidence dismissed the appeal of the wife. The Appellate Court reversed the finding of the Trial Court on the issue of cruelty, however, held the issue of desertion in favour of the husband.

4. Heard Mr. Pawar, learned counsel for the Appellant.

5. Mr. Pawar, learned counsel appearing for the Appellant would submit that for the purpose of dissolution of the marriage on the ground of desertion, it is necessary to show desertion for a period of two years prior to the institution of the petition. He submits that in the present case, the parties separated on 20th March, 2001 and on 18th July, 2001 the wife filed an FIR under Section 498-A of the IPC, in which the Respondent-husband was acquitted on 2nd September, 2004 and thereafter, an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 came to be filed which was decided on 10th June, 2005. He further submits that the period during which the proceedings under Section 498-A and the proceedings under Section 125 of Cr.P.C. were being prosecuted should not be counted for computing the period of two years for the purpose of desertion. He would further point out to the findings of the Appellate Court and would submit that the Appellate Court has not given any findings as regards the desertion, as there is no discussion on the

intention to desert as well as on the aspect of desertion without any reasonable cause.

6. Considered the submissions and perused the record.

7. It is an admitted position that on 29th March 2001, the parties had separated and the petition for divorce has been filed on 13th August, 2006. The question of law sought to be canvassed by learned counsel for the Appellant seeking to exclude the period during which the proceedings under Section 498-A and Section 125 of Cr.P.C. were being prosecuted is not supported by the statutory provision of law. In a Petition seeking dissolution of marriage under Section 13 (1) (ib) of Hindu Marriage Act, 1955, it has to be shown that the desertion is for a continuous period of not less than two years immediately preceding the presentation of the petition without reasonable cause and without the consent or against the wish of such party. Merely because some proceedings were initiated by the wife during the period would not enure to the benefit of the wife for the purpose of computing the period of two years by excluding the said period. The fact is not disputed that in 2001, the parties have separated and the petition has been filed in the year 2006. There was thus, desertion for a continuous period of not less than two years which satisfies the requirement of the provisions of Section 13(1)(ib) of Hindu Marriage Act, 1955.

8. As regards the next submission that there is no finding as to desertion for reasonable cause and without consent, the Trial Court as well as the Appellate Court has noted the evidence of the

Respondent-husband that the Appellant had left the house in the month of March, 2001 and thereafter 5 to 6 times Respondent made attempts to bring her back, but the Appellant refused to come for cohabitation. The Appellate Court has noted that since the year 2001 till the year 2006, there was no petition filed for restitution of the conjugal rights. The Trial Court noted that the Appellant was serving as primary teacher and she was residing with her parents who were residing in the same village and that she had not made any attempt to go back to her matrimonial house. The Appellate Court noted that there was a desertion for period of more than two years and there is nothing on record to show that the Respondent had withdrawn himself from the society of the Appellant without any reasonable cause.

9. On the basis of the evidence which has come on record, the Appellate Court has re-appreciated the evidence and held that desertion have been proved. It is also admitted that subsequently the Respondent-husband has re-married and there is a child from the said marriage.

10. It is well settled that in exercise of powers under Section 100 of the CPC, this Court will not re-appreciate the evidence and substitute its own view in place of the view of the Appellate Court which is the final fact finding Court, unless it is shown that the findings of the Appellate Court are based on no evidence. In the present case, the Appellate Court has considered the evidence on record and arrived at

a finding of desertion. It is impermissible for this Court to interfere with the said findings under Section 100 of the CPC by re-appreciating evidence.

11. In the light of the above, no substantial question of law arises, Appeal stands dismissed. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]