



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.10 OF 2020

Maya Sanjay Akotkar

.VS.

Sanjay Vasantao Akotkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr A. S. Thotange, Advocate for the appellant

Ms Ritu Jog, Adv. h/f. Mr A. C. Dharmadhikari, Advocate for the respondent

CORAM : G.A. SANAP, J.

DATE : APRIL 18, 2024.

Heard learned Advocates for the parties at the stage of admission. Perused the record and proceedings.

2. In this second appeal, the challenge is to the judgment and decree dated 02.03.2019 passed by the learned District Judge-5, Akola, whereby the appeal filed by the appellant against the decree of divorce granted by the learned Civil Judge Senior Division, Akola was dismissed.

3. The marriage between the appellant and the respondent was solemnized on 12.02.2004. In view of the matrimonial discord, the respondent filed the petition for divorce on the ground of cruelty and desertion. It is the case

of the respondent that the appellant resided with him hardly for 38 days. They resided together with their family at Akola. The appellant insisted the respondent to reside separately from joint family. The respondent did not accept this suggestion. The appellant, thereafter, started quarrelling with the family members of the respondent. It is stated that without any cause and reason, the appellant left the matrimonial house and went to stay at Balapur on 28.02.2004. The respondent tried his level best to convince the appellant to join his company, but to no use. The appellant, instead of joining the company, lodged a report with the police against the respondent and his family members. They were prosecuted for the offence punishable under Section 498-A of the Indian Penal Code and Dowry Prohibition Act. The respondent and his family members have been acquitted. It is further stated that repeated efforts made by the respondent to establish marital relations with the appellant proved futile. The respondent, therefore, filed a petition for divorce on the grounds of desertion and cruelty.

4. The appellant filed the written statement and opposed the claim. She has admitted the filing of a prosecution against the respondent and his family members. She has also not disputed the acquittal of the respondent and

his family members in the said criminal case. However, the appellant contended that she was subjected to cruelty. There was a demand of dowry. She was therefore constrained to leave the house of the respondent and stay with her parents. In short, she denied the grounds of desertion as well as the cruelty pleaded by the respondent.

5. The parties adduced the evidence before the trial Court. The respondent examined himself as a sole witness. The appellant examined herself as well as her father in support of the defence. Learned Judge of the trial Court on consideration of the evidence, recorded the findings on both the grounds i.e. cruelty and desertion in favour of the respondent and granted a decree for divorce. The appeal filed by the appellant against the judgment and decree of divorce was dismissed. Therefore, the appellant has filed this second appeal.

6. I have heard the learned Advocate Mr A. S. Thotange for the appellant and learned Advocate Ms Ritu Jog for the respondent.

7. Learned Advocate for the appellant submitted that the Courts below have failed to properly appreciate the

evidence as well as to properly apply the provisions of law to the facts and evidence and have come to an erroneous conclusion. Learned Advocate submitted that the failure to properly appreciate the evidence has resulted in perversity and as such, the appeal involves a substantial question of law. Learned Advocate took me through the record to support his submissions.

8. Learned Advocate for the respondent-husband submitted that the evidence adduced by the parties has been scrutinized by both Courts and the Courts below have found said evidence sufficient to prove the grounds of desertion and cruelty. Learned Advocate submitted that re-appreciation of evidence in a second appeal is not permissible. In short, learned Advocate submitted that this appeal does not involve a substantial question of law.

9. I have gone through the record and proceedings. It has been proved that when the appellant left the house of the respondent, she filed a petition for restitution of conjugal rights bearing HMP No. 132 of 2008. It is undisputed that said petition was dismissed for default. The prosecution was lodged against the respondent and his family members under the Indian Penal Code as well as under the Dowry

Prohibition Act. It has come on record that after a full dressed trial, the respondent and his family members have been acquitted. It is the contention of the respondent that the prosecution was malicious and due to said prosecution, he was subjected to mental pain and agony. It was cruelty to him and his family members. He has further stated that despite making sincere efforts, the appellant did not respond positively and joined his company and cohabit with him.

10. The Courts below, on appreciation of the evidence, have found that the appellant deserted the respondent without any reasonable cause. The Courts below have also recorded the finding that the mental pain and agony undergone by the respondent and his family members on account of the malicious prosecution amounts to cruelty. The Courts below have recorded the reasons in support of the findings. It is seen that the Courts below have considered the settled principles of law enunciated by the Hon'ble Apex Court. The contention of the appellant that she was ready and willing to co-habit with the respondent and therefore, she filed a counter claim for restitution of conjugal right was also rejected by the trial Court and confirmed by the appellate Court. The Courts below have taken into consideration the admission given by the appellant in the

proceeding filed under Section 125 of the Code of Criminal Procedure, where she stated that she is not willing to cohabit and reside with the respondent and is also not ready to give a divorce. The Courts below have found that, on the ground of cruelty and desertion, there was a breakdown of the marriage.

11. On going through the material placed on record and particularly the reasons recorded by the Courts below, I am satisfied that the Courts below have not committed any error, mistake, illegality or perversity in appreciating the evidence on record. In my view, the thorough analysis of the evidence by both Courts below is based on the sound principles of the law. In my view, therefore, in this second appeal, no substantial question of law arises. As such, the appeal deserves to be dismissed. Accordingly, the appeal stands **dismissed** at the stage of admission.

12. The second appeal stands disposed of accordingly. Pending applications, if any, also stand disposed of.

(G. A. SANAP, J.)

Namrata