



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

SECOND APPEAL NO. 517 OF 2018

Shri Pankaj S/o Jaichandji Agashe

VS.

Smt. Bhavna w/o Pankaj Agashe

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

Mr S.D. Malke, Advocate for appellant.

None for the respondent.

CORAM : G.A. SANAP, J.

DATE : JANUARY 05, 2024.

Heard Mr. S.D. Malke, learned Advocate for
the appellant. Advocate for the respondent is absent.

2. In this Second Appeal, the notice was issued
to the respondent on following substantial questions of
law.

(i) *Whether the evidence on record is sufficient
to grant the decree for divorce on the ground of cruelty
under Section 13(1)(ia) of the Hindu Marriage Act,
1955?*

(ii) *Whether the Courts were justified in giving
importance to the aspect that the parties were residing
separately for period of eight years which resulted in*

break down of the marriage ?

3. This appeal is listed today for admission. I have heard learned Advocate for the appellant on the issue of substantial questions of law proposed to be framed for the purpose of admission.

4. Learned Advocate for the appellant submitted that learned Judge of the trial Court has not granted decree on the ground of cruelty. Learned Advocate submitted that observations made in the judgment of the Trial Court and the judgment of the Appellate Court confirming the said judgment indicate that decree was granted on the ground of irretrievable break down of the marriage. Learned Advocate submitted that on account of this, the findings of fact suffer from perversity. It is submitted that therefore, it gives rise to substantial questions of law raised in this appeal.

5. In order to satisfy myself about the correct factual position with the able assistance of learned Advocate for the appellant, I have gone through the judgment and order passed by the trial Court as well as the judgment and order passed by the First Appellate

Court. On going through the same and the material, I am satisfied that substantial questions of law do not arise in this appeal. The ground of cruelty was pleaded for seeking divorce by the respondent. The respondent adduced the evidence to prove the ground of cruelty. The appellant did not challenge the evidence of respondent as well as evidence of witness No.2 (Ramkrushn Rajaram Bawankar). Similarly the appellant did not adduce oral evidence to rebut oral and documentary evidence adduced by the respondent. Learned trial Court on the basis of the evidence found that the ground of cruelty was made out by the respondent for getting decree of divorce. It is further seen that apart from the evidence on record learned Judge of the Trial Court took into consideration the undisputed facts and circumstances. The important circumstance relied upon and discussed by the trial Court was the remote possibility of coming together of the appellant and the respondent to lead their matrimonial life. This circumstance was relied upon to draw the inference as to the fact in issue. It is seen that finding of fact recorded by the trial Court has been confirmed in appeal. It is therefore, apparent that challenge in this appeal is to the concurrent findings of fact.

6. In view of above, according to me, no substantial questions of law as sought to be contended arise in this appeal. Appeal in my view, is devoid of any substance.

7. Accordingly appeal is dismissed with no order as to costs.

(G. A. SANAP, J.)

Manisha