



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

10 SECOND APPEAL NO. 632 OF 1992

Smt. Ratnabai Pandharinath Hange
age 35 years, occ. Household
r/o at present Khandobachi Wadi
Tq. Gangakhed, Dist. Parbhani

....Appellant

VERSUS

Pandharinath Rama Hange
age 40 years, occ. Agril.,
r/o Nagdharwadi, Tq.Kandhar
Dist. Nanded

.....Respondent

.....

Mr. T. K. Sant, Advocate holding for Mr. P. V. Mandlik, Advocate for
Appellant.
None for Respondent.

CORAM : R. M. JOSHI, J.

DATE : 2nd JANUARY, 2025.

JUDGMENT :

1. This second appeal takes exception to the judgment and decree dated 14.07.1992 passed in Regular Civil Appeal No. 43/1986 whereby the judgment and decree passed in H.M.P. No. 13/1984 dated 17.01.1986 by Civil Judge, Senior Division, Nanded, granting decree of divorce came to be maintained.

2. This appeal is admitted on following substantial questions of law :-

(i) Whether the learned first appellate Court erred in granting divorce to the respondent-husband despite holding that desertion was at the instance of husband ?

(ii) Whether the Courts below erred in rejecting the interim maintenance to the appellant – wife under Section 24 of the Hindu Marriage Act ?

3. Parties are referred to as Appellant(wife) and Respondent(husband).

4. There is no dispute about the fact that Appellant and Respondent got married in the year 1972. Two children are begotten from this wedlock. There is allegation of Respondent that Appellant's father took her away to the parental home and thereafter she did not join company of Respondent. Respondent claims that Appellant had deserted him since 1974 till the time of filing of petition in the year 1984 without any just and reasonable cause. Thus, petition for dissolution of marriage came to be filed by invoking provisions of Section 13(i)(b) of Hindu Marriage Act.

5. Appellant-wife appeared before the Trial Court and resisted the claim of Respondent. She claimed to have been illtreated by Respondent. She further claims that for about 3 to 4 years she had lived with Respondent in the matrimonial home and two children are begotten from the said wedlock. She claims that since she was threatened with death, she stayed along with her parents. There is also allegation against Respondent that he had not maintained her and her children.

6. On the basis of evidence led before the Trial Court, Trial Court held that Appellant had failed to prove ill-treatment meted out to her by her husband and case of Respondent-husband was accepted and the marriage was dissolved by judgment dated 27.01.1986. Learned First Appellate court in the challenge to the said judgment passed by Trial Court, held that Respondent-husband has failed to prove that Appellant-wife has deserted him unjustly and without any reasonable cause for continuous period of two years. It is also held that he was not deserted by Appellant-wife in order to seek decree of divorce. Learned First Appellate Court however, dismissed the appeal solely on the ground that there is no chance of

reunion between parties having regard to the time lapsed in between filing of original proceeding and judgment of First Appellate Court.

7. Learned counsel for Appellant submits that the learned First Appellate Court had committed error in dismissing the appeal and not dismissing the suit for the reason that Section 13 of the Act does not provide for ground for dissolution of marriage on the ground that the spouses have irreconcilably fallen out with no chances of reunion. He drew attention of the Court to the relevant provisions to indicate that only on the grounds as specified in Section 13 of the Act, decree of dissolution of marriage can be passed. It is his submission that only Hon'ble Supreme Court can grant divorce on the ground of irretrievable break down of marriage and such power is not available to the Trial Court.

8. Respondent though served remained absent. Hence, this appeal is proceeded ex-party against him. There is no challenge by Respondent to the findings recorded by Appellate court to the effect that Respondent husband in fact deserted Appellant-wife. Thus, only issue comes up for consideration before this Court as to whether it was open for the Appellate Court to confirm the decree of

dissolution of marriage on the ground that time is lapsed in between the original proceedings and decision of the appeal and therefore there is no possibility of their reunion.

9. In this regard, it would be material to take note of observations made by First Appellate court in the impugned judgment. The First Appellate Court records that “If the appeal would have been decided within a year or two of its filing then the result would have been in favour of the Appellant. Now I do not see any fun in setting aside the judgment of the lower court. Even if I set aside the judgment there is no chance of any reconciliation or reunion. I do not see any blame on the part of appellant. Yet, due to the peculiar circumstances, I am in favour of granting divorce in order to avoid any further complication and in order to make lives of both spouses less painful.” This Court is shocked to read these observations for the purpose of confirming the decree which was otherwise not tenable as per the findings recorded by the Appellate Court itself. Suffice it to say that decree has been passed only on the ground that there is no possibility of reconciliation between the parties. Even otherwise, there are no peculiar/exceptional

circumstances in the instant case, though it is so observed by said Court.

10. At this stage, it would be relevant to take note of provision of Section 13 of Hindu Marriage Act, which reads thus:-

Section 13 :Divorce

(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation . In this clause,

(a)the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b)the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(v)has *** been suffering from venereal disease in a communicable form; or

(vi)has renounced the world by entering any religious order; or

(vii)has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

***Explanation. In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

11. Perusal of above provision shows that there is no ground statutorily provided to grant decree of divorce for the reason that there is no possibility of the reunion. Thus, it would not be open for any Court to grant decree of divorce on the ground that the marriage is irretrievably broken down. The Hon'ble Supreme Court, in exercise of its jurisdiction under Article 142 of Constitution, can pass such order to do complete justice in any particular matter. Such power is not permitted to be exercised by any other Court. The reason recorded by Appellate Court in the instant case for grant of decree of divorce is beyond statutory provisions and hence the same is not sustainable in the law.

12. Moreover, when the Appellate Court has recorded finding in Paragraph No. 12 of the impugned judgment, that Respondent husband deserted Appellant wife initially. It is also held that husband illtreated wife. There is also finding recorded to the effect that Respondent husband failed to prove unjust and unreasonable withdrawal from his society by wife. In spite of recording these findings, thus, so called breakdown of marriage attributable to Respondent husband could not be used advantageously to grant decree of divorce in his favour.

13. In so far as grievance made by Appellant wife about non grant of maintenance under Section 24 of Hindu Marriage Act is concerned, it is always open for the wife to seek maintenance and also to seek enhancement thereof. Since the original petition deserves to be dismissed, this Court finds no reason to cause any interference in order of cost as awarded by Appellate Court. It is however clarified that non grant of maintenance in marriage petition would not create any embargo for Appellant to seek maintenance from Respondent husband in accordance with law.

14. As a result of this, appeal partly succeeds. Substantial questions of law are answered accordingly. Appeal is allowed. Impugned judgment and order is set aside to the extent of Clause (a) of operative part of judgment. Regular Civil Appeal No. 43/1986 stands allowed by maintaining Clause (b) of the operative part of judgment. HMP No. 13/1984 stands dismissed. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge