



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 449 OF 2016
WITH
CIVIL APPLICATION NO. 1088 OF 2017
IN SA/449/2016**

Vanita W/o Pradip Mahapure
VERSUS
Pradip S/o Kisan Mahapure

Mr. A. S. Gandhi, Advocate for Appellant
Mr. S. S. Chapalgaonkar, Advocate for Respondent.

CORAM : R. M. JOSHI, J.
DATE : 06th February, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Learned counsel for the Appellant/original Plaintiff has submitted that the First Appellate Court has reversed the findings on issue No.1 which was recorded in favour of the plaintiff, without there being any appeal, cross objection or even arguments before the Appellate Court.
3. In that regard, learned counsel for the respondent has attempted to convince this Court that the findings recorded by the Appellate Court are consistent with the position of law.

4. There is no dispute about the fact that the Trial Court has held with the respondent, has withdrawn himself from the society of plaintiff without reasonable excuse. Undisputedly, no appeal or cross objection was filed by the respondent before the First Appellate Court. There cannot be dispute about the proposition of law that it was open for the respondent to take exception to the findings recorded against him if he supports the passing of the ultimate decree in his favour and does not seek any interference therein. The order of the First Appellate Court does not indicate that even any submissions were made on behalf of the respondent taking exception to the findings recorded by the Trial Court in favour of plaintiff.

5. Thus, following substantial question of law arises in this appeal :-

Whether the First Appellate Court has committed error in reversing the findings recorded against the respondent, without there being any appeal, cross objection or even without any argument made before the First Appellate Court ?

6. Considering the provisions of Order XXXXI Rule 22, though it was open for the respondent to challenge the said findings even without filing cross objection or separate appeal, in absence of any such even submission made before the First Appellate Court, a serious error of law is committed in reversing said finding. The substantial question of law,

therefore, deserves to be answered in affirmative.

7. In view of the above discussion, judgment passed by the First Appellate Court in the Civil Appeal No. 65 of 2011 cannot sustain and accordingly stands set aside.

8. Parties are relegated back to the First Appellate Court for decision of appeal afresh. Since, it is a matrimonial dispute and the appeal is of year 2011, Appellate Court is directed to decide the said appeal within a period of six months.

9. Parties to appear before the First Appellate Court on 01.03.2025. No separate notice is required to issued to the parties for their appearance before the First Appellate Court.

10. Second Appeal stands disposed of in above terms. Pending Civil Application, if any, stands disposed of.

(R. M. JOSHI, J.)

bsj