



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

**FAMILY COURT APPEAL NO.52 OF 2024
WITH
CIVIL APPLICATION NO.6465 OF 2025**

Sow. Savita w/o Raju Khare,
Age : 43 years, Occu.: Household,
R/o.: C-7/04, Mayur Park Harsul,
Chhatrapati Sambhajnagar

.... APPELLANT
(Original Petitioner)

VERSUS

Raju s/o Kautik Khare,
Age : 50 years, Occu.: Private service,
R/o.: C-25, Subhash Colony,
Simra Road, Govindpura,
Bhopal (Madhya Pradesh-462023)

.... RESPONDENT
(Original Respondent)

....
Mr. Rajesh H. Mewara, Advocate for the Appellant
Mr. S. N. Dudhate, Advocate for the Respondent
....

**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

RESERVED ON : 06/08/2025

PRONOUNCED ON: 12/08/2025

JUDGMENT : (Per : Sandipkumar C. More, J.) :

1. ***Admit.***
2. Heard finally with consent of the parties alongwith Civil Application No.6465 of 2025 filed by the appellant- original petitioner for production of additional documents and evidence under Order XLI Rule 27 of CPC.

3. The appellant – petitioner is aggrieved by the judgment and order passed by the learned Family Court Judge, Aurangabad in Petition No. A-319 of 2020, whereby her request for dissolution of her marriage with the respondent, has been rejected.

4. The background facts are as under :

The marriage of the appellant – wife is solemnized with respondent- husband on 11/04/2004 at Aurangabad, wherein her parents gifted gold ornaments to respondent and his family members and also incurred marriage expenses to the tune of Rs.6,50,000/-. The appellant started residing with the respondent – husband in his joint family at Bhopal. However, after few days of the marriage, respondent and his family members started harassing her. Though it was told at the time of marriage that respondent – husband was in permanent service in Madhya Pradesh Electricity Board, but subsequently it was found that he was working on temporary basis. Respondent was having habit of drinking liquor and he used to spend all his money for that purpose only. He was not giving money to the appellant for household expenses. Despite the appellant giving birth to a male child, the respondent never took any responsibility for maintaining his son. Contrary to that, he was asking amount of Rs.5 lakh from the appellant for starting new business. On failure of fulfilling the said demand, the respondent drove the appellant out of his house

in the year 2017. However, on the request parents of the appellant, the respondent and his family members kept the appellant in their house but after few days, illtreatment of the appellant at the hands of the respondent and his family members continued as before.

Thereafter, their 9 year old son was diagnosed with blood cancer and shifted to Tata Memorial Cancer Hospital in Mumbai. The respondent-husband denied responsibility for providing financial assistance for his son's treatment. Appellant, thus, left with no option but to seek help from her brother, who mortgaged his flat and arranged money for treatment of son of the appellant. She also had to stay at Mumbai alone with her son. During the period of treatment, the respondent never paid any amount but only once he visited Mumbai under the influence of liquor and raised quarrel with the appellant. When son of the appellant initially got recovered and discharged from the aforesaid hospital, he again became unconscious in the school and therefore, doctor suggested that he should be admitted to Tata Cancer Hospital at Mumbai again. On the second occasion also the respondent – husband did not pay anything towards the treatment. Unfortunately, their son could not survive. After that when the appellant again went to Bhopal, but her illtreatment at the hands of the respondent continued.

Thereafter, the appellant took every care of the respondent-husband when he was admitted to hospital due to illness specially

when his brothers refused to help him. When the respondent recovered from the illness, the appellant due to her ill health came to Aurangabad with the permission of the respondent on 22/02/2018. However, thereafter despite efforts taken by the appellant, the respondent did not allow her to join his company and contrary demanded Rs.5 lakh for business. As such, he willfully deserted the appellant from 22/02/2018. He also sent filthy messages to her on mobile and therefore, the appellant was constrained to file the aforesaid petition for divorce.

Though the respondent filed written statement in the court of learned family court judge admitting his relationship with the appellant and death of their son due to cancer, but the allegations against him in respect of illtreatment, were denied. According to him, the appellant was not behaving properly with him and she was insisting him to shift at Aurangabad. In short, he put all the blame on the appellant for not residing with him. According to him, when son Ankush was admitted in Tata Memorial Hospital at Mumbai for treatment of cancer, he used to pay money to the appellant for said treatment. He also obtained monetary help from Madhya Pradesh Government for the said treatment but unfortunately his son could not survive. He contended that he was suffering from jaundice and was admitted in AIIMS hospital at Bhopal, but the appellant leaving him in ill condition, left his

company on her own without any reasonable cause. As such, he has prayed for dismissal of her petition.

5. Learned Family Court Judge after considering the evidence of the appellant, dismissed her petition with costs and hence this appeal.

6. Learned counsel for the appellant submits that the learned Family Court Judge has definitely erred in appreciating the evidence of the appellant even though the respondent – husband failed to adduce any evidence. According to him, learned Family Court Judge has discarded the evidence of the appellant – wife because she could not produce supporting documents in respect of her allegations against the respondent – husband. He pointed out that learned Family Court Judge had in fact forfeited the evidence of the respondent – husband, but still relied on the contents of his written statement, which was not permissible under law. He further submitted that the appellant has also filed a civil application for production of additional documents in respect of allegations made by the appellant -wife as per Order XLI Rule 27 of the CPC and the same are required to be considered by remanding the matter back to the Family Court. According to him, the appellant petitioner could not produce those documents as her mental state was highly deteriorated due to loss of her son – Ankush. As such, he mainly prayed for remand of the matter for

fresh consideration in the light of documents which the appellant intends to produce in the evidence. He relied on following judgments :-

- A) *Union of India vs. Ibrahim Uddin and another, (2012) 8 SCC 148;***
- B) *Sanjay Kumar Singh vs. State of Jharkhand, (2022) 7 SCC 247 &***
- C) *Judgment of the Apex Court in case of Sirajudheen vs. Zeenath and others, in Civil Appeal No.1491 of 2023 arising out of SLP (Civil) No.22557 of 2019, pronounced on 27/02/2023.***

7. As against this, the learned counsel for the respondent – husband strongly opposed the submissions made on behalf of the appellant. According to him, learned Family Court Judge has rightly rejected the claim of the appellant for divorce specially by considering her admissions in the cross-examination. According to him, the respondent was always ready and willing to cohabit with the appellant but she was not happy with him at Bhopal and wanted to reside at Aurangabad separately. He pointed out that learned Family Court Judge has come to the conclusion that the appellant could not establish the cruelty at the hands of the respondent – husband. So far as prayer of the appellant for production of additional documents and evidence is concerned, the learned counsel for the respondent – husband pointed out that the

documents which the appellant intends to adduce in the evidence, were already accessible to her at the time of trial before the learned Family Court Judge. There was no due diligence on her part in producing those documents before the trial court. Therefore, he submitted that the production of such documents by requesting remand of the matter, claimed by the appellant, is definitely out of scope of Order XLI Rule 27 of CPC. As such, he claimed for dismissal of the appeal alongwith pending civil application.

8. Heard rival submissions and also perused the entire material on record alongwith impugned judgment with able assistance of the learned counsel for the rival parties.

9. Though the appellant/wife is claiming that the learned Family Court Judge has not properly appreciated her oral evidence and dismissed her petition for grant of divorce by holding that she could not establish the aspect of cruelty, but the learned counsel for the appellant/wife mainly argued for remand of the matter back to the learned Family Court Judge by considering it afresh in the light of the documents which the appellant intends to file as an additional evidence. Admittedly, the appellant is seeking decree of divorce by making the allegations, which are already reproduced herein above. It is equally important to note that though the respondent/ husband filed his written statement, but he did not remain present for facing cross-examination. Further, it is not in dispute that

since he abstained for making him available for cross-examination, the learned Family Court Judge, by passing order below Exhibit-1 in that petition, has forfeited his defence.

10. On careful scrutiny of the impugned judgment and order, it is evident that most of the allegations levelled by the appellant against respondent are discarded by the learned Family Court Judge on the basis of her admissions in the cross-examination only. Further, it appears that some of her allegations are not believed for want of necessary documents. It is evident from the impugned judgment that allegations of the appellant in respect of her ill-treatment and demand of Rs. 5,00,000/- from the respondent and his family members have been disbelieved, by observing that despite long period of cohabitation of 14 years, not a single complaint was filed by the appellant, either to police or Women Grievance Redressal Cell about the alleged cruelty and demand of money. However, on perusal of the copies of documents which the appellant intends to file as an additional evidence, it is clearly evident that one N.C. Report dated 22.02.2018 was lodged by the appellant in Harsul Police Station at Aurangabad wherein allegation of monetary demand for purchasing vehicle from the respondent to her is made. Further, there are also recitals in respect of abusing and threats to kill. It is to be noted that the respondent had deposed before the learned Family Court Judge in the year 2023. As such, it might be

possible that at the relevant time she could not recollect about filing such report.

11. The appellant has also placed on record copy of application dated 20.07.2018 which is addressed to Women Grievance Redressal Center in Police Commissioner Office, Aurangabad. There is also endorsement of concerned office in receipt of the said application and further date for consideration appears to be given on 12.09.2018. On perusal of the said application, the appellant by making similar allegations as that of her petition before the Family Court, had asked the authority for registration of crime against the respondent and his family members. Further, she has also produced copies of bank statements of her brother Sachin, who was PW-2 in the proceeding before the Family Court. There are also documents in respect of loan through mortgage for meeting the medical expenses, availed by parents of the appellant. In addition to these documents, there is affidavit of uncle of appellant stating as to how the appellant has borne entire expenses of treatment of son Ankush and how the respondent, under the influence of liquor, abused the appellant. Besides, there are also screen shots of messages sent by respondent on the mobile of the appellant in filthy language. Thus, it appears that these documents are definitely relating to the allegations made by appellant/wife in her original petition before the Family Court.

12. It is also significant to note that the learned Family Court Judge has drawn inference on the basis of admission given by the appellant in her cross-examination. Learned Family Court Judge despite having forfeited the defence of respondent/husband, also considered pleading in his written statement. Thus, it appears that even after forfeiting defence of respondent, the Family Court relied on the contents of his written statement and drew inference that the respondent was hospitalized from 15.02.2018 to 21.02.2018, to conclude that she left house of respondent by leaving him in ill condition. Further, contention of the appellant that her brother mortgaged his flat for making arrangement of money for treatment of son Ankush, has also been rejected by the learned Family Court Judge for want of proper documents. Under such circumstances, *prima facie*, it appears that the Family Court refused to believe the allegation in respect of ill-treatment and expenditure for medical treatment of son Ankush, for want of necessary documents.

13. So far as filing additional documents at the appellate stage is concerned, it is governed by Order 41 Rule 27 of the Code of Civil Procedure, which is reproduced as below :

“27 . Production of additional evidence in Appellate Court — (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”.

Learned counsel for the respondent strenuously argued that the documents which the appellant intends to produce at this juncture, were readily accessible to her, but due to her own negligence, she failed to produce the same before the Family Court Judge. There was no due diligence on the part of appellant, and therefore, the aforesaid provision is of no help for the appellant.

However, if we peruse the part (b) of the aforesaid Order, the Court is having discretion to permit the parties to produce additional evidence for proper adjudication of the dispute between them.

14. In the case of ***Union of India vs Ibrahim Uddin and another*** (supra) the Hon’ble Apex Court has observed that, it is the discretion of the appellate Court to allow production of additional

evidence in exceptional circumstances and such discretion has to be exercised judicially and with circumspection only where any of the prerequisite conditions provided under Rule 27 exists. Further, it is also observed that the application for production of additional evidence in appellate Court should be considered at the time of final hearing of appeal on merits. While allowing the additional evidence, it is to be determined that such additional evidence must have important bearing on the main issue required in the interest of justice.

15. In view of the aforesaid observation and considering the nature of documents which the appellant intends to produce on record in support of her allegations in the main petition, we deem it proper to give one more opportunity to the appellant/wife to establish her contention in respect of her alleged mental and physical harassment at the hands of respondent/husband, by directing the learned Family Court Judge to decide the petition afresh by allowing the appellant to lead additional evidence for proving documents which she intends to bring on record as an additional evidence. Hence, we pass the following order.

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned judgment and order dated 11.06.2024 in Petition No.A-319 of 2020 passed by the learned

Family Court Judge, Aurangabad, is hereby quashed and set aside.

- (iii) The matter is remanded back for deciding it afresh by permitting the appellant/wife to lead additional evidence in support of her allegations in the petition.
- (iv) Needless to say that, the respondent/husband is also permitted to lead evidence in rebuttal in respect of the evidence led by the appellant.
- (v) Respondent/husband is at liberty to file additional written statement or to adopt the written statement already filed on record.
- (vi) The Family Court shall decide the petition as early as possible and preferably within the period of six months from the receipt of this order.
- (vii) Parties are directed to appear before the learned Family Court Judge, Aurangabad on 02.09.2025.
- (viii) The appeal and pending civil application are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)