



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 02 OF 2021

Sou. Sarika Satish Aaken,
Age : 39 Years, Occ. : Service,
Through Sudarshan Vyankayya Yemul,
R/o : 98 – C, Shramiknagar, Pipeline Road,
Sawedi, Ahmednagar.

... APPELLANT

...VERSUS...

Shri. Satish Narsaiyya Aaken,
Age : 40 Years, Occ. : Service,
R/o : 352, Pipeline Hudco,
Ahmednagar.

... RESPONDENT

-
- Mr. Rajendra S. Kasar, Advocate for the Appellant
 - Mr. Abhijit More, Advocate for the sole Respondent
-

CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL-JADHAV, JJ.

RESERVED ON : SEPTEMBER 25, 2025

PRONOUNCED ON : DECEMBER 15, 2025

J U D G M E N T [Per Vaishali Patil-Jadhav, J.] :

. Admit. Heard finally at admission stage with the consent of learned counsel for the parties.

2. This Family Court Appeal is filed under Section 19 of the Family Courts Act, 1984 by the Appellant/Wife, challenging the judgment and decree dated 06.11.2020 passed by the Judge, Family Court, Ahmednagar, in Petition No. A-15 of 2018. For the sake of

convenience, the parties hereinafter shall be referred to as Appellant as 'Wife' and respondent as 'Husband'.

The facts giving rise to the present appeal may be stated briefly as follows:

3. The Wife filed petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, seeking a decree of divorce against the Husband inter alia contending that their marriage was solemnised on 30.07.2007 at Ahmednagar, as per Hindu rites and rituals. After marriage, the Wife started cohabiting with the Husband at his house situated at Pipeline, HUDCO Ahmednagar. The Husband treated her well only for about eight (8) days and thereafter, started ill-treating her. At that time, the Wife was serving as a Primary Teacher at Wambhori, while the Husband was working as an Auditor in a Co-operative Society at Kanhur Pathar. The Husband used to visit Ahmednagar twice in a week. The Wife was suffering from Vitiligo skin disease and admittedly, this fact was known to the Husband prior to the marriage. Nevertheless, he used to ill-treat her on that count and used to say that he had married her only for her money, as she was employed as a teacher. The Husband also used to suspect her character. Despite this, with the hope that their marital relationship would improve, the Wife continued to cohabit with him. In the year 2008, with the intention of residing together, the Wife got herself transferred at Kanhur Pathar school, as

Headmistress. However, there was no change in the behaviour of the Husband. On the occasion of their first Diwali after marriage, when the Wife desired to visit her parental home, the Husband refused permission and threatened that he would not take her back if she left. She went to her parental house, however, as she wanted to keep their marriage alive, she asked one Laxman Bura the middleman, to mediate. With his help and mediation, she returned to the husband's home for cohabitation.

4. Meanwhile, the Wife conceived from the Husband and gave birth to a male child, namely Varad, on 30.03.2009. During her pregnancy, the Husband did not take care of her and even after the birth of the child, his behaviour remained unchanged. When Wife was pregnant, the Husband used to mentally harass her by doubting her character, he questioned the paternity of the child saying that whose child she is bearing, which caused mental cruelty to the Wife. He even used filthy language while casting such allegations. The Husband used to take away entire salary of the Wife, leaving only Rs. 2000/- in her account and would demand detailed account of expenditure even of that Rs. 2000/-, with an intention to harass her. He also got himself transferred to Ahmednagar without informing the Wife and left her and the child at Kanhur Pathar. The Husband's brother, who was an alcoholic, used to visit their house and abuse the Wife. During the

menstruation period of the Wife, the Husband used to have unnatural physical relations without her consent. Meanwhile, the Wife had lodged complaint before the Superintendent of Police, Ahmednagar, upon which compromise and conciliation took place between them. However, even thereafter, there was no change in the behaviour of the Husband.

5. Whenever the Husband used to visit the Wife at Kanhur Pathar, he used to ask their minor son, Varad, as to who visits the Wife in his absence and with whom she sleeps. Since the parties did not own a house, the Wife asked the Husband about purchase of house from the money belonging to her, which the Husband had been taking from time to time. However, the Wife was shocked when the Husband refused to buy house, stating that he has no sufficient money to purchase the house. When the Wife asked for details regarding the money spent by him, the Husband became angry and abused her in filthy language, casting aspersions on her character. The Husband used to check the Wife's phone records and frequently questioned her about calls received from male teachers at her school. On such pretexts, he often assaulted her. In May 2015, the Husband made allegations regarding her character, stating that she was suffering from Vitiligo skin disease and that he had married her only for her salary. He then assaulted the Wife and drove her and their minor son out of the matrimonial home.

6. Without any cogent reason, the Husband tortured the Wife physically, mentally and financially, which caused cruelty to her. He neither provided any maintenance to her nor enquired about the well-being of the Wife and the son, thereby completely neglecting them. Due to the persistent ill-treatment and threats extended by the Husband, the Wife developed an apprehension of danger to her and her son's life. Consequently, in September 2017, the Wife issued divorce notice to the Husband through her advocate to which the Husband did not respond. In these circumstances, it was impossible for the Wife to continue the matrimonial tie with the Husband, therefore, she prayed for dissolution of marriage.

7. The Husband opposed the petition by filing written statement at Exhibit 13, specifically denying all the allegations made by the Wife. He contended that after solemnization of marriage, the Wife cohabited with him till May 2015. He alleged that the Wife's brother, Ganesh, who is serving in the police department, used to threaten him at the instance of the Wife. He further stated that on 15.10.2014, at Kanhur Pathar, the Wife's father assaulted and threatened him and also attempted to exert political pressure upon him. According to him, the Wife's parents threatened him on several occasions, i.e. on 15.09.2014, 15.10.2014, 25.10.2014, 27.10.2014, 15.11.2014, 23.05.2015, and 11.05.2017. He also alleged that on 11.05.2017, the Wife's brother used

foul language and attempted to assault him at his workplace. The Husband claimed to have filed a complaint before the Collector, Ahmednagar, regarding the alleged assault and the physical and mental harassment caused to him by the Wife's family. He further stated that when the Wife was working as a teacher at Gargundi, Taluka Parner, District Ahmednagar, and was given additional charge as Headmistress, certain complaints were lodged against her at the instance of local politicians, and at that time he stood by her, supported her mentally, and helped her overcome the difficulties. He further alleged that the Wife's father had an eye on her salary and, therefore, the Wife's parents were not allowing her to reside peacefully with him. He stated that he was ready to forgive the mental harassment caused to him by the Wife's father and relatives and expressed his willingness to resume cohabitation with the Wife.

8. He stated that he was aware that the Wife was suffering from Vitiligo skin disease, and this fact had been informed to him by her father prior to marriage. However, since he had liked the Wife, he consented to the marriage, therefore, there was no question of torturing her on that ground. He further contended that in June 2007, some differences arose between them, and at that time, their relative, Shri Laxman Bura, mediated and helped to resolve the misunderstanding. On that occasion, the Wife had written a letter to him in her own

handwriting, admitting her mistakes, after which they resumed cohabitation.

The Husband denied having ever demanded money from the Wife and alleged that it was her parents who frequently interfered in their marital life, which led to discord between them. According to him, the Wife's parents were interested in her salary and, therefore, intentionally created misunderstandings between the couple. He denied ever doubting the Wife's character and further denied having questioned their son regarding visitors during his absence. The Husband asserted that he is young and expects peaceful life and is ready to cohabit with the Wife. He alleged that the Wife was staying at her parental home under the influence and pressure of her parents, which adversely affected their relationship. He also contended that the Wife did not want his mother to reside with them and objected to his taking responsibility for her. Because of the interference of the Wife's parents, they are facing difficulty in their matrimonial life. According to him, due to such interference from the Wife's parents, their matrimonial relationship deteriorated. The Husband urged that the Wife should consider the future of their son and claimed to be willing to set aside all misunderstandings, referring to the letter dated 03.06.2007. He further stated that he is the sole breadwinner in his family and that his mother is totally dependent on him. At times, if required, he also financially

helps his brother's children for their education, so that they also get decent education. But this is not liked by the Wife. She insists that the Husband should neither support his mother nor help his brother, leading to frequent quarrels between them.

9. The Husband further stated that the Wife was serving as a Primary Teacher at Gargundi, Taluka Parner, District Ahmednagar. At that time, the parties were residing in a rented house at Kanhur Pathar and possessed all household articles required for their daily needs. The Husband used to travel from Kanhur Pathar to Ahmednagar, as he was transferred there. According to him, one day, the Wife suddenly left the matrimonial home with the help of her relatives and her brother, who is in police service, and took away all the household belongings. Thereafter, the Husband claimed to have made attempts to reconcile by convening a meeting of the relatives of the Wife and other respected members of the society. However, he alleged that the Wife's parents and brother, having an eye on her salary, they picked up quarrel for no reason and did not allow to arrive at any amicable settlement between them.

10. After recording evidence, Family Court observed that the allegations made by the Wife were vague in nature, and did not inspire the confidence of the Court, the evidence on record was insufficient to

substantiate the grounds of cruelty and desertion and that corroborative evidence was lacking. It was held that the Wife failed to prove that Husband treated her with cruelty and that he deserted her, and therefore refused to grant the decree of divorce in her favour. The Family Court held that the conduct attributed to the Husband was not of such nature and gravity as to cause reasonable apprehension in the mind of the Wife that it would be harmful or injurious for her to reside with him.

Heard learned advocate for the Wife and the Husband. We have perused the entire record, the written statement, and the citations relied upon by the Wife.

11. After hearing the rival submissions, the following points arise for our consideration:

- A)** Whether the Wife has proved that the conduct of the Husband amounted to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955?
- B)** Whether the Wife has proved that the Husband was guilty of desertion within the meaning of Section 13(1)(ib) of the said Act?
- C)** Whether the judgment and decree passed by the Family Court calls for interference in this appeal?

12. In support of the petition, the Wife examined herself at 'Exhibit 22' and her brother at 'Exhibit 26'. She has filed her evidence

affidavit in verbatim reproducing her averments in the petition. She produced the documents namely : (i) Marriage Invitation (ii) One marriage photograph (iii) Copy of notice dated 06.09.2017 (Exhibit 22) and (iv) Postal Acknowledgment (Exhibit 21).

13. In her cross-examination, the Wife stated that she had never lodged any complaint against the Husband at any police station. She has clarified that she had filed one complaint before the Superintendent of Police, Ahmednagar, in which compromise and conciliation took place between the parties. She further stated that frequent quarrels used to occur as the Husband spent his entire as well as her salary on his mother and brother's family. She denied the suggestion that during such quarrels she ever asked the Husband not to look after his mother and brother's family. The Wife admitted that she had written a letter to dated 03.06.2007 (Exhibit 25) in her own handwriting, wherein she admitted certain mistakes and apologised to the Husband. However, she stated that the letter was written under coercion and not voluntarily. She stated that she had complained about her Husband's behavior to Mr. Laxman Bura, who had mediated between them. She denied the suggestion that her parents have an eye on her salary and that their interference was the cause of discord between the parties. The Wife has stated that even if the Husband offered a guarantee of good behaviour, she is not willing to cohabit with

him. She has denied the suggestion that the Husband had approached persons from their community in the year 2017 to persuade her to resume cohabitation. She has also denied that the Husband was not given any opportunity to meet their son Varad, stating that he had never approached to meet him. She has stated that she is not willing to give custody of the child to the Husband, even if he expressed willingness to take care of him. She reiterated that the main reasons for quarrels between them is the suspicion about her character by the Husband and his refusal to purchase a house despite taking her entire salary. She has also stated that she had never claimed maintenance or permanent alimony from the Husband.

14. The Wife examined her brother, Amol Sudarshan Yemul, as AW-2 at Exhibit 26. He has supported the case of Wife. In the cross-examination, he has stated that the Wife earns more than the Husband. He has stated that the Wife used to request the Husband to purchase a house from the money taken by him from her salary. However, he further states that though the Husband used to take money from her, he never paid attention to her said requests. He has also stated that money issues and the Wife's Vitiligo skin disease were the only reasons for frequent quarrels between the two. He has denied the contention that the family members of the Appellant Wife are not letting the issues

between the two go away as the Wife earns more than the Husband and that they have an eye on her salary.

15. The Husband examined himself by filing evidence affidavit at Exhibit 31, reiterating his contentions in the written statement. He has produced on record the letter written by the Wife addressed to him on 03.06.2007 at Exhibit 25. In his cross examination, he has denied that no efforts were made by him on his part to resume cohabitation with the Wife after May 2015. He has also stated that no notice was issued by him to the Wife for cohabitation, nor were any legal proceedings initiated by him for restitution of conjugal rights. He has stated that he looks after the well-being of his brother's children. He has stated that the Wife had filed complaint against him before the Superintendent of Police, Ahmednagar, regarding physical and mental harassment. However, he has denied the contention that due to the compromise and conciliation that took place between them in the office of the Superintendent of Police, Ahmednagar, the Wife returned for cohabitation with him. The Husband has deposed that he is still ready to cohabit with the Wife.

16. Husband examined one Laxman Bura at 'Exhibit 37'. In his examination-in-chief, he stated that he has mediated between the Wife and Husband on multiple occasions, on account of trivial quarrels

occurring between them. Shortly after their marriage in April 2007, there was a fight between the Wife and the Husband on account of living separately from the parents of the Husband. Again, in January 2010, the Wife had complained of a quarrel between the two, as the Husband used to ask for accounts of expenditure made by the Wife. Again, in 2014, and in the month of May 2015, there were instances of quarrel between the parties. On all these occasions, on the request of the Husband, Mr. Bura had mediated and cleared the misunderstandings between the two. In his cross examination, Mr. Bura deposed that he knew the Husband since long, as they reside in the same locality. He deposed that he had not verified about the place of residence of the Wife during instances of quarrel that had occurred between them, which have been mentioned by him in his examination-in-chief. He also deposed that he cannot remember the exact incident that had occurred between the parties in January 2010 and the dates of incidents occurred in the years 2014 and 2015.

17. To deal with the issue of mental cruelty, it will be useful to refer the following observations of the Hon'ble Supreme Court in the case of Gurbux Singh Vs. Harminder Kaur¹.

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances

¹ AIR 2011 SC 114
komal kamble

indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and

dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

The word ‘cruelty’ is not defined in the Hindu Marriage Act,

1955. Resultantly, it becomes the responsibility of the Court to decide

cruelty depending on the evidence, circumstances and instances brought before the Court by the parties.

18. Perusal of wife's evidence shows that she has failed to substantiate her allegations of cruelty. She has admitted that before marriage Husband was knowing that she is suffering from Vitiligo skin disease. Knowing the same, he has married her. Therefore, there appears no merit in the contention of the Wife that her Vitiligo skin disease was the reason for the frequent quarrels between them. Though Wife has alleged that he was suspecting her character except her bare words there is nothing on record to substantiate the said allegation. Her brother AW-2 has also not stated this reason for the quarrels between Husband and Wife. According to him, money issues and Wife's Vitiligo skin disease were the only reasons for the frequent quarrels. Another reason for frequent quarrels according to the Wife is that Husband used to spend his and her salary on his mother and brother's family. Merely because Husband was spending salary on his mother and brother and on that count there were quarrels that according to us would not amount to cruelty.

Fact remains that the Wife has admitted to have written a letter dated 03.06.2007 (Exhibit 25) in her own handwriting admitting certain mistakes and apologizing to the Husband. Though she claims

that the said letter was written under coercion the said stand appears to be afterthought.

19. From the evidence on record, it appears that there were trivial irritations, quarrels and normal wear and tear of marital life, which happens in day-to-day life. If the married life of the Husband and Wife is reviewed as a whole, though there appear few instances of quarrels between them over a period of years, those are not sufficient to prove cruelty. The alleged ill-conduct of the Husband is not persistent for a fairly lengthy period, where relationship can be said to have deteriorated to an extent that, because of the acts and behavior of the Husband, the Wife finds it extremely difficult to live with him any longer.

The wife has failed to prove that the conduct of Husband for a longtime caused the feeling of deep anguish, disappointment, frustration in her. There is nothing on record to show that the Husband has given her sustained course of abusing and humiliating treatment calculated to torture discommode or has rendered her life miserable. The Wife has failed to prove that sustained unjustifiable conduct and behaviour of the Husband has actually affected her physical and mental health. The alleged treatment complained of by the Wife and the resultant danger or apprehension is not very grave, substantial and weighty. Thus, in absence of this evidence the Wife has failed to prove

the ground of cruelty. There is neither evidence of physical cruelty nor there is evidence of mental cruelty. Point “A” is therefore answered in the negative.

20. Learned counsel for the Wife has submitted that as the Husband and Wife are residing separately for about ten years, the marriage between the parties, is irretrievably broken down, and the same is also causing mental cruelty to her. He, therefore, submitted that Wife is entitled for decree of divorce on the ground of desertion and irretrievable breakdown of marriage.

In reply, learned advocate for the Husband has relied upon following observations in Naveen Kohli Vs. Neelu Kohli²:

“In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.”

In this case Hon’ble Supreme Court has dissolved the marriage between Husband and Wife by awarding permanent alimony

of Rs. 20,00,000/-. The parties are expecting the same result in the instant case also.

21. Desertion is a matter of inference to be drawn from the facts and circumstances of each case, as observed by the Hon'ble Supreme Court in the case of Lachman Utamchand Kirpalani Vs. Meena³. It is well settled that desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. It is a total repudiation of the obligations of marriage. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) The factum of separation (Factum Deserendi) and (2) The intention to bring cohabitation permanently to an end (Animus Deserendi) Similarly, two elements are essential so far as the deserted spouse is concerned (1) The absence of consent and (2) Absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.

22. Applying the above observations to the facts of this case, the evidence on record shows that, when the wife was working as a primary teacher at Gargundi, they both were residing in a rented house at Kanhur Pathar. The Husband used to travel to-and- fro from Kanhur

³ AIR 1964 SC 40

Pathar to Ahmednagar. Once, the wife called her parents and brother at Kanhur Pathar and left the rented house in absence of the Husband along with all her belongings as well as household articles and went to her parental home. The pleadings as well as evidence of the Wife does not specify as to what was the cause for her leaving the matrimonial house. Thereafter, though the Husband made several attempts to bring her back through the respectable members of the society, those attempts failed because of Wife.

During cross-examination, the Wife admitted that she is not ready to continue matrimonial relationship with the Husband. Even if the Husband offers guarantee of good behavior, she is not willing to cohabit with him. Record also indicates that she has not made any attempts for re-union. On the contrary in September 2017, she issued legal notice through advocate to the Husband for dissolution of marriage. Thus, it is clear from the evidence on record that the Wife has deserted the Husband and she is not ready for re-union. She, therefore, cannot take advantage of her own wrong to claim decree of divorce on the ground of desertion. Point “B” is therefore answered accordingly.

23. The Family Court has properly assessed the evidence on record and has rightly reached to a conclusion that the Wife has failed to bring any corroborative evidence in support of her grounds of cruelty

and desertion and the alleged incidents amounting to cruelty and desertion are vague in nature. The Family Court has passed a well reasoned judgment, which warrants no interference. No error of jurisdiction or law is committed by the Family Court. Point “C” is therefore answered in the negative.

24. On perusal of the decision in **Naveen Kohli (Supra)**, it is evident that the Apex Court has granted decree of divorce on the ground of irretrievable breakdown of marriage by invoking Article 142 of the Constitution of India. Since the High Court does not have such powers, we cannot grant decree of divorce on the ground of irretrievable breakdown of marriage.

25. For the above reasons, since the Wife has miserably failed to prove the grounds of cruelty and desertion, she is not entitled to a decree of dissolution of marriage.

26. In the result, the Family Court Appeal being devoid of merit is dismissed.

[VAISHALI PATIL-JADHAV, J.]

[NITIN B. SURYAWANSHI, J.]