

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.120 OF 2019**

Shri. Someshwar Rameshwar Yempe,
Age- 37 Yrs., Occu.- Service,
R/o- Shvkrupa Sadan, Shivaji Nagar,
Plot No.18, Isbavi, Tahasil- Pandharpur,
District – Solapur,
at present Mani Ambrewadi, Post Mani,
Tahsil Khed, District- Ratnagiri.

..Appellant

Versus

Mrs. Jyoti Someshwar Yempe,
Age- 30 yrs., Occu.- Swing Machine
C/o. Sadashiv Uttareshwar Andhalkar,
A/p – Piliv, Tahsil Malshiras,
Dist- Solapur.

..Respondent

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Mr. Sachinkumar P. Rajepandhare, Advocate for Appellant.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 07th OCTOBER, 2025.

FINAL ORDER:-

1. The appellant (original plaintiff) impugns judgment and decree dated 04.01.2018 passed by District Judge, Pandharpur in Regular Civil Appeal No.84/2014, thereby upholding judgment and decree dated 02.04.2014 passed by Civil Judge Senior Division, Pandharpur in HMP No.162/2011, thereby rejecting appellant's claim for grant of decree of dissolution of marriage under provisions of Hindu Marriage Act.
2. The appellant/plaintiff instituted proceeding under Section 13(1)(ia) of Hindu Marriage Act before Civil Judge Senior Division at Pandharpur in HMP No.162/2011 seeking decree of dissolution of marriage on ground of desertion.

3. It is contention of appellant that marriage between him and respondent is solemnized on 08.05.2004. The respondent had cohabitation with him for one and half month at Mani, Taluka Khed, where he was serving in school. The respondent was not happy to reside with him. The couple is blessed with daughter namely Divya. The respondent was asking partition of property from his parents. She instituted false proceeding against appellant and his family members under Section 498-A of Indian Penal Code. She physically and mentally harassed appellant. In that proceeding compromise took place on 03.11.2008. Even thereafter, on 25.02.2009 she left matrimonial home alongwith daughter and deserted appellant.

4. The respondent refuted claim. She stated that she had filed Petition No.7/2012 for restitution of conjugal right and as a counter blast petition is filed for divorce. It is her contention that she was mentally and physically harassed by appellant. However, considering future of daughter, she was willing to stay with appellant and continue matrimonial life. She never deserted him. On the contrary, she persuaded petition for restitution of conjugal rights.

5. The Trial Court framed issues based on pleading of parties, recorded evidence and concluded that appellant failed to prove case of cruelty or desertion and rejected petition. Aggrieved by order of Trial Court, appellant had approached District Judge, Pandharpur in Regular

Civil Appeal No.84/2014, who concurred with findings of Trial Court and dismissed Appeal. Hence this Second Appeal.

6. Mr. Sachinkumar Rajepandhare, learned Advocate appearing for appellant submits that after 25.02.2009, respondent never cohabited with appellant. This is admitted position as can be observed from cross-examination of appellant and suggestion put to appellant. He would further invite attention of this Court to admission of respondent that she never went for cohabitation after 25.02.2009. According to him, aforesaid material was sufficient to accept case of appellant as to desertion. He would further submit that there is sufficient material to show that respondent abused appellant in filthy language and there is material to demonstrate her behaviour in public place bringing insult to appellant. Further, she had filed false criminal cases, wherein order of acquittal is passed.

7. Having considered submissions advanced, it can be observed that both Courts have concurrently recorded finding of facts that appellant failed to prove his case of desertion and cruelty against respondent. So far as allegation of desertion is concerned, it is necessary to establish by convincing evidence that respondent deserted appellant without reasonable cause. The Trial Court as well as Appellate Court observed that on 14.11.2013, there was settlement between parties before Court and they had agreed to withdraw respective proceeding instituted against each other. It is true that, desertion may be constructive and

can be inferred from attending circumstances. However, it must be brought on record that desertion was intentional.

8. In present case, circumstances shows that there was no withdrawal from matrimonial obligation. On account of trifle disputes, they were separated. Even wife had instituted proceeding for restitution of conjugal right prior to institution of proceeding for divorce. All these circumstances are sufficient to hold that requirement for grant of decree of divorce on ground of desertion are not fulfilled in facts of case.

9. Second ground that wife acted in manner of cruelty, appellant relied upon fact that wife had instituted proceeding under Section 498-A of Indian Penal Code. Pertinently, after filing of complaint, there was compromise between parties. The allegations, which are made by appellant-husband against wife were prior to recording of such compromise. In result, both Courts giving reference to Section 23 of Hindu Marriage Act observed that cruelty within meaning of Section 13(1)(ia) Hindu Marriage Act cannot be made out in facts of present case.

10. The Appellate Court giving reference to law laid down in case of *GVN Kameshwara Rao Vs. Jabille*¹ observed that cruelty cannot be judged from solitary incident, but it has to be considered on overall consideration of all relevant circumstances. The Courts have

¹ AIR 2002 SC 576.

concurrently observed that evidence on record is not sufficient to make out case of cruelty within meaning of Section 13(1)(ia) of Hindu Marriage Act against respondent-wife. The findings recorded by Courts below are based on appreciation of evidence on record. No perversity in findings is brought to notice of this Court. Hence, no substantial question of law arises for consideration in this Appeal.

11. In result, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE