



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO.40 OF 2017

PRAVIN WAMANRAO HAJARE

VS

PRATIBHA PRAVIN HAJARE

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms S.W. Deshpande, Advocate for the appellant
Mr. J.R. Kidilay, Advocate for the respondent

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE : 04th APRIL, 2025

1. Heard.
2. Since the petition under Section 13(1)(i-a) (i-b) of the Hindu Marriage Act, 1955 (for short "the HMP Act") for dissolution of marriage filed by the appellant came to be dismissed on a limited ground of application of *res judicata*, in view of the fact that the earlier Hindu Marriage Petition (HMP) No.60 of 2007 filed by the appellant, on the same ground, came to be dismissed.
3. The appellant and the respondent are the legally wedded husband and wife and their marriage was solemnized on 13.02.2005 at Amravati as per the Hindu rites and customs at the relevant time. The appellant was serving in the Border Security Force (BSF) and at the time of marriage, he sought leave. After marriage the appellant and the respondent cohabited for two months and after completion of leave, he joined his duties. The respondent

lived with the family of the appellant as the respondent was not allowed to live with the appellant at the place of his posting. It is alleged that she used to insist the appellant to leave his service and cohabit with her separately from his mother and brother. It is further alleged that the respondent lived for one and half months with the family members of the appellant, but used to raise quarrel with them. In that period, the respondent did not prepare food and used to leave matrimonial house by citing reason of her LIC business.

4. Thereafter, the respondent, along with her mother, had been at the place of posting of the appellant on the day of Vijaya Dashmi, in the month of September, 2005, where the respondent stayed for few days.

5. It is contended that the respondent used to stay out of the house from 9:00 a.m. to 9:00 p.m. and she was not doing any domestic work and never cooked food for the appellant and his mother. Thus, the appellant sought dissolution of marriage on the grounds of cruelty as well as desertion.

6. The learned Family Court framed 14 issues on 13.07.2013 and thereafter, on 21.08.2013, a preliminary issue was framed as regards the maintainability of the petition.

7. The learned Family Court, after considering the record and after hearing both the parties, recorded the

findings to the effect that the petition is not maintainable.

8. The learned Family Court has observed that on the similar ground, the appellant had filed HMP No.60 of 2007 for dissolution of marriage. It is further observed that after leading evidence, the learned Family Court found that the appellant failed to establish and prove cruelty and accordingly, the petition was not entertained on the ground of cruelty.

9. In the said petition, another ground was of desertion. The learned Family Court, after considering the evidence and the material available on record, has categorically held against the appellant on the point of desertion also.

10. After dismissal of the said HMP No.60 of 2007, admittedly, the appellant and the respondent never cohabited together. Thus, after dismissal of the said petition, there is no question of cruelty at the behest of the respondent, as the respondent never cohabited with the appellant after dismissal of the said petition.

11. In the circumstances, we find that the Court has rightly held that the *res judicata* will come in picture for the reason that the earlier HMP No.60 of 2007 was rejected on the same ground.

12. The learned Family Court, while rejecting the petition, has recorded the reasons in detail and also discussed the evidence available on record.

13. In that view of the matter, as no perversity or error is

pointed out by the learned counsel for the appellant in dismissing the petition filed by the appellant, we do not find any merits in the present appeal and accordingly, it is **dismissed**.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)