



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

FAMILY COURT APPEAL NO. 19 OF 2025

APPELLANT :

(Orig. Petitioner)

Sau. Dhandevi W/o Kuldeep Waghmare,
Aged about 28 years, Occu.: Pvt.Service,
R/o At-Kalmeshwar, Distt.- Nagpur.
At Present c/o Shri Uday Dhanraj, Plot
No.151, Jawahar Nagar, Manewada,
Nagpur.

-Versus-

RESPONDENTS :

(Orig. Respondent)

Kuldeep s/o Rajendra Waghmare, Aged
about 30 years, Occu.: Business, R/o. C/o
Kuldeep Medical Stores, At & Post
Nagardhan, Tahsil – Ramtek, District –
Nagpur.

Mr. P. K. Mishra, Adv. for the appellant.
Ms P. S. Sahare, Adv. for the respondent.

**CORAM: SMT. M. S. JAWALKAR &
RAJ D. WAKODE, JJ.**

**CLOSED ON : 10TH OCTOBER, 2025
PRONOUNCED ON: 3RD NOVEMBER, 2025**

J U D G M E N T (Per : Smt. M. S. Jawalkar, J.)

Heard.

2. **Admit.** Heard finally with the consent of the learned

counsel for the parties.

3. The present family court appeal is filed by the appellant-wife challenging the judgment dated 17/10/2024, passed by the Principal Judge, Family Court, Nagpur dismissing Petition No.A-47 of 2024 for decree of divorce.

2. The marriage of the appellant and the respondent was solemnized on 01/06/2022 at the office of Sub-Registrar, Nagpur. Both belonged to different caste. Their marriage was performed under Special Marriage Act, 1954. However, they did not reside together under one roof after solemnization of their marriage either at Nagpur or at Ramtek. As the marriage was performed against the wish of their parents, they did not reside together and there was no consummation of marriage between the appellant and the respondent. Since the marriage turned to be a deadwood for them, the appellant requested the respondent to have mutual divorce, but he showed his resentment. It was contended by the appellant that she was ill-treated, harassed, humiliated and subjected to cruelty. Therefore, she filed divorce petition before the Family Court at Nagpur.

3. The respondent husband appeared before the Family Court

and filed his written submissions. He admitted the solemnization of marriage on 01/06/2022 and took a defence that he is ready to cohabit with the appellant. He further claimed that the marriage was consumed on 02/12/2023 when his friend Chaitanya, his wife along with the appellant and the respondent had been to Anand Vihar at Shegaon. After framing of issues and recording of evidence, the Principal Judge, Family, Court, Nagpur delivered the judgment on 17/10/2024 and held that the appellant failed to prove that after solemnization of marriage, the respondent treated her with cruelty and on this ground alone dismissed the petition for dissolution of marriage.

4. The appellant and the respondent examined themselves. In addition to that the respondent-husband examined his friend Chaitanya. The contents in the petition appear to be of nullity of marriage, however, the petition is filed on the ground of cruelty.

5. The appellant has placed on record certified copy of marriage certificate and affidavit of rent agreement dated 12/01/2024. The respondent placed on record whatsapp chat, which is marked as Exhibit-27. However, the learned Family Court made it clear that exhibition of document is subject to proving the contents of the said document. On perusal of the cross of the appellant and also

the question put by the learned Family Court to the appellant, it appears that after registering marriage, both of them were not residing together. For the sake of convenience, the question put up to the wife by the Court and answer is reproduced as under:

“1] After marriage, whether at any point of time both of you have ever resided together even for single day or spend entire day together?

Ans.:- No. After marriage, till filing of this petition, I met him only once for 25 minutes that too on public place.”

6. The appellant has specifically denied that she along with the respondent and his friend Chaitanya and his wife had been to Shegaon at any point of time. The respondent in cross-examination admitted that after marriage, he has not brought the appellant at any point of time to his house nor he has filed any petition for restitution of conjugal rights. So far as the visit to Shegaon on 02/12/2023, the witness examined by the respondent namely Chaitanya Kadukar deposed that they had been to Shegaon. However, in cross-examination, he has admitted that there is no document to show that they had been to Shegaon nor is he having any receipt that they had stayed in Anand Vihar at Shegaon.

7. In reply, the respondent submitted that he has filed the petition for restitution of conjugal rights on 26/12/2024. His evidence

was recorded on 19/08/2024 at that time, there was no petition filed by the respondent for restitution of conjugal rights. He has also placed on record a copy of Police complaint dated 16/12/2024, wherein he has stated the facts about marriage and also mentioned that he used to meet the appellant-wife whenever he gets an opportunity. However, this fact is not mentioned in his affidavit.

8. The learned Family Court recorded the findings in para-15, which are reproduced as under:

“15] Above discussion would go to show that the petitioner failed to plead and prove any grave and weighty incidences so as to say that she cannot cohabit with the respondent. On the contrary, the facts and circumstances coupled with the evidence of the parties clearly leads to the probabilities that because of caste issue, the parties have secretly solemnized marriage and thereafter, they went to their respective parents house so that they can have a time to convince their parents to accept their marriage. Respondent's evidence clearly shows that an attempt was made from his side to convince the petitioner's father but, it was of no use, and on the contrary, the petitioner's father had threatened about killing the petitioner and himself. In such circumstances, it is quite probable that because of her father's pressure, the petitioner did not join the respondent's company. It is worth to note that the petitioner failed to disclose as to why, after marriage, she went to her parents house instead of going to respondent's house. She has not come with a specific case that after solemnizing marriage, she was willing to go to the respondent's house and he refused to take her with him. In such circumstances, the only probability arose is about solemnizing secret marriage by the parties and making an

arrangement to stay at respective parents house to purchase the time to convince their parents to accept the marriage.”

9. After going through the judgment, it appears that the only ground on which the original petition stands dismissed is that the appellant failed to prove any cruelty meted out to her by the respondent after solemnization of marriage.

10. The learned counsel for the appellant submitted that the matter may be remanded and opportunity to raise the ground of nullity of marriage be granted as both of them are residing separately since 01/06/2022. After going through the contents and evidence of the appellant, we are of the considered opinion that the matter may be remanded so as to get an opportunity to the appellant to raise the ground of nullity, as the contents in the petition are in fact clearly showing that it is a case of nullity of marriage. As such, the appeal is partly allowed.

11. The impugned judgment dated 17/10/2024, passed by the Principal Judge, Family Court, Nagpur in Petition No.A-47/2024 is hereby quashed and set aside.

12. The matter is remitted back to the Principal Judge, Family Court, Nagpur to its original number.

13. The appellant is at liberty to amend the petition and the Principal Judge, Family Court, Nagpur to grant an opportunity to the appellant to substantiate her claim of nullity of marriage and also grant an opportunity to the respondent to put his case/defence. The Principal Judge, Family Court, Nagpur shall consider the same on its own merits in accordance with law.

14. The family court appeal stands disposed of in the above terms. No costs.

(RAJ D. WAKODE, J)

(SMT.M. S. JAWALKAR, J)