IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (STAMP) NO. 35573 OF 2024
WITH
INTERIM APPLICATION NO. 1461 OF 2026

Mrs. Hetal Sharad Parmar
Aged : 30 years,
Occu.: Housewife,
Residing at : 203, 2nd Floor,
Mahavir Dham Building ...Appellant/Applicant
Devidayal Road, Mulund (West),
Maharashtra, Mumbai 400 080.

Versus

Mr. Sharad Dhirajlal Parmar,
Age : 31 years, Occu.: Business,
R/at. Flat No. - 202, Tridev Tower,
Bhakti Marg, Mulund (West),
Mumbai 400 080, ...Respondent
Maharashtra, India.

Mr. J.G. Sharma, Advocate for the Appellant/Applicant.
Mr. Vikas G. Saindane, Advocate for the Respondent.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATED: 17th JULY 2026.

JUDGMENT (Per : Manjusha Deshpande, J.) :-

1. The Appellant wife being aggrieved by the *ex-parte* decree of dissolution of marriage passed by the learned

RAJESHRI PRAKASH AHER
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Judge of the Family Court Bandra, Mumbai, in Petition No. A-428 of 2023, under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955, on the ground of desertion and cruelty has assailed it in the present Appeal.

2. The marriage between Appellant and Respondent was solemnized as per Hindu rites on 07.05.2017, which was an arranged marriage. On account of her mother's kidney related ailment, the Appellant was frequently required to attend her mother and accompany her for dialysis thrice a week, of which the Respondent-husband was aware. Even though the Respondent had agreed to this arrangement, eventually, when she joined him at the matrimonial home, she was asked by the Respondent to abide by the family's culture and follow the unwritten rules of the family. She was taunted by the members of his family, for not bringing sufficient dowry. There used to be frequent quarrels at her matrimonial home. She was also abused by the family members of the Respondent-husband without any reason. Fed up with the treatment meted out to her by the Respondent-husband and his family, she lodged complaint in the police station.

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3. The Appellant has filed FIR No. 470 of 2022 on 05.07.2022 against the Respondent-husband and his family members; a Domestic Violence Complaint ('DV Complaint', for short) against the Respondent and his family on 24.11.2020; an FIR on 05.07.2022 under Sections 498-A, 406 and 323 of the Indian Penal Code ('IPC' for short); there are other ancillary proceedings arising out of these complaints that are pending between the parties.

4. The learned Advocate for the Appellant submits that during the pendency of all the aforementioned proceedings, the Family Court allowed the petition for dissolution of marriage filed by the Respondent-husband *ex parte* on the ground of desertion.

It is submitted that the Appellant-wife did not get an opportunity to defend the Hindu Marriage Petition, since she had completely relied upon her Advocate on record. According to the Appellant, she did not receive any response from her Advocate whenever she enquired about the status of the Hindu Marriage Petition pending before the Family Court. Whenever she contacted the Advocate on record

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regarding the said proceedings, she did not receive appropriate response from the Advocate. It is submitted that, in fact, she intended to contest the dissolution of marriage on merits, as she has strong grounds to oppose the same. It is further submitted that it was due to the sheer mistake of the Advocate, that the written statement could not be filed before the Family Court, as a result of which the petition for dissolution of marriage is allowed *ex parte*.

5. In support of her submissions that the litigant should not suffer due to the mistake of his Advocate, the learned advocate for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***Raffiq and Another v. Munshilal and another***[1] where the Hon'ble Supreme Court has held that for whatever reason the advocate might have absented himself from the Court, the innocent litigant should not be allowed to suffer injustice, for the fault of his advocate.

6. The learned Advocate submits that the Judge of the Family Court has observed in the judgment that the Appellant-wife has deserted the Respondent-husband since 25.03.2020, however, the fact remains that the Respondent

1 AIR 1981 SC 1400

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himself has averred in the written statement filed in the DV proceedings in DV/53/2020 that the Appellant left the matrimonial home in August 2020. Thus, in view of the aforementioned observation, it is submitted that if the *ex parte* order is not set aside, the Appellant would be deprived of the valuable right to oppose, which would cause grave injustice to the Appellant, and her other litigation is likely to be affected because of the impugned order.

7. On the contrary the learned Advocate Mr. Vikas Saindane, appearing for the Respondent-husband submitted that the present Appeal has been filed by the Appellant with an intention to deprive the Respondent-husband the benefit of the judgment and decree dated 19.06.2024. Had there been any intention on her part to resume cohabitation, she would have definitely returned back and wouldn't have filed proceedings such as complaint under the Protection of Women from Domestic Violence Act, 2005 ("DV Act", for short) and the FIR under Section 498-A of the Indian Penal Code. It is submitted that the reason given by the Appellant for her failure to cause appearance in the Hindu Marriage Petition is that, her advocate did not keep tab on the matter

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on the dates of the hearing in the divorce proceeding. Therefore, due to negligence of the advocate and the surrounding circumstances, she was unable to participate in the said proceeding. This stand of the Appellant is patently false, as all the while she had participated in the Court proceeding concerning maintenance under the DV Act i.e. DV/53/2020. The Appellant-wife was regularly attending the dates in the aforesaid proceeding. She was very much aware about the pending divorce proceedings, which can be gathered from her own admission made in the cross-examination in the D.V. Case No.DV/53/2020. In fact, the Appellant-wife had caused appearance before the Family Court in the Marriage Petition No. A/428/2023 along with her advocate and also attended the meeting before the marriage counselor.

It is submitted that, the matter before the marriage counselor could not be settled because of the enormous demand of alimony made by the Appellant-wife. Thereafter, she had stopped attending the divorce proceeding and continued to attend the hearings in the DV case, which was giving her maintenance regularly.

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It is urged that, the Appellant is trying to take advantage of her own wrong by resorting the falsities and illegalities by suppressing the facts before this Court. She herself has admitted that, she left her matrimonial home in March 2020. In her cross-examination in the DV case, she has admitted that, she had only once visited the house of Respondent-husband in August 2020, to take possession of her gold ornaments and belongings. It is also admitted in her cross-examination that, she did receive the notice issued by the Respondent-husband for restitution of conjugal rights through his advocate on 15.01.2021.

Thus, in view of the aforementioned background, the period of 2 years was already over when the Hindu Marriage Petition No.A/428/2023 was filed by the Respondent on 13.02.2023. The Appellant had been served with the summons long before and had due knowledge of the Divorce Petition No. A/428/2023, which was pending before the Family Court. It is therefore prayed that the Appellant cannot be allowed to take advantage of her own wrong by granting her prayer in the Appeal, since it is evident that the Appellant is not interested in resumption of cohabitation, but

interested in protracting the litigation so as to harass the Respondent. It is therefore prayed that, the Appeal of the Appellant deserves to be dismissed.

8. We have heard the respective counsel and also perused the documents placed on record. From the perusal of the impugned judgment dated 19.09.2024, it is evident that the Petition for dissolution of marriage has been filed under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955.

So far as the first ground of dissolution of marriage invoked by the Respondent on the ground of cruelty as per Section 13(1)(i-a) is concerned, the learned Judge while declining the prayer on that, ground has observed that the Petitioner has failed to prove that the Appellant has subjected him to cruelty as alleged. So far as the other ground i.e. Section 13(1)(i-b) for desertion invoked by the Respondent-husband is concerned, the learned Judge of the Family Court, has held that the Appellant-wife has left the company of the Respondent-husband on 25.03.2020, without any reasonable cause, and the Respondent has examined himself and stated about the efforts made by him for

reconciliation. He has also supported his testimony by placing on record the police reports and complaints filed against him by his wife and also the legal notice issued by him for resumption of cohabitation. Inspite of the notice issued to her, the Appellant-wife has neither resumed cohabitation nor given any response to the notice.

9. In her cross-examination in DV Case No.DV/53/2020, she has admitted that, she has not filed any application for resumption of cohabitation against the Respondent-husband, nor did she file any application for judicial separation. She admitted that she has filed one case against the Respondent-husband at Mulund Police Station, Mumbai. She has also admitted in her cross-examination that she did receive a notice from Family Court, Bandra, in which she appeared through her advocate and participated in the counseling on one occasion. She further admitted that she didn't file any written statement before the Family Court, Bandra. Thus, from the cross-examination of the Appellant in the D.V. Proceedings, which is annexed to the reply by the Respondent, it can be gathered that the Appellant after leaving her matrimonial home on 25.03.2020 had only once

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visited her matrimonial home to collect her Stridhan. She also admitted that she has received a notice for restitution of conjugal rights, however, she was not interested in resumption of cohabitation due to the alleged ill-treatment.

10. It can be gathered from the cross-examination of the Appellant that she was very much aware about the pending divorce proceeding. However, she has not shown any interest and diligence to attend the dates in the proceedings for divorce. On the other hand, she was regularly attending the dates in the DV proceedings, where she was successful in obtaining an order of maintenance of Rs.20,000/- per month. The marriage between the parties has been dissolved by invoking Section 13 (1) (i-b) of the Hindu Marriage Act, 1955, which reads thus :

> *"**13. Divorce.** -- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--*
>
> *[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*
>
> *(i-a) .....*

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(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or"

11. In the present case, the Respondent-husband has made an averment in the Petition itself that, the Appellant has deserted him on 25.03.2020, and the petition for dissolution of marriage is presented on 13.02.2023. Section 13(1) (i-b) contemplates that there should be desertion by the Appellant for a continuous period of not less than two years. In the present case, it is more than two years after the date on which the Appellant-wife has left her matrimonial home in August 2020 with an intention of never returning back. Her intention can very well be gathered from the date on which she filed the DV case i.e. 24.11.2020, wherein she had made allegations of domestic violence against the Respondent-husband. She has also admitted of having received the notice for restitution of conjugal rights issued by the Respondent-husband on 15.01.2021.

12. Thus, in view of refusal of the Appellant to resume cohabitation, having failed to respond to the notice issued by the Respondent, and also considering that she has left her matrimonial home on her own free will, in August 2020 the

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learned Judge of the Family Court has held that the Respondent-husband has established the case of constructive desertion. The oral evidence led by the Respondent has gone unchallenged. In view of the deposition of Respondent-husband about the date of desertion and the efforts made by him for reconciliation, coupled with the other documents placed on record, which are proved by him, the learned Judge has rightly held that the Respondent has established by way of unrebutted oral evidence that there is willful desertion at the hands of his wife for more than 2 years, till the date of filing of the Petition, and has accordingly answered the Point No.2 in affirmative and accordingly the marriage solemnized between the parties has been dissolved.

13. Since the evidence led by the Respondent has gone unchallenged, and it is also supported by producing evidence in support of the claim of the desertion. It is also observed by the learned Judge of the Family Court that, inspite of service of summons, the Appellant has failed to lead any evidence, that itself fortifies the reluctance of the Appellant to resume cohabitation. It is also observed that, though the Appellant-wife appeared before the marriage counselor, she has failed

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to appear and file her written statement on the subsequent dates in the proceedings for dissolution of marriage. This conduct of the Appellant itself supports the observations of the learned Judge that the Appellant-wife does not appear to be interested in resumption of cohabitation and the Respondent-husband herein has clearly proved the ground of desertion though he has failed to prove the ground of cruelty.

14. We do not find any infirmity in view of the conduct of the Appellant-wife, which clearly reflects that though she was simultaneously pursuing the proceedings filed by her under the DV Act, diligently, she has intentionally avoided to attend the matrimonial proceedings. Thus, she cannot take benefit of her own wrong by contending that, due to negligence of her Advocate, she could not remain present in the proceedings. As such the challenge in the Appeal fails and the Appeal filed by the Appellant stands dismissed.

15. In view of the dismissal of the Family Court Appeal, stay to the impugned judgment granted earlier stands vacated.

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16. In view of dismissal of Family Court Appeal, Interim Application stands disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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