



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 53 OF 2021

WITH

INTERIM APPLICATION NO.3259 OF 2020

[REDACTED]

[REDACTED] d

.....Appellant

Vs.

[REDACTED]

.....Respondent

Ms. Usha Tanna (Through VC) with Mr. Hemal Ganatra and Ms. Rushda Patel, for the Appellant.

Mr. Vikramaditya Deshmukh, with Mr. M. S. Khadilkar, Mr. Chinmay Page & Mr. Ashutosh Pawar, for the Respondent.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

RESERVED ON : 11th JULY 2025.PRONOUNCED ON : 17th JULY 2025.**JUDGMENT :-** (*Per Dr. Neela Gokhale, J.*)

1. This is an unfortunate case where despite the parties undergoing mediation innumerable times, the matter was not resolved.

Even the co-ordinate Benches of this Court tried to resolve the discord between the parties, but to no avail. The marriage is of 12th December 2013. The parties resided together for a total period of about 12 months and separated since 14th December 2014. Matrimonial proceedings between the parties commenced in the year 2015 before the Family Court, Pune and they continued to meander before reaching this Court by way of this Appeal. In an endeavor to put an end to prolonged agony of the parties and as a penultimate attempt to resolve their disputes, we placed the matter in chambers. We held marathon sessions, to bring the parties to an amicable settlement, but regrettably, we were not able to break the deadlock between the parties. This has brought upon us the duty to decide the fate of the matrimonial tie between the parties. We heard counsels of both the parties. The Appeal is admitted and taken up for final hearing forthwith.

2. The Appellant-wife challenges the judgment and order dated 28th November 2019 passed by the Family Court No.3, Pune in Petition-A No.1274 of 2016, whereby her Petition filed under Section 9 of the Hindu Marriage Act, 1955 ('HMA') for Restitution of

conjugal rights was dismissed and the counterclaim of the Respondent-husband for divorce was allowed. Thus, the marriage dated 12th December 2013 between the parties stands dissolved by a decree of divorce under Section 13(1)(ia) and (ib) of the HMA passed by the Family Court, Pune.

3. Facts leading to the present proceeding are that the parties married on 12th December 2013 at Kothrud, Pune as per the rites and ceremonies of Hindu Religion. There is no issue from the said marriage. Due to matrimonial discord between the parties, they separated on 14th December 2014. A petition for mutual divorce was filed under Section 13B of the HMA in the Family Court, Pune on 15th April 2015. The petition was withdrawn by the Appellant-wife on 27th July 2015, followed by a police complaint made by her against the Respondent and his family members with the local police station. Thereafter, the Appellant filed a petition for restitution of conjugal rights against the Respondent in the Family Court, Pune. The Respondent filed his written statement-cum-counterclaim for divorce on the grounds of cruelty and desertion. The said petition was decreed, which led the Appellant knocking the doors of this Court.

The Appellant had made an application seeking interim maintenance before the Family Court, which was rejected. There was no appeal filed against that order. Further, there was no prayer for permanent alimony and maintenance in the petition before the Family Court, made by the Appellant and consequently, none was granted. However, for the first time in the present appeal, the Appellant has sought Rs.1,00,000/- per month as maintenance from the Respondent.

4. Heard Ms. Usha Tanna, learned counsel appearing for the Appellant through video conferencing and Mr. Vikramaditya Deshmukh, learned counsel representing the Respondent.

5. The allegations of the Appellant in her petition for Restitution of conjugal rights as well as the Affidavit in lieu of Examination in Chief are as under:

- (i) The Respondent's parents harassed the Appellant and humiliated her.
- (ii) The Respondent and his parents prohibited the Appellant from working and she was compelled to do household work such as cleaning utensils, cooking, cleaning the house and other such

household work. They always picked quarrels with her on petty grounds.

- (iii) On 28th August 2024, after quarreling with her, the Respondent told her that she should not stay with him. The Respondent and his parents conveyed to the Appellant's father that the Respondent wanted divorce from her.
- (iv) The Respondent and his parents took away her jewellery comprising her *stridhan* from her.
- (v) On 9th April 2015, she was offered an employment opportunity and hence, she agreed to sign the consent petition. However, when the Judge, Family Court verified her consent, she complained that her signature was obtained by force. Hence, she withdrew her consent to the consent petition.
- (vi) Upon returning to her matrimonial home, her parents-in-law and sister-in-law abused her and treated her with cruelty. This caused the Appellant's father to suffer a heart-attack and he was admitted in the ICU and kept in the hospital for 45 days.

(vii) Respondent refused to take her home hence, she issued a notice dated 15th June 2016 to the Respondent through her lawyer, which was replied by the Respondent through his lawyer on 27th June 2016.

(viii) She has tremendous love and affection for the Respondent and desires to cohabit with him. Hence, she filed the petition for restitution of conjugal rights.

6. The Respondent denied all the allegations made in the Petition by way of his written statement to the Petition and sought divorce in his counterclaim on the following grounds, which are also part of his Affidavit in lieu of Chief Examination:

- (i) The Appellant used to leave the house in the morning without informing anybody and return late at night.
- (ii) She used to quarrel with him and make allegations against his parents and sister. She behaved badly with his younger sister, who is specially abled, affecting her health due to her torture and harassment.

- (iii) Appellant always told the Respondent that marriage with him was a mistake and the biggest failure of her life. On their first valentine day after marriage, she left him to spend the entire day with her friends.
- (iv) The Appellant quarreled with him when they went for a trip to Lonavala with his friend and his wife. She refused to entertain his friends and always refused to go out with them. On the other hand, she met her own friends secretly outside the house without informing the Respondent. In fact, she never disclosed her location to the Respondent.
- (v) She was always rude to the Respondent's employees and used to barge in his office at any time and behave irresponsibly with his staff.
- (vi) The Appellant refused physical relations with the Respondent after 3-4 months of their marriage. She behaved aloof with him.
- (vii) She misbehaved with relatives and family members during her *manglagaur* and purposely returned home very late in the evening despite being aware that there were guests for the said function at

home. Many relatives and friends inquired with the Respondent's mother regarding the Appellant's behavior.

(viii) When the Respondent planned a trip to Goa, the Appellant went with him, but refused to go out anywhere with him. Instead, she roamed alone the entire day inside the hotel and did not speak to the Respondent for three whole days.

(ix) The Appellant made allegations of the Respondent having extra-marital affairs and fought with him on that ground.

(x) Even on their anniversary, the Appellant made plans to go out with her friends without the Respondent saying that it was a day of her failure.

(xi) She started demanding divorce and left to go to her parent's house on 14th December 2014 from which date, they are residing separately.

7. The parties adduced their respective evidence before the Family Court. The Respondent alleges cruelty and desertion by the Appellant. The Family Court, upon consideration of the entire

evidence, held the allegations made by the Respondent as proved and allowed his counterclaim.

8. We have perused the impugned judgment and order carefully. A plain reading of the same demonstrates a meticulous appreciation of the evidence on record by the Family Court. The Appellant has alleged that she was made to do all the housework in the Respondent's house. Despite this allegation, the Appellant's evidence reveals her admissions that there was one servant in the house for 24 hours; another servant for house-cleaning, washing utensils, etc and another servant for cooking. Thus, this allegation is correctly held as not proved by the Family Court.

9. The Family Court in paragraph No.19 of the impugned judgment and order has correctly assessed the interpretation of Section 9 of the HMA. The Appellant seeking restitution of conjugal rights was required to demonstrate withdrawal by the Respondent, from the society of the Appellant without reasonable excuse. There is no averment either in the Petition or in the evidence led by the Appellant alleging/suggesting such withdrawal by the Respondent. On the contrary, she has proceeded to make allegations against the

Respondent as mentioned in paragraph No. 5 herein above. Thus, the Family Court has raised a genuine doubt as to the *bona fide* desire of the Appellant to resume cohabitation. Her claims of the Respondent demanding divorce from her during their cohabitation are not substantiated by cogent evidence.

10. Most surprisingly, the Appellant made a police complaint against the Respondent and his family members only after she withdrew her consent to the divorce petition. Apart from stating in paragraph No.15 of her cross-examination that she did not consent for mutual divorce, there is no iota of evidence to indicate that her consent to the mutual divorce petition was forced on her. In fact, she admits that she was personally present in the Court at the time of filing the consent petition. Her mother accompanied her. She was represented by an Advocate. Moreover, the reason given in the pursis by the Appellant to withdraw the consent petition is that she was hopeful about the future with the Respondent. Thus, her allegation that she was forced to file a consent petition is quite doubtful. Moreover, the fact that she made the police complaint against the Respondent and his family members shows an inclination to harass the

Respondent once the mutual consent proceedings failed for some reasons. Admittedly, there was no such complaint made by her prior to the withdrawal of the mutual consent petition.

11. The Appellant has not examined any witness to corroborate her statements, including her mother. The Family Court thus correctly inferred that the Appellant is not seriously interested in reconciliation and there is no evidence indicating withdrawal of the Respondent from her society without reasonable cause.

12. As far as the evidence of the Respondent is concerned, he has narrated the various incidents of cruelty inflicted upon him by the Appellant. The Family Court in paragraph 21 of the impugned judgment has set out a list of the incidents of cruelty meted out to him. The cross-examination of the Respondent by the Appellant's counsel has not brought out any contradiction or improvement from his deposition. His unchallenged and unrebutted testimony also demonstrates attempts made by him to save their marriage. Thereafter, filing of the mutual consent petition establishes the fact that even the Appellant was inclined to end the marital tie, especially in the absence of any testimony to show that she was forced to sign

the petition. It is pertinent to note that a written statement to the counterclaim filed by the Respondent is also not found on record.

13. Even before us the only argument of Ms. Tanna was that the Appellant was not permitted to cross-examine the Respondent. She pointed to an order dated 12th March 2019 passed by the Family Court noting that the Appellant and her counsel are absent and the proceedings were adjourned for cross-examination of the Respondent till the next date. There is another order dated 28th March 2019 passed by the Family Court noting that the Appellant sought time for cross as per advocate was not present. The Family Court further noted that several chances were given to the Appellant, but no cross was taken and hence, the cross-examination was closed. Despite the said order, the cross-examination of the Respondent is found to be complete on 16th September 2019 as there is a noting by the Family Court that 'Cross-examination closed. No re-examination'. It is thus clear that the Appellant was given an opportunity to complete the cross-examination of the Respondent despite the order dated 28th March 2019. Thus, we find no force in this submission advanced by Ms. Tanna.

14. The Supreme Court in its recent decision in the case of *Roopa Soni v. Kamal Narayan Soni* (2023) 16 SCC 715 observed that the word ‘cruelty’ under Section 13(1)(ia) of the HMA has got no fixed meaning and gives a wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be in another. It is to be applied from person to person while taking note of the attending circumstances. Paragraph No.7 of this decision reads thus:

“7. We would like to emphasize that an element of subjectivity has to be applied albeit, what constitutes cruelty is objective. Therefore, what is cruelty for a woman in a given case may not be cruelty for a man, and a relatively more elastic and broad approach is required when we examine a case in which a wife seeks divorce. Section 13(1) of the Act of 1955 sets contours and rigours for grant of divorce at the instance of both the parties. Historically, the law of divorce was predominantly built on a conservative canvas based on the fault theory. Preservation of marital sanctity from a societal perspective was considered a prevailing factor. With the adoption of a libertarian attitude, the grounds for separation or dissolution of marriage have been construed with latitudinarianism.”

15. Having regard to the social background of the parties, the conduct of the Appellant as seen from the evidence on record can be

construed as 'cruelty' against the Respondent. The Respondent is a part of his family's business. The un rebutted evidence pertaining to the Appellant's behavior with his employees is sure to cause agony to him. Similarly, humiliating the Respondent in front of his friends is also 'cruelty' to him. Moreover, apathetic and indifferent behavior with the Respondent's specially abled sister is also sure to cause pain to the Respondent and his family members. Refusal to have a physical relationship and making allegations of extra-marital relations is also cruelty by the Appellant and established as such for want of any cross-examination on that aspect. That the marriage has broken without any possibility of being mended is quite clear even from the fact of the parties filing a mutual consent divorce petition as early as in 2015. It is also an admitted fact that the Respondent made an attempt to work on their relationship by moving out of his family home to a rented flat. He invited the Appellant to live there and gave her the key to the said flat. Despite this, the Appellant did not show up at the new flat. This evidence of the Respondent is also unchallenged, further refuting the assertion of the Appellant regarding the Respondent deserting her. Thus, the Family Court has correctly determined the issues in the matter. We find no infirmity in the impugned judgment and order.

16. For more than a decade, the parties have been living separately. The marriage does not survive any longer and the relationship is terminated and confirmed as such legally as well, by the Family Court. This appeal simply continues the *status quo* awaiting an order of this Court.

17. For all the reasons set out as aforesaid, we are of the considered view that the impugned judgment and order is well-reasoned and based on the evidence correctly appreciated by the Family Court. There is no infirmity in the impugned judgment and order.

18. Lastly, we must deal with the prayer made by the Appellant seeking maintenance of Rs.1,00,000/- from the Respondent. We find that there was neither any prayer nor any application made by the Appellant seeking permanent alimony and maintenance before the Family Court. Hence, neither is there any issue framed on the said aspect nor is there any evidence led in that behalf. For the first time in this Appeal, we are unable to determine any quantum of maintenance to be awarded, if any, to the Appellant. She has other efficacious remedy to agitate her claim of permanent alimony and maintenance, if

she so desires, in an appropriate forum and in appropriate proceedings. The prayer for maintenance is thus rejected.

19. Considering the above discussion, the Appeal is dismissed.

20. In view of dismissal of Appeal, Interim Application shall also stand disposed of.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)