
(1993) 08 BOM CK 0070

In the Bombay High Court

Case No : Family Court Appeal No. 102 of 1992

Chandrashekhar Keshav Umbranikar

APPELLANT

Vs

Rohini Chandrashekhar Umbranikar

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Family Courts Act, 1984 — Section 19

Citation : (1994) 1 DMC 25

Hon'ble Judges : M.K. Mukherjee, C.J.;A.P. Shah, J

Bench : Division Bench

Advocate : Usha Purohit and Shaunak Satpute and Co, for the Appellant; P.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mukherjee, C.J.—The appellant filed a petition u/s 13 of the Hindu Marriage Act, 1955, in the Family Court, Pune, seeking dissolution of his marriage with the respondent on the ground of cruelty and desertion. As the petition was rejected and the appellant was directed to pay a sum of Rs. 600/- per month for the maintenance of the respondent and a further sum of Rs. 200/- per month for the maintenance of their minor daughter, he has filed the instant appeal.

2. It is not in dispute that the appellant married the respondent according to Hindu rites on December 5, 1987 and thereafter they started living in Pune where a daughter was born to them on November 13, 1988. It is also not in dispute that on March 3, 1989 the respondent left her matrimonial home and since then she is living with her parents. According to the appellant, the respondent is very rude, arrogant and quarrelsome. Besides, she did not do any household work. His next averment in his petition is that whenever he asked her to mend her ways she used to bang her head against the wall and give out that she would commit suicide. After detailing some of the instances of her rude and crude behaviour in the petition, the appellant lastly alleged therein that in the night of March 2, 1989 there was a petty quarrel between the respondent and his

mother over washing of utensils and on the following day she left his house and deserted him since then.

3. In contesting the petition the respondent denied all the accusations made against her except that she left his home on March 3, 1989 following her quarrel with her mother-in-law over washing of utensils on the previous night. However, her version relating to the incident of that night is that when her mother-in-law asked her to wash the utensils she told her that as she was feeling some pain in her stomach and as her daughter was crying she would wash the utensils on the following morning. This explanation of her's, according to the respondent, did not find favour with her mother-in-law and she rebuked her. It is under such circumstances that she left the house.

4. The respondent's further case is that her maternal uncle approached the appellant and his family members in the month of January, 1990 for a settlement and ultimately a joint meeting was held in March 1990. Though she had then expressed her unqualified desire to go to her matrimonial home and resume cohabitation, the appellant insisted upon a written undertaking to be given by her before he could decide upon the question whether he would take her back in the marital home. Since she refused to give such an undertaking, the appellant did not allow her to join him. In other words, according to the respondent, she was always ready and willing to go back to her husband but her husband unjustifiably refused to accept her.

5. In support of his case, the appellant besides examining himself, examined her brother-in-law and another witness. The respondent however, besides examining herself, did not examine any other witness.

6. On perusal of the evidence during the trial, we are in complete agreement with the learned Trial Judge that the appellant has failed to prove his claim for divorce on the ground of cruelty. The instances referred to by him to sustain his case of cruelty related to incidents of petty nature which, even if they are accepted as true, can at best be said to be normal "wear and tear" of matrimonial life. Even the incident that admittedly took place on that fateful night of March 2, 1989 was, in our view, not of much moment so as to make out a case of cruelty. While on this point, we may state that the learned Counsel for the appellant also, in her usual fairness, conceded that evidence on record does not make out a case of cruelty but she strenuously argued that the appellant was entitled to a divorce on the ground of desertion.

7. Coming now to the question as to whether the appellant has been able to make out a case of desertion, it can be said in favour of the appellant that the quarrel that took place in the night of March 2, 1989 was not of such magnitude so as to justify the respondent's leaving her matrimonial home; but then such indiscretion by itself will not prove the case of desertion, unless, of course, the appellant has also been able to prove "animus deserendi" of the respondent. Having considered the evidence on record, we must hold that the appellant has

signally failed to prove this constituent of desertion.

8. Admittedly a joint meeting was held on March 11, 1990 at the instance of the respondent and her family members, While being cross-examined about the proceedings of the meeting, the appellant stated that if the respondent had apologised about her past behaviour he would have thought for reconciliation. He next stated that after the meeting on March 11, 1990 he decided not to cohabit with the respondent and that his such decision was final. He also admitted that the respondent told him that there was no necessity of written undertaking as she wanted to continue marital relations. He further admitted that in reply to a letter written by him on April 21, 1990 the respondent had stated to forget the past and to have a reconciliation. He next admitted that even after the reply he told the respondent that he would consider the question of resumption of cohabitation only after execution of the undertaking. Prakash Gadgil, the brother-in-law of the appellant, also admitted in cross-examination that it was decided that if the respondent refused to execute the undertaking then there was no question of allowing her to stay with the appellant and they told the respondent in the meeting that only after she gave the written undertaking they would decide whether she would be taken in the family of the appellant. It is therefore evidently clear that while the respondent was willing to return to his matrimonial home after admitting her fault in leaving the house, the appellant was not willing to take her back. In fact, as the evidence discussed shows that even if the respondent had given the undertaking as asked for, the appellant might not have, still then, taken her back. This unfair and rigid stand taken by the appellant leads us to conclude that the appellant was trying to induce her to give an undertaking so as to utilise it for making out a case for divorce and not for taking her back.

9. For the foregoing discussion we must uphold the order of the Family Court dismissing the petition. The reasons given by the Family Court for granting alimony are also, in our opinion, unassailable in view of the materials on record. The appeal is accordingly dismissed with costs, which is assessed at Rs. 2000/-.