
(1991) 01 BOM CK 0010
In the Bombay High Court
Case No : F.A. No. 792 of 1987

Kashinath Namdeo Patil

APPELLANT

Vs

Meenaxi Kashinath Patil

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Hindu Marriage Act, 1955 — Section 13

Citation : (1992) 2 DMC 99

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Advocate : V.D. Govilkar, for the Appellant; Naidu, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Desai, J.—The appellant-husband has questioned the correctness and legality of the judgment and decree passed by the trial Court refusings to grant him a decree of divorce on the ground of desertion and cruelty.

2. The marriage between the parties took place on 17th February 1975. As per the case made out the respondent wife left the matrimonial house and went to reside with her parents on or about 15th July 1975. The petitioner-appellant therefore presented a petition u/s 13 of the Hindu Marriage Act, on 27th July 1981 claiming relief of divorce on the grounds of desertion and cruelty. The trial Court framed the necessary issues i.e. nos. 2 and 3 and reached to a conclusion that the petitioner failed to prove both the grounds and therefore dismissed the petition by the order impugned before me.

3. Heard Shri Govilkar at length. According to him the wife voluntarily, without the consent or permission, withdrew from the company of the petitioner husband. It was mental design and with determination she withdrew and as such it amounts to desertion and the petitioner is entitle to a relief of decree of divorce on that ground.

4. With the assistance of the learned Counsel, I have gone through the pleadings

as made in the petition. In para 3 of the petition he alleged that there were bickering and quarrels with the respondent and the aunt of the petitioner. He averred in para 3 that "In the circumstances, the petitioner suggested that the respondent should go and reside with the petitioner's parents but the respondent refused to do so point blank and instead without the petitioner's consent and against his wishes, on 15th July 1975 the respondent took all the ornaments and clothes and certain other articles and in spite of the petitioner's protests went away to reside with her parents B.D.D. Chawl No. 10, Sewree, Bombay 15". This averment candidly suggests that the petitioner himself consented for withdrawal of the company by wife under the circumstances then prevailing in the home. Only grievance that could be made that instead of going to the house of the petitioner's parents as suggested, she went to reside with her parents. This does not amount to desertion as wilful act on the part of the respondent-wife. It is then clear from his evidence that had been to his place after delivery of a child in April 1976. The petitioner in his deposition has categorically admitted this and considered by the trial Court in para 50 of the impugned judgment. However, the petitioner refused to take her back and locked the door and went away. This is suggestive of the desire, willingness and readiness of the wife to co-habit with the husband. He was not inclined to continue the conjugal rights. As such the petitioner is not entitled to claim a decree of divorce on the ground of desertion. Besides this the petitioner has not pointed out that after her departure on 15th July 1975, he made any attempt to bring her back to her matrimonial home. On 5th March 1976 she was blessed with a daughter. It is his case that immediately in April 1976 she had been to his place. As such the ground of desertion is totally devoid of substance. It is further urged by Mr. Govilkar that she took forcible possession of the premises which is located in a locality known as Chunabhatti. Her residing in her matrimonial home taken on lease by the petitioner in an area known as Chunabhatti also completely demolishes his case of desertion. Mr. Govilkar tried to make out a case that he was forcibly driven out of the house. However, this submission is totally misconceived. The trial Court was, therefore, justified in rejecting the relief on the ground of desertion.

5. The next ground for claiming divorce is cruelty. The petitioner has pleaded this ground in para 3 of the petition, wherein he has stated that the respondent-wife used to make reckless and irresponsible allegations qua relationship between the petitioner and his aunt. It is pertinent to note at this stage that the nature of allegations have not been specifically pleaded. Mr. Govilkar tried to place reliance on the pleadings made by the wife in her written statement wherein she has stated that the petitioner had illicit relations with his aunt. Mr. Govilkar tried to urge that this amounts to cruelty. According to him these allegations are false and baseless. Even accepting these allegations, the incidents took place prior to July 1975. The instant petition for divorce on the ground of cruelty was presented on 27th July 1981. The incident of allegations has no proximity with the cause on which relief as claimed is based. According to Mr. Govilkar, she

repeated the allegations and the process was continuous and it continued till July 1981. The submission is without any merit. It is true, in the proceedings for maintenance, she made an averment for legal requirements. According to her she is entitled to the maintenance u/s 125 of the Criminal Procedure Code as she could not reside with the husband since he was having relations with his aunt. Such averment in a subsequent legal proceeding, would not amount to repetition of the allegations. It is only that the respondent wife tried to narrate the circumstances which constrained her to withdraw from the company of the husband.

6. Another time of submission on this count is that this being a continuous affair, it constitute cruelty. However, no such case has been made out in the petition. Next aspect which tried to be urged by Mr. Govilkar is that respondent-wife has failed several false and vexatious as also malicious prosecution against the petitioner. In para 6 he has given the list of cases. Excepting cases at Sri. Nos. 1, 2 and 7 all other cases have been filed by the petitioner himself. This prosecution could not, in any manner constitute a cruelty on the part of the respondent-wife. Respondent-wife filed cases at Sri. Nos. 1 and 2. They are proceedings for maintenance u/s 125. As such it does not amount to cruelty, while making a claim for maintenance against the husband. The prosecution at Sri. No. 7, according to the learned Counsel, pertains to a charge of theft against the husband. It is urged by Mr. Govilkar that he was charged by wife for theft of articles owned by him. Mr. Govilkar made a submission that this charge came to be made when he was removing certain articles from the matrimonial home. According to him, the petitioner was the owner of the articles and as such making such charge amounts to malicious prosecution which constitute cruelty. A husband removing household articles from the matrimonial home, even if an owner of the property, was wholly without justification. In that eventuality if respondent-wife was constrained to file prosecution it does not amount to cause harassment or practices mental cruelty on him.

7. The petitioner failed to substantiate the plea of cruelty also. Hence the appeal is without any merit.

The appeal is, therefore, dismissed, with no order as to costs.