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Court : Mumbai

Decided On : Jan-10-1997

Reported in : (1997)99BOMLR669

Judge : A.S.V. Moorthy and ;M.L. Dudhat, JJ.

Appeal No. : Family Court Appeal No. 65 of 1994

Appellant : Chitra Pradeep Deshpande

Respondent : Pradeep Dattatray Deshpande

Disposition : Appeal dismissed

Judgement :

M.L. Dudhat, J.

1. This Family Court Appeal is filed against the judgment and decree dated 9th July, 1994 passed by the learned Principal Judge, Family Court No. 2, Pune. The respondent in this Appeal (Original Petitioner) had filed Matrimonial Petition No. A No. 779 of 1992 under Section 13 of the Hindu Marriage Act for divorce. The said petition was filed on the grounds of cruelty and desertion on the part of the wife, who is the appellant in this Appeal.

2. It is the case of the respondent-husband that he got married with the Appellant-wife in the year 1980. Till the year 1983, the Appellant-wife cohabited with him.

However thereafter she left the matrimonial house for delivery of a child and never returned to the matrimonial house till 1990. However somewhere in 1990 she returned to the matrimonial house but without bringing her newly born daughter and continued to stay in the matrimonial house till October 1990. Thereafter she again left the matrimonial house in October 1990. Therefore, the respondent husband filed the present Divorce Petition for divorce on 21st February 1992. It was contended on behalf of the respondent-husband that he is entitled to get divorce on the grounds of mental cruelty and desertion. On the other hand, the Appellant-wife filed her written-statement, wherein she denied all the allegations made by the respondent-husband in the Petition.

3. After allowing both the sides to lead the evidence and after hearing both the sides, the trial Court came to the conclusion that the respondent-husband had failed to prove cruelty on the part of the Appellant-wife as alleged by him. However, the trial Court further held that the Respondent-husband had proved the desertion on the part of the Appellant-wife and passed the decree of divorce in favour of the respondent-husband.

4. During the pendency of the aforesaid Petition, the wife had also made an application under Section 24 of the Hindu Marriage Act for maintenance. The trial Court granted maintenance at the rate of Rs. 600/- for the Appellant-wife and Rs. 500/- per month for the child. The said interim order of maintenance was confirmed by the trial Court while passing the decree.

5. Against the aforesaid judgment and decree of the trial Court, the Appellant-wife (Original Respondent) has preferred this Appeal. It is contended on behalf of the Appellant-wife that, in fact, the trial Court ought to have taken into consideration the desertion by the wife from 1983 till 1990, more particularly, in view of the fact that in the year 1990, the Appellant wife came back to the matrimonial house and continued to stay there till October 1990 and in October 1990 she was required to leave the matrimonial house only because she was ill treated in the matrimonial house. Secondly, it was contended by the learned Counsel appearing on behalf of the Appellant-wife that the amount of maintenance of Rs. 600/- per month for the wife and Rs. 500/- per month for the child is inadequate and the same ought to be

enhanced by the High Court in view of the rise in prices.

6. Admittedly, in this case, after the marriage, in the year 1983, the Appellant-wife had left the matrimonial house for the purpose of delivering a child, and even after the delivery of the child, the Appellant wife did not return to the matrimonial house. It appears that in the year 1990, she had returned to the matrimonial house, but some how or the other, she left the matrimonial house again in October 1990. According to the respondent-husband, the Appellant-wife had left the matrimonial house and deserted him without any reason, while it is the contention of the Appellant-wife that due to the ill treatment meted out to her in the matrimonial house she was constrained to leave the matrimonial house and, in fact, she was required to file a criminal case against the husband and her-in-laws, which is still pending.

7. The trial Court scanned the evidence in great detail and after scanning the evidence has given a finding that the respondent-husband has proved animus deserendi on the part of the Appellant-wife. In paragraphs 26 to 28 of its judgment, the trial Court has given cogent reasons for the same.

8. Admittedly, from 1983 to 1990, the Appellant wife never returned to the matrimonial house. After deserting the respondent-husband for seven long years without any rhyme or reason, she came back to the matrimonial house in the year 1990 only to leave the respondent-husband again in October 1990. It is also pertinent to note that during the period that she stayed in the matrimonial house in 1990, she had not brought her daughter, which shows that she had no intention to cohabit with the respondent-husband in the matrimonial house. Though the Appellant-wife has alleged that she was ill-treated, the facts on record clearly go to show that there is no substance in her allegation. From the record, it appears that the respondent-husband, who was staying with his aged parents, started living with the Appellant wife by taking other accommodation. For that purpose, the respondent was required to take a loan from his employer.

9. It is true that Appellant-wife has alleged that the respondent-husband had made a demand of Rs. 60,000/-, but the said allegation also appears to be without any substance. The fact that no demand was ever made by the respondent-husband

from 1980 to 1990 and the fact that the respondent-husband had himself purchased a house for living separately with the Appellant-wife, away from his parents, itself falsifies the said allegation that the respondent-husband had made a demand of Rs. 60,000/-.

10. According to our opinion, the trial Court was right in rejecting the arguments as advanced by the Appellant-wife and, therefore this is a case where the respondent-husband has proved the animus deserendi on the part of the Appellant-wife. Apart from that, in the evidence before the trial Court, the Appellant-wife has also stated that she has no intention to return to the matrimonial house and resume cohabitation and has also further stated that she herself is ready and willing for the divorce. In view of this, there is no need to disturb the finding given by the trial Court and, therefore, we confirm the finding given by the trial Court that the Appellant-wife had deserted the respondent-husband and, therefore, the respondent-husband is entitled for the decree of divorce on that ground.

11. The learned Counsel appearing on behalf of the Appellant-wife thereafter contended that the amount of maintenance granted by the trial Court is inadequate and the same should be enhanced.

As pointed out earlier, the trial Court has granted the amount of Rs. 600/- per month for the maintenance of the Appellant-wife and Rs. 500/- for the maintenance of the child. While awarding the aforesaid amount, the trial Court has taken into consideration the pay slip of the respondent-husband. As per pay slip, the salary of the respondent-husband is about Rs. 3500/- per month. He himself is a diabetic patient, having hyper tension also. He has aged father and mother, who are also ailing. Further, from the evidence on record it appears that the Appellant-wife is carrying on the business of beauty parlour. Taking all these facts into consideration, there is no need to enhance the amount of maintenance.

12. Hence this Appeal is dismissed and the judgment and decree dated 9th July 1994 passed by the learned Principal Judge, Family Court, Pune, in Petition A-No. 779/1992 is confirmed. There shall be no order as to costs. Certified copy and authenticated copy expedited.

