



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.06 OF 2014

APPELLANTS :- 1. Sau. Vandana Wd/o Nilesh Bhagat, aged 38 years, Occ. Household,

2. Poonam D/o Nilesh Bhagat, aged 16 years, Occ. NIL,

3. Shubham S/o Nilesh Bhagat, aged 14 years, Occ. NIL,

4. Aniket S/o. Nilesh Bhagat, aged 12 years, Occ.NIL

Appellant No.2 to 4 are since minor, appearing through Appellant No.1 of natural guardian,

All R/o Chikhli, Tq. Chikhli, Dist. Buldhana.

..VERSUS..

RESPONDENTS :- 1. Sau. Asha Nilesh Bhagat, age 40 years, Occ. Household, R/o Dongaon, Tq. Mehkar, Dist. Buldhana.

2. Nilesh Shamrao Bhagat (deceased), Through Lrs.,

a Sau. Mandakini Devidas Shinde, age 49 years, R/o Isrul, Tq. Deulgaon Raja, Dist. Buldhana.

- b** Arundhata Dnyandeo Gawande, age 46 years, Occ. Agriculturist, R/o Katha, Tq. Chikhli, Dist. Buldhana.
- c** Sau. Shila Sanjabrao Dukare, age 42 years, Occ. Agriculturist, R/o KUpgaon, Tq. Chikhali, Dist. Buldhana.
- d** Sau. Manorama Sukhdeo Amle, age 38 years, Occ. Agriculturist, R/o. Warud, Tq. Jafrabad, Dist. Jalna.
- e** Sau. Seema Pradeep Pawar, aged 36 years, Occ. Agriculturist, R/o Malshemba, Tq. Chikhali, Dist. Buldhana.

Mr. N. A. Padhye, Advocate for Appellant.

Mr. S. S. Deshpande, Advocate for the Respondent No.1.

CORAM

ROHIT W. JOSHI, J.

RESERVED ON

25.11.2025

PRONOUNCED ON

12.02.2026

JUDGMENT :

- 1) Heard finally with consent of the learned Advocates for the respective parties.
- 2) The present Second Appeal is filed in order to challenge judgment and decree dated 18.03.2013 passed by the learned Ad-hoc District Judge-2, Buldhana in Regular

Civil Appeal No.45 of 1997. By virtue of the said judgment and decree the learned First Appellate Court has reversed judgment and decree dated 06.02.1997 passed by the learned Civil Judge, Senior Division, Buldhana in Hindu Marriage Petition No.68 of 1995.

3) The aforesaid marriage petition was filed by late Nilesh Bhagat, seeking decree for divorce against his wife, who is the respondent in the present appeal, under Sections 13(1)(ia) and (1)(ib) of the Hindu Marriage Act,1955.

4) The learned Trial Court had granted a decree for divorce vide judgment and decree dated 06.02.1997. The said decree came to be reversed by the learned First Appellate Court vide judgment and decree dated 18.03.2013.

5) The parties will be referred as 'husband' and 'wife' hereinafter.

6) It will be pertinent to state that the husband has expired during the pendency of the Regular Civil Appeal. The appeal was disposed of as abated in view of the demise of the husband. However, the wife filed application for restoration and for bringing legal representatives of deceased husband

on record. The said application was allowed by the learned First Appellate Court and respondent No.1 who is mother and respondent Nos. 2 to 5, who are sisters of the husband, were arrayed as respondent Nos.1 to 6 in the appeal. Subsequently, respondent Nos.6 to 9 were also added as parties. It is the contention of the wife that the husband had solemnized a second marriage with respondent No.6 and respondent Nos.7 to 9 are his children begotten from the said marriage.

7) The marriage between the parties was solemnized on 15.05.1991 as per Hindu rites and customs. The couple is not blessed with any issue. The parties stayed together for a very short period after the marriage. The allegations of the husband, as can be seen from the pleadings in the divorce petition, are that the wife did not observe her household duties and also did not attend the work in the agricultural fields, her behavior towards family members and relatives was improper and she used to insult them intermittently. The husband has also alleged that the wife used to insist that they should reside separate from the other family members. It is also alleged that the wife used to call the husband and his

mother as beggars and used to ill-treat them. It is also alleged that the wife raised a quarrel while Shraddha ritual of the husband's father was being observed in the year 1992 and left the house on her own. The husband has specifically stated that the wife was upset with the fact that the entire property was owned and possessed by his mother and sisters and used to insist for transferring the same in his name. It is stated that notice for restitution was issued by the husband on 03.08.1993, in response to which the wife issued reply notice by levelling false allegations and did not come to reside with the husband. It is also alleged that attempt for reconciliation through relatives had also failed. Further allegation is made that on 09.10.1994, the wife, her parents, sister and brother came to the house of the husband and had beaten him up. With these allegations, the aforesaid petition was filed on 06.07.1995.

8) The wife filed her written statement opposing the divorce petition. She denied all adverse allegation against her. She alleged that the mother and sister of husband were subjecting her to mental and physical cruelty. She asserted

that she was ready and willing to continue with her marital relationship. It was alleged that she was forced to leave the matrimonial house on several occasions and was required to take shelter at her parental house. The wife also alleged that efforts of reconciliation at behest of her relatives did not yield any positive results. She also alleged that the husband had married with another lady although the marriage between the parties was subsisting.

9) The wife had initiated proceedings under Section 125 of the Code of Criminal Procedure against the husband and had also initiated criminal prosecution against him, his family members and some other individuals for the offence of bigamy punishable under Section 494 read with Section 109 of the Indian Penal Code.

10) The learned Trial Court gave opportunities to the parties to reconcile their discord. However, those attempts also did not bring about any positive result.

11) Based on rival pleadings, the learned Trial Court framed issues on the point of cruelty and desertion.

12) On appreciation of evidence, the learned Trial Court

held that both the grounds for divorce, i.e., cruelty and desertion without reasonable cause, were established and has granted a decree for divorce accordingly. The learned Trial Court has held that the principal allegation of the wife was that the husband was not willing to cohabit since demand for motorcycle was not met by her parents. The learned Trial Court held that the written statement was silent with respect to demand of motorcycle and, therefore, the oral evidence with respect to the alleged demand was not admissible. The learned Trial Court refused to take into consideration the said oral evidence since it was raised sans pleadings. The learned Trial Court has referred to evidence of plaintiff's witnesses and has observed that in the reconciliation meeting held in the year 1993, the wife and her relatives has raised quarrel, as a consequence of which reconciliation talks failed. It is observed by the learned Trial Court that the evidence of the husband's witnesses was more probable and a case was made out for grant of divorce on the ground of cruelty as also on the ground of desertion.

13) As stated above, the wife preferred an appeal

challenging the said decree for divorce. The learned First Appellate Court has reversed the decree for divorce by holding that the husband had filed a petition for divorce only on the ground of cruelty and not on the ground of desertion. The learned First Appellate Court has considered the case of cruelty and has held that the allegations were not proved. The learned First Appellate Court has referred to the cross-examination of the wife where questions were put to her with respect to alleged demand at the time of marriage. Referring to the said cross-examination, the learned First Appellate Court has held that the tenor of cross-examination suggested that there was no demand from the side of husband at the time of marriage and the marriage was performed happily. The learned First Appellate Court has also observed that during the course of cross-examination of wife no suggestion was given to her that she was short-tempered and quarrelsome in her behavior with the husband and the family members and that the veracity of the statements made by her in the examination-in-chief was also not challenged in the cross-examination. It is held that deliberately material

questions were not put to the wife during her cross-examination and thereby deprived her to give answers which would have clarified her position. Thereafter the learned First Appellate Court dealt with evidence of the witnesses of the husband and has discarded the same principally on the grounds that they were interested witnesses and also on the ground that the evidence was lacking with respect to material particulars as regards the exact date of the incidents narrated in the examination-in-chief. The learned First Appellate Court has also held that the contention with respect to harassment on account of demand for motorcycle was not disputed in the cross-examination and was therefore accepted. Likewise, it is also held that the husband had married respondent No.6. As regards the allegation with respect to demand of the wife to get the property of the family transferred in the name of husband, it is also observed that this conduct was in good faith. In view of such findings, the appeal came to be allowed and decree for divorce passed by the learned Trial Court came to be dismissed.

14) As regards the second marriage, it must be stated

that the husband has not denied the fact of marriage with respondent No.6. It is, however, his contention that the marriage was solemnized after decree for divorce was granted by the learned Trial Court. The husband, therefore, contends that respondent No.6 is his legally wedded wife.

15) In this regard, it must be stated that although the wife has stated in her written statement that the husband had married with respondent No.6 while the marriage was subsisting, she has also stated that she was ready to cohabit with the husband.

16) The present appeal came to be admitted vide order dated 27.07.2018 on the following substantial question of law :-

“Whether the appellate Court was legally justified in reversing the decree passed by the trial Court dissolving the marriage between the parties ?”

17) The finding by the learned First Appellate Court that the husband had sought divorce only on the ground of cruelty is contrary to the record. Perusal of pleadings will

clearly reveal that apart from cruelty, allegations of desertion are also made in the petition. It is specifically pleaded that the wife had left the marital house in Pitrupaksh of the year 1992, a day after Shraddha ritual of husband's father was observed. The husband has stated that the wife was insisting for separating from the family in mess and residence and had left the house since the said demand is not met. There are pleadings with respect to attempts on the part of the husband to bring the wife back to her marital house. Pleading is also made with respect to meeting held on 25.07.1993 for reconciliation. It is also stated that notice dated 03.08.1993 was issued for restitution, however, the wife issued a false reply notice dated 11.08.1993 and refused to cohabit. The learned Trial Court has also framed issue on the point of desertion. The finding by the learned First Appellate Court that the petition is not filed on the ground of the desertion is contrary to the record. It will, therefore, be necessary to direct the learned First Appellate Court to revisit matter and deal with the contentions pertaining to desertion.

18) As regards cruelty, the learned First Appellate Court

has disbelieved the evidence of the husband, his mother, maternal uncle and two neighbors on the ground that the said witnesses are interested witnesses. The evidence is also disbelieved by stating that material particulars such as date, time and place of incidents are not narrated by the said witnesses.

19) While discarding the evidence of witnesses of the husband, the learned First Appellate Court has accepted the evidence of wife and her witnesses, which also lacks such particulars. More importantly, the learned First Appellate Court has held that the wife had proved her allegation that she was being harassed by the husband on the ground that his demand for a motorcycle was not fulfilled by her father. The learned First Appellate Court completely lost sight of the fact that the said evidence was clearly beyond the pleadings. The wife did not plead that she was subjected to cruelty or harassment on account of the so called demand for motorcycle. Perusal of reasons recorded by the learned First Appellate Court indicates that the same yardstick is not applied to both parties while appreciating the evidence. The

findings on the aspect of cruelty are, therefore, unsustainable.

20) As regards the contention of the wife that the husband had solemnized a second marriage during subsistence of his marriage with her, the husband has admitted the second marriage. However, his contention is that the marriage was solemnized after decree for divorce was granted by the learned Trial Court. The wife is not seeking divorce on the ground of bigamy. This version needs to be dealt with bearing in mind that the wife has initiated criminal prosecution against the husband and around 19 people for offence of bigamy. The finding by the learned Trial Court that stance taken by the wife regarding her willingness to cohabit is not believable. She had mentioned that she was ready to cohabit with the husband despite the second marriage.

21) In this regard, the learned First Appellate Court should consider that it is the case of husband that the wife was exerting pressure for transferring the properties standing in the name of husband's mother and sisters in his name. The

learned First Appellate Court should also consider as to whether the statement made by wife about readiness to cohabit with husband is an honest statement or designed with a view to stake claim over properties of her in-laws, which she claims to be properties of her husband.

22) Parties were residing separate since the year 1992 shortly after the marriage. All attempts of amicable settlement have failed. The husband expired on 23.12.2004. The learned First Appellate Court may also take into consideration as to whether long separation with no attempt of reconciliation and coupled with refusal to separate formally will amount to cruelty or not, in the light of decisions of the Hon'ble Supreme Court in the case of ***Samar Ghosh Vs. Jaya Ghosh***, reported in **(2007) 4 SCC 511** and ***Rakesh Raman Vs. Kavita***, reported in **(2023) 17 SCC 433**.

23) In the light of reasons recorded, the substantial question of law is answered in favour of the appellants and against respondent No.1.

24) Judgment and decree dated 18.03.2013 passed by the learned Ad-hoc District Judge-2, Buldhana in Regular

Civil Appeal No.45 of 1997 is quashed and set aside.

25) Regular Civil Appeal No.45 of 1997 is remitted to the learned First Appellate Court for deciding the same afresh in accordance with law.

CIVIL APPLICATION (S) NO.958 OF 2024

26) This is an application seeking permission to lead additional evidence with respect to birth certificates dated 24.01.2005 of Pooja Nilesh Bhagat and Aniket Nilesh Bhagat, issued by the Secretary, Grampanchayat Katoda. Since the appeal is partly allowed remanding Regular Civil Appeal No.45 of 1997 for fresh adjudication, liberty is granted to respondent No.1/applicant to file appropriate application in the said appeal. The Civil Application is **disposed of**.

27) All other pending Civil Applications are **disposed of**.

Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

Tanmay..