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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

911 SECOND APPEAL NO. 268 OF 2018 WITH
CIVIL APPLICATION NO. 4742 OF 2018
IN SA/268/2018

████████████████████

....Appellant

VERSUS

████████████████████

.....Respondent

.....

Mr. M. P. Tripathi, Advocate holding for Mr. N. B. Khandare, Advocate
for Appellant.

Mr. Kshitij Surve, Advocate holding for Mr. Hemant Surve, Advocate
for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 20th FEBRUARY, 2025.

PER COURT :

1. This appeal under Section 100 of Code of Civil Procedure takes exception to the judgment and decree passed in H.M.P. No. 458/2016 filed by the husband against the wife seeking divorce on the ground of cruelty. The said petition came to be allowed. Decree came to be passed of dissolution of their marriage. This decree was challenged in Regular Civil Appeal No. 48/2017 unsuccessfully. Hence, this appeal.

2. Parties are referred to as wife and husband for the sake of convenience.

3. Marriage between the parties was solemnised on 15.04.2009. A daughter is begotten from the said wedlock. It is the case of the husband that after marriage, the parents of the wife frequently used to visit the matrimonial home and used to cause interference in their marital life. It is claimed that on 17.10.2010, wife without any intimation left matrimonial home and went to her parents home. On 24.10.2010, he went to the parental house of wife but was insulted there. On 8.10.2010, wife gave birth to a female child. Visit of husband and his family members to parental house of wife resulted into their insult. There is allegation against the wife that she made false allegation against father of the husband of he outraging her modesty. Wife used to give threats for committing suicide and sending husband and his family members to jail. On these amongst other contentions, cruelty is claimed by husband to have been committed by the wife.

4. Wife appeared before the Trial Court and resisted the claim. There is allegation that the father of the husband was

addicted to liquor and used to abuse her and rush towards her to beat her. She denied to have caused any cruelty to the husband.

5. Trial Court framed issues and cast initial burden on the husband to prove that wife treated him with cruelty. Parties led oral as well as documentary evidence. Trial Court decreed the suit by holding that wife has meted out cruel treatment to the husband is sufficient to entitle him to seek decree of divorce. Wife challenged said judgment in Regular Civil Appeal no. 48/2017. First Appellate Court dismissed the appeal and confirmed the judgment and decree passed by the Trial Court.

6. Learned counsel for wife submits that both the Courts below have committed error in not appreciating the evidence on record in proper perspective. It is his submission that the alleged cruelty is not sufficient to grant decree of divorce. It is his submission that the decree of divorce cannot be granted on any allegation of cruelty which is not substantive in nature. Thus, it is his contention that this appeal involves substantial question of law as to the degree of cruelty meted out to the husband to enable him to get decree of divorce.

7. Learned counsel for husband has drawn attention of the Court to the evidence on record led before the Trial Court. It is his submission that the husband has proved that without there being any substance, allegation was made against the father of husband about he outraging modesty of daughter-in-law i.e. appellant/wife, there was no complaint made to police or anyone else. According to him, it was open for the wife to lead evidence to indicate that in order to save marital life she did not lodge any complaint to that effect. However, there is no such evidence led by the wife before the Trial Court. He has drawn attention of the Court to the observations made by the Trial Court with regard to the conduct of the wife. It is argued that when the cross-examination was sought to be done in respect of attempted suicide by wife, adjournment was sought and thereafter the wife appeared before the Court by applying Mehendi on her hand in order to suppress the evidence of attempted suicide. This, according to him, is more than sufficient to indicate that the Trial Court has rightly taken into consideration the evidence on record so also the conduct of the wife to pass the decree of divorce.

8. Under Section 100 of Code of Civil Procedure, it is not open for this Court to re-assess the evidence to record independent finding of fact. It is however open for the wife to satisfy this Court that the findings of fact recorded by the Courts below are inconsistent with the evidence on record and hence perverse. Perusal of evidence of husband, his father and one more witness i.e. friend of the father more than sufficiently demonstrates that the contention of the husband is duly proved by leading cogent evidence. On the other hand, wife was unable to give any explanation for making allegation against the father of the husband without making any complaint to that effect to the police. Here in this case, husband has not only made allegation that wife used to threaten him and his family to send them to jail by committing suicide but infact that attempt was made. Such an act on the part of spouse would amount to such a cruelty that it becomes a ground for decree of divorce. In any case, perusal of the evidence on record shows that the findings of the Trial Court for granting dissolution of marriage confirmed by the First Appellate Court are consistent with the same. Thus, no perversity is seen in the said findings to cause any interference therein. Thus, for want of any perversity or involvement of substantial question of law in this appeal, appeal stands dismissed.

9. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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