IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4199 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI Sd/-
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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DIPTI D/O PURSHOTAMDAS MANGANLAL ASODIYA W/O PRADHOT NATVARBHAI VASAIYA

Versus

PRADHOT NATVARBHAI VASAIYA

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Appearance:
MR P P MAJMUDAR(5284) for the Appellant(s) No. 1
MR ABHISHEK M MEHTA(3469) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI**
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 21/06/2023

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)

1. By filing this appeal, the appellant-wife, original defendant, has called in question judgment and order dated 30.11.2017 passed by learned Principal Judge, Family Court, Gandhinagar, in Family Suit No.91 of 2015, whereby divorce petition filed by the husband is allowed.

2. The original plaintiff, Pradyot Natvarlal Vasaiya, had filed Family Suit No.91 of 2015 on 1.9.2015 before the Court of learned Principal Judge, Family Court, Gandhinagar, under the provisions of Section 13 (1) (a) of the Hindu Marriage Act, 1955 for the purpose of getting divorce from the defendant, viz. Dipti daughter of Purshotamdas Maganlal Asodiya. Notice was issued by the concerned Court, which was duly served upon the defendant and defendant appeared through advocate and opposed the said petition. For the sake of convenience and brevity, the parties are herein after referred to as “the husband” and “the wife”. Issues were framed by the concerned Court and thereafter evidence was led by the parties. After submission of closing purshis, the petition was heard at length and, ultimately, petition was allowed on 30.11.2017.

3. Being aggrieved and dissatisfied with said judgment and order passed by learned Principal Judge, Family Court, Gandhinagar, defendant-wife has preferred present appeal by raising manifold grounds.

4. Mr.P.P.Majmudar, learned advocate for the appellant-wife has submitted that the judgment and order passed by learned

Principal Judge, Family Court, Gandhinagar, is erroneous, vaxacious, capricious and against the settled principles of law and hence requires to be quashed and set aside. Mr.Majmudar further submitted that at the time of appreciating the evidence as well as the material available on record, learned Judge has given undue weightage to the non-important aspects, whereas discarded important evidence available on record and, by doing so, grave error has been committed by the Court below which is required to be rectified by allowing present appeal. Learned advocate Mr.Majmudar has submitted that if the evidence is read in *toto,* it can be seen that in the suit as well as reply, allegations and counter allegations were levelled by the rival parties and entire evidence is nothing but a word against a word, and denial of the allegations levelled by the plaintiff in the suit. In counter, wife has also made allegations against the husband, which were denied by the husband and evidence to that effect has been led by both the parties. He submitted that, therefore, it cannot be said that cruelty was meted out to the husband by the wife and, without any cause or reason, wife has deserted the husband.

4.1 Mr.Majmudar, learned advocate for the appellant has further submitted that it is true that the wife has lodged a complaint against the husband and his family members for offence under Section 498-A and 354 of IPC, however, said complaint was quashed by this Honourable High Court and said order is also confirmed by the Honourable Apex Court. He submitted that quashing of complaint does not mean that the accused has got full-fledged acquittal, after leading and

appreciation of evidence and, therefore, on the basis of quashing of complaint, it cannot be said that evidence of husband would be considered on higher pedestal than that of the wife.

4.2 Mr.Majmudar, learned advocate for the appellant further submitted that bare perusal of the evidence on record shows that the wife did not cause any mental cruelty to the husband. He also submitted that record shows that the wife was thrown out of the house and she has not deserted her husband. He also submitted that marriage was solemnized between the parties on 22.11.2019 and, out of wedlock, one baby-boy viz. Krishil is born and after birth of the child, they are not residing together due to constant harassment by the in-laws of the wife. He also submitted that it is true that since the year 2014, both husband and wife are living separately but it cannot be a ground for grant of divorce. Mr.Majmudar also read the evidence on record and forcefully submitted that though the parties are residing separately since last more than seven years, it cannot be a ground for irretrievable breakdown of marriage and the Court should not have dissolved the marriage on this ground. He has placed reliance upon the decision in the case of **Shyam Sunder Kohli v. Sushma Kohli alias Satya Devi** reported in **2004 (7) SCC 747** and submitted that considering overall evidence on record, this is a fit case wherein judgment and order passed by learned Principal Judge, Family Court, Gandhinagar, is required to be quashed and set aside. He, accordingly, prayed to allow present appeal.

5. *Per contra,* learned advocate Mr.Abhishek Mehta appearing on behalf of the respondent-husband has vehemently submitted that judgment and order passed by learned Principal Judge, Family Court, Gandhinagar, is just and proper and it may not be interfered with. He also submitted that the impugned judgment is based on sound principles of law and evidence on record is considered in its proper perspective by learned Judge. He also submitted that learned Judge has assigned proper reasons and the findings given by him are supported by evidence and the impugned judgment is in conformity with law.

5.1 Mr.Abhishek Mehta further has submitted that to consider the controversy involved in the present appeal, evidence is required to be read in sequence of events and incidents, which shows that from the very beginning of marriage life, acts, action, behaviour and conduct of the wife were not befitting to a newly wedded wife. He also submitted that application for dissolution of marriage has been preferred by the husband, *inter alia*, on the basis of two grounds, (i) opponent-wife deserted the husband in terms of Section 13 (1) (ia) and (ii) cruelty in terms of Section 13 (1) (ia). Mr.Mehta also submitted that the husband has filed family suit for divorce before the Family Court on 1.9.2015 and after service of notice, the wife had filed a complaint under Section 498-A and 354 of IPC against the husband and his family members. He also submitted that pursuant thereto the husband filed quashing petition before this Honourable Court and considering the allegations and other material available on record, this

Honourable Court has quashed said complaint. Such order was challenged by the wife before Honourable Apex Court by preferring Special Leave Petition but said Special Leave Petition also came to be dismissed by Honourable Apex Court. Mr.Mehta also submitted that it is an admitted fact that wife had inflicted blow with tongs (Saanasi) on the head of mother-in-law in absence of husband and, due to such injury, mother-in-law had become unconscious and she was shifted to the hospital and before medical officer, mother-in-law has given specific history that injury was caused by the appellant herein. Said fact is admitted by the wife in her cross-examination. Mr.Mehta submitted that on the basis of this set of evidence, the issue pertaining to temperament and nature of wife is proved by the husband by leading very cogent and convincing evidence. He also submitted that, as per record, the wife went to her parental home after this incident by leaving her son at her in-law's place, and since then she is residing at her parental home. He further submitted that, from the evidence on record, it is found that the husband had tried to bring her back to matrimonial home on numerous occasions with the help of relatives and family members, but for the reasons best known to the appellant and her family members, she has not returned back and ultimately the husband has filed divorce petition. He further submitted that, to prove the plaint, four witnesses have been examined by the husband, whereas though the wife has entered into witness box herself, no other witness is examined by her in support of her case.

5.2 In support of his submissions, Mr.Abhishek Mehta, has relied upon the judgment in the case of **Durga Prasanna Tripathy v. Arundhati Tripathy** reported in **2005 (7) SCC 353** and has prayed to dismiss this appeal by confirming the order of the learned Principal Judge, Family Court, Gandhinagar.

5.3 Mr.Abhishek Mehta, learned advocate for the respondent has also submitted that during the pendency of the proceedings an application under Section 24 of the Hindu Marriage Act was preferred by the wife for getting *pendente lite* maintenance, which was opposed by the husband. After considering the arguments canvassed by the rival parties, learned Principal Judge, Family Court, granted Rs.5,000/- maintenance per month during the period of pendency of Family Suit. Mr.Mehta further submitted that till today, the husband has paid approximately Rs.2 Lacs to the wife towards interim maintenance, and as per his calculation, the husband is required to pay total amount of Rs.9 Lacs to the wife.

6. Heard learned advocates appearing for the parties and perused the material as well as evidence available on record and considered the judgments cited at bar. From the material placed on record, it is clear that marriage between the parties was solemnized on 22.11.2009 and out of wedlock, one baby boy “Krishil” is born on 18.11.2011. As per the case of the plaintiff, from the very beginning, the defendant-wife was behaving as if she was forced to marry and she has not married out of her will. It is also alleged that she was not

interested in their relationship. It is also alleged that after the birth of baby boy, the defendant-wife was not at all willing to come back to her matrimonial home and though the plaintiff-husband tried to bring her back to matrimonial home, she did not come. It is alleged that since 2014, they are residing separately and there is no relationship between them. On the other hand, as per the case of the defendant wife, she is residing at her parental home since 2014 due to physical and mental torture meted out to her by her in-laws. She also stated that her husband was very supportive earlier but he did not come to meet her after birth of their son. She also stated that inspite of her repeated efforts, the husband did not take her back and she is willing to reside with her husband.

7. As per the material available on record, application for dissolution of marriage has been preferred by the husband, *inter alia*, on two grounds, (i) opponent-wife deserted the husband in terms of Section 13 (1) (ia) and (ii) cruelty in terms of Section 13 (1) (ia). The husband has filed family suit for divorce before the Family Court on 1.9.2015 and, after service of notice, wife had filed a complaint under Section 498-A and 354 of IPC against the husband and in-laws. The husband has filed quashing petition before this Honourable Court and considering the allegations and other material available on record, this Honourable Court has quashed the said complaint. Said order was challenged by wife before Honourable Apex Court by preferring Special Leave Petition, which was dismissed by Honourable Apex Court. It is also an admitted position of fact that wife had inflicted blow of tongs (Saanasi)

on the head of mother-in-law in absence of husband, due to which she became unconscious. When the mother-in-law was shifted to the hospital for treatment, she has given specific history that injury were caused by the appellant herein. Said fact is admitted by the wife in her cross-examination. Therefore, on the basis of this set of evidence, the issue pertaining to temperament and nature of wife is proved by the husband by leading very cogent and convincing evidence. Not only that it is also an admitted fact that since then the wife is residing at parental home.

8. At this stage, we may refer to the observed made by Honourable Apex Court in **Durga Prasanna Tripathy's case** (supra), which is reproduced hereunder:-

> *"**22.** In our view that 14 years have elapsed since the appellant and the respondent have been separated and there is no possibility of the appellant and the respondent resuming the normal marital life even though the respondent is willing to join her husband. There has been an irretrievable breakdown of marriage between the appellant the respondent. The respondent has also preferred to keep silent about her absence during the death of her father-in-law and during the marriage ceremony of her brother-in-law. The complaint before the Mahila Commission does not implicate the appellant for dowry harassment though the respondent in her evidence before the Family Court has alleged dowry harassment by the appellant. It is pertinent to mention here that a complaint before the Mahila Commission was lodged after 7 years of the marriage alleging torture for dowry by the*

mother-in-law and brother-in-law during the initial years of marriage. The said complaint was filed in 1998 that is only after notice was issued by the Family Court on 27.03.1997 on the application filed by the appellant u/s. 13 of the Hindu Marriage Act. The Family Court, on examination of the evidence on record, and having observed the demeanor of the witnesses concluded that the appellant had proved that the respondent is not only cruel but also deserted him since more than 7 years. The desertion as on date is more than 14 years and, therefore, in our view there has been an irretrievable breakdown of marriage between the appellant and the respondent. Even the conciliation officer before the Family Court gave its report that the respondent was willing to live with the appellant on the condition that they lived separately from his family. The respondent in her evidence had not disputed the fact that attempts have been made by the appellant and his family to bring her back to the matrimonial home for leading a conjugal life with the appellant. Apart from that, relationship between the appellant and the respondent has become strained over the years due to the desertion of the appellant by the respondent for several years. Under the circumstances, the appellant had proved before the Family Court both the factum of separation as well as animus deserendi which are the essential elements of desertion. The evidence adduced by the respondent before the Family Court belies her stand taken by her before the Family Court. Enough instances of cruelty meted out by the respondent to the appellant were cited before the Family Court and the Family Court being convinced granted the decree of divorce. The harassment by the in-laws of the respondent was an after-thought since the same was alleged after a gap of 7 years of

marriage and desertion by the respondent. The appellant having failed in his efforts to get back the respondent to her matrimonial home and having faced the trauma of performing the last rites of his deceased father without the respondent and having faced the ill-treatment meted out by the respondent to him and his family had, in our opinion, no other efficacious remedy but to approach the Family Court for decree of divorce.

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29. *The facts and circumstances in the above three cases disclose that reunion is impossible. Our case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot.*

30. *Before parting with this case, we think it necessary to say the following:*

31. *Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the Judgement of the High Court and affirm the order of the Family Court granting decree for divorce. .....”*

9. Considering the observations made by Honourable Apex Court in aforesaid decision as well as considering the facts of present case as well as evidence on record, it is clear that parties are residing separately since August 2014. The Family Court, on examination of the evidence on record, concluded that the appellant had proved that the respondent is not only cruel but also deserted him since August 2014. The desertion as on date is more than eight years and, therefore, in our view, there has been an irretrievable breakdown of marriage between the appellant and the respondent.

10. Over and above all these aspects, the wife has also admitted the fact of having caused injuries to her mother-in-law with tongs (Saanasi). It is pertinent to mention here that a complaint was lodged for offence under Section 498-A and 354 of IPC, only after service of notice issued in the divorce petition filed by the husband. It is also pertinent to note that such complaint is quashed by this Court and said decision is also confirmed by Honourable Apex Court.

11. Marriages are made in heaven. Both parties are residing separately since last more than eight years and they have crossed the point of ‘no return’. Considering the allegations and counter allegations levelled by rival parties against each other, it is found that they have reached at the stage from where they cannot reconcile themselves, bury their differences and live together forgetting their past as a bad dream. We, therefore, have no other option except to dismiss present

appeal by confirming the judgment and order passed by learned Principal Judge, Family Court, Gandhinagar, granting decree of divorce.

12. Considering the status of the parties and economic condition of the respondent-husband as well as future of the baby boy-Krishil, who is residing with the mother, we deem it proper that if an amount of Rs.15 Lacs is ordered to be paid to the wife and for well being of child as permanent alimony, it would meet the ends of justice. Accordingly, the respondent-husband is directed to pay Rs.15 Lacs to the appellant-wife within a period of three months from today, by an account payee demand draft drawn in favour of the appellant-wife.

13. In view of above, present appeal fails and is hereby dismissed. The impugned judgment and order dated 30.11.2017 passed by learned Principal Judge, Family Court, Gandhinagar, in Family Suit No.91 of 2015 is hereby confirmed. No order as to costs.

Sd/-

(ASHUTOSH SHASTRI, J)

Sd/-

(DIVYESH A. JOSHI,J)

R.S. MALEK