HIGH COURT OF JUDICATURE AT BOMBAY



USJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO. 4 OF 2003**

RAMESH LAXMAN SONAWANE
Age 40 years, Occ. Service
R/at Kondhava Budruk,
S.No.36/2, Arjun Building,
Near Sunrise Co. Pune 48 .. Appellant

v/s.

MRS MEENAXI RAMESH SONAWANE
Age 35 years, Occ. Household,
R/at C/o. Haribhau Rambhau
Jagtap (Guruji), Pimple Saudagar,
(Kate Pimple) Aundh Camp,
Tal. Haveli, Dist. Pune .. Respondent

.....

Mr. R.V. Govilkar for the appellant
Mr. S.M. Sabrad for the respondent

.....

**CORAM : A.M. KHANWILKAR &**
**R.Y.GANOO, JJ.**

**JUDGMENT RESERVED ON : 24th AUGUST, 2011**
**JUDGMENT PRONOUNCED ON : 14th OCTOBER, 2011**

**ORAL JUDGMENT : (Per R.Y. Ganoo, J)**

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1. The appellant filed petition under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as HMA) for divorce against the respondent in the District Court at Pune being Hindu Marriage Petition No.207 of 1998. The appellant shall hereinafter referred to as the husband. The respondent shall hereinafter referred to as the wife. The said petition was assigned to learned 6th Joint Civil Judge, Senior Division, Pune. Learned 6th Joint Civil Judge, Senior Division, Pune (hereinafter referred to as learned Trial Judge) conducted the trial and by Judgment and Decree dated 28th August, 2002 dismissed the said petition with costs. Being aggrieved by aforesaid Judgment and Decree dated 28th August, 2002, passed in Hindu Marriage Petition No.207 of 1998, the husband has filed this Family Court Appeal.

2. The marriage between the husband and the wife was solemnized on 12th February, 1987 as per Bauddha rites and rituals. Out of the aforesaid wedlock, the wife gave birth to a male child on 8th April, 1988 which was named as Paresh. Another male child was born on 9th January, 1990. The said son was named as Ritesh. The husband has filed this petition for divorce alleging therein that the wife had

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treated the husband with cruelty. The grounds on which the petition for divorce is filed are as follows :

(a) The wife was in the habit of picking up quarrels on trivial matters.

(b) The wife was always suspicious about the behavior of the husband. Said wife used to level defamatory allegations against the husband that he used to be out of the house till late night as he had some affair with a woman.

(c) The wife used to sell gold ornaments such as neckless, locket, earrings, golden rings and even Mangalsutra without permission of the husband and did not disclose to the husband as to what she did with that money.

(d) The husband was required to pay to the milkman a sum of Rs. 2,000/- for the milk which was never purchased and when the wife was questioned about it, she did not give satisfactory reply and that the husband was humiliated. The husband claims that he realized that the wife was paying that money to her brother.

(e) The wife did not shower love and affection towards the

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children and the wife was not attending to the children and the entire responsibility of the children was on the husband and that the husband had to attend to household duties like a married girl.

(f) The wife used to humiliate the husband before his friends and colleagues.

(g) The wife had borrowed money from the sister of the husband falsely stating that amount was needed for scooter repairing of the husband.

(h) It is also the case of the husband that in the month of May, 1997 the wife demanded monies from wife of brother of the husband and said wife of husband's brother handed over ear rings to the wife as the wife had told that the monies are required for the medical treatment of elder son Paresh and that after borrowing monies, the wife sold those earrings and paid the amount to her brother. According to the husband when the husband questioned the wife about her behavior, wife herself told that she has paid the amount to her brother as he needed money. The husband felt embarrassed on account of the behavior of the wife. According to the husband,

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the wife was of hot temperament and quarrelsome nature and that she would beat the husband even before the children, by giving fist blows to the husband.

(i) According to the husband, on 16th February, 1998, wife demanded Rs.500/- from the husband and thereafter the wife quarreled with the husband and left for parental home on 17th February, 1998 and did not return thereafter. According to the husband, while leaving from the parental home, the wife did not bother to obtain his permission and she failed to take care of the children.

(j) The husband claims that the wife gave threats to him that she would file complaint in the police to falsely implicate him and get arrested.

(k) According to the husband, husband had a tenanted premises at Pimprigaon and that as he was staying at Kondhva (Bk) he had locked the said premises. According to the husband, while husband was at Delhi for his office work, in order to harass the husband, the wife surrendered the possession of the said premises to the landlord without the permission or consent or knowledge of the husband.

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(l) The husband thereafter filed complainant with the Superintendent of Police through his advocate on 21st August, 1998., According to the husband, the wife had taken all the articles from the said house situated at Pimprigaon.

3. The divorce petition was served upon the wife. The wife filed written statement and she has denied each and every allegation which was levelled against her. So far as the allegation levelled against the wife stated in paragraph 2 of the petition regarding alleged affair with woman, the wife had not specifically denied the said allegation. The wife in paragraph 10 of her written statement had levelled allegation against the husband and stated that the husband is having relations with one lady by name Yamuna Genu Adalkar. The relevant portion of the said paragraph 10 is as follows :

> "Without prejudice to what has been stated above this respondent states and submits that the petitioner is having licentious in character and at the instance of a lady named Yamuna Genu Adalkar, had caused to the respondent unbearable ill-treatment and had ultimately

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drive her out of this house threatening her to cause injury to her person if she returns. That the petitioner sent a notice that was replied by this respondent requesting the petitioner to take her back for co-habitation and be in the company of the petitioner and the children. It would thus be seen that the boot is in other leg".

4. With the aforesaid contentions, the wife objected to the grant of decree of divorce and prayed that the petition be dismissed. The learned trial Judge considered the pleadings before him and framed issues at Exh. 37. They are as follows :-.

"1. Is it proved that the respondent caused mental and physical cruelty to the petitioner ?
2. Is is proved that the respondent has deserted to the petitioner without any cause ?
3. Is the petitioner entitled to the relief claimed ?
4. What order and decree ?"

5. At the trial, the husband gave evidence as PW-1. No other witness was examined on behalf of the husband. The wife gave evidence as DW-1. Mr. Haribhau R. Jagtap, father of the wife, gave evidence in

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support of the wife as DW-2.

6. The learned trial Judge came to the conclusion that the husband has failed to prove that the wife caused mental and physical cruelty to the husband. He also held that, the husband has failed to prove that the wife has deserted the husband without any cause. The learned trial Judge came to the conclusion that the husband is not entitled to reliefs claimed in the petition. The petition was, therefore, dismissed with no order as to costs.

7. The learned advocate Mr. Govilkar appearing on behalf of husband took us through the entire record and advanced submissions in support of the appeal so as to contend that the learned trial Judge committed an error in dismissing the petition.

8. According to learned advocate Mr. Govilkar, the testimony of the husband PW-1 should have been accepted so far as the allegations above mentioned at Sr. No. (a) to (k). He further submitted that though the husband had given cogent evidence in regard to the various ways in which the wife had treated him with cruelty the

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learned trial Judge declined to accept it. He submitted that the learned trial Judge erred in dismissing the petition.

9. Insofar as the allegation at Sr. No. (b), the learned advocate Mr. Govilkar submitted that in the petition at para 2, a categorical averment was made that the wife used to pass defamatory allegations against the husband, that he was being out till late night as he had some affair with a woman. The learned advocate Mr. Govilkar has submitted that these allegations made by the wife were without any substance and had caused psychological trauma to the husband. He pointed out that these allegations levelled by the husband against the wife are not denied by the wife while filing the written statement. He took us through the written statement, where the wife had dealt with the allegations in paragraph No. 2 and he submitted that in the absence of appropriate and specific denials the Court should hold that the allegations levelled in paragraph No. 2 against the husband have gone unchallenged. He submitted that on this count, the case of the husband that the wife had treated the husband with cruelty is required to be accepted. The learned advocate Mr. Govilkar submitted that apart from failure

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on part of the wife to specifically denying the allegations in paragraph No. 2 of the written statement, the wife had levelled allegations about relations of the husband with one lady by name Yamuna Adalkar. He pointed out that said allegations are found in para No. 10 of the written statement. Relevant portion of para 10 is quoted earlier. Learned advocate Mr. Govilkar submitted that the wife has not proved the allegations levelled against the husband as regards his ilicit relations with Yamuna Adalkar.

10. Learned advocate Mr. Govilkar drew our attention to para 3 of the examination-in-chief of the wife, DW-1 and submitted that wife's evidence at para 3 clearly goes to show that wife had levelled allegations against the husband and has stated that the husband and Yamunabai were staying at Kondhava Budruk in a flat as if Yamuna was his wife of the husband. He further pointed out evidence of the wife in para 4 of her examination-in-chief where wife has stated that on the basis of information received from one Mr. Baburao, owner of the said flat, she came to know that the husband and Yamuna have purchased that and they are staying in the said flat. Learned advocate Mr. Govilkar further drew our attention to para 7 of the

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examination-in-chief of wife where the wife has stated that the husband has claimed divorce so that he can marry with the said lady Yamuna. Learned advocate Mr. Govilkar thereafter took us through evidence of wife and in particular para 10 i.e. cross-examination conducted by the husband that of the wife. He pointed out that even in the cross-examination, the wife has reiterated her stand about the husband having relations with the lady of the different caste. Learned advocate Mr. Govilkar therefore submitted that the wife had levelled allegations against the husband about the ilicit relations with Yamuna and that she has not proved those allegations.

11. Learned advocate Mr. Govilkar had taken us through evidence of Haribhau R. Jagtap, DW-2, father of the wife. He pointed out that said Haribhau, DW-2 has also levelled allegations against the husband as regards husband staying with Yamuna. Learned advocate Mr. Govilkar submitted that the wife has not proved the said allegations. Learned advocate Mr. Govilkar therefore submitted that the husband is entitled to a decree of divorce. Learned advocate Mr. Govilkar submitted that learned trial Judge has not

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considered this point in the proper perspective. Learned advocate Mr. Govilkar submitted that the observations of the learned trial Judge at para 10 to 12 of the impugned judgment are wrong in as much as the learned trial Judge failed to appreciate the submissions advanced by the husband as regards the allegations levelled by the wife that the husband is having illicit relations with said Yamuna.

12. So far as the allegations at point no. (K) (supra), Learned advocate Mr. Govilkar submitted that the husband had categorically stated in his evidence that he had gone to Delhi for his office work and when he returned to Pune, he noticed that a third person is occupying the premises and on enquiry with the landlord, he was informed that the wife has given possession of the said premises to the landlord. Learned advocate Mr. Govilkar submitted that the fact that the premises were surrendered by the wife was accepted by the landlord, and therefore the Court should have accepted the stand of the husband that on account of surrender of the premises at Pimpri Gaon by the wife without knowledge and consent of the husband, the husband was deprived of the said premises for no reason particularly when he wanted to retain the premises. Learned

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advocate Mr. Govilkar submitted the case of the husband that the wife had surrendered the premises to the landlord directly should have been accepted. Learned advocate Mr. Govilkar submitted that the very act of the wife to surrender the said premises to the landlord should have been accepted by the learned trial Judge as an act which constituted cruelty to the husband. Learned advocate Mr. Govilkar submitted that view taken by the learned trial Judge on the basis of text of Exh.52 i.e. a letter addressed to the Superintendent of Police is not correct. Learned advocate Mr. Govilkar had therefore submitted that this Court should hold that on account of surrender of the premises at Pimprigaon by the wife, the husband had suffered cruelty and that he is entitled for divorce.

13. So far as the ground of desertion is concerned, the learned advocate Mr. Govilkar submitted that the view taken by the learned trial Judge that the husband has failed to prove that the wife deserted the husband is incorrect. He took us through the notices at Exh.54 and 59. Learned advocate Mr. Govilkar had, therefore, submitted that considering the entire evidence on record and his submissions this Court should set aside Judgment dated 28th August, 2002 and

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allow the appeal and the marriage between the husband and wife be dissolved as prayed for.

14. Learned advocate Mr. Sabrad appearing on behalf of the respondent wife submitted that so far as the grounds set out at Sr. No.(d), (g) and (h), the husband has not proved them. According to the learned advocate Mr. Sabrad, the husband ought to have examined appropriate persons in support of his stand that the wife had dealt with those persons and entered into some transaction. It was submitted that the husband ought to have examined (i) the milkman, to whom the husband was required to pay a sum of Rs. 2,000/- (ii) husband's sister who is supposed to have advanced monies to his wife. (iii) husband's brother's wife who is said to have handed over ornaments to the wife. Learned advocate Mr. Sabrad submitted that as the husband did not examine aforesaid person the learned trial Judge rightly came to the conclusion that the husband is not entitled to divorce. Learned advocate Mr. Sabrad further submitted that even as regards other allegations mentioend in grounds at Sr. Nos. (a), (c), (e), (f), (i) and (j), the husband has not proved them by giving proper evidence. He submitted that the

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learned trial Judge was right in declining the divorce on those grounds.

15. So far as the allegation against the wife that the wife had surrendered the premises at Pimprigaon to the landlord without the consent of the husband while the husband was at Delhi i.e. ground at Sr. No.(k) above. Learned advocate Mr. Sabrad submitted that the said allegations are not proved as the husband has not examined the landlord to place on record the circumstances under which the landlord got back the possession of the premises. He further submitted that the husband had filed a complaint with the Superintendent of Police and Commissioner of Police, Pune and in the said letter at Exh.52, the husband had stated that the landlord Shri. Vitthal N. Nanekar had forcibly taken possession of the said premises in the absence of the husband. He further submitted that in the said letter, the husband has stated that the landlord has taken possession of the premises by taking disadvantage of dispute between him and his wife. Learned advocate Mr. Sabrad, therefore, submitted that the husband did not approach the Police Officers with a positive case that the possession was surrendered by the wife

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to the landlord. According to him, a proper appreciation of letter dated 21st August, 1992 at Exh.52 addressed to the Police would go to show that the husband approached the concerned Authorities with a case that the landlord dispossessed the husband while he was at Delhi. Learned advocate Mr. Sabrad, therefore, submitted that the ground taken by the husband that surrender of the premises by the wife to the landlord without husband's consent is not made out and consequently there is no question of the husband getting a decree of divorce. He submitted that the learned trial Judge has declined to accept the stand of the husband on this aspect and has rightly dismissed the petition.

16. Insofar as the ground of desertion more particularly stated in para 8 of the petition, the learned advocate Mr. Sabrad submitted that according to the husband, the wife left the premises on 17th February, 1998 and did not return to matrimonial home. According to Mr. Sabrad learned advocate, in the petition the husband has not raised the ground that the wife deserted the husband. He submitted that the husband could not have been taken up the ground of desertion while filing this petition because

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according to the husband, the wife left the house on 17th February, 1998 and the petition was filed in November, 1999. He, therefore, submitted that the minimum period of 2 years required to get divorce on the ground of desertion by the wife was not available. He submitted that despite this learned trial Judge framed an issue at Sr. No.2. Learned advocate Mr. Sabrad states that the learned trial Judge has in para 26 dealt with the aspect of desertion. Our attention was drawn to the para 26. He submitted that two letters were sent by the husband to the wife being letters at Exh.54 and Exh.59. He pointed out that the husband had specifically stated in those letters that he is not inclined to continue matrimonial life with the wife and that it would be better if a divorce by mutual consent is obtained. According to Mr. Sabrad, if this was the stand of the husband, surely, there is no question of the husband seeking a divorce on the ground of desertion. He submitted that in any case, the learned Judge has answered the issue as regards desertion in the negative. He submitted that in paragraph 8 of the petition it is stated that the wife left the husband on 17th February, 1998 and that resulted in causing cruelty to him. Mr. Sabrad submitted that this allegation is not proved.

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17. With reference to the ground taken by the husband at Sr.No. (b) above that the wife used to allege that the husband is having illicit relations with Yamuna, learned advocate Mr. Sabrad had submitted that this stand is reflected in para 2 of the petition and that wife has suitably dealt with the said paragraph in the written statement at paragraph 3 and has denied the said allegations. Learned advocate Mr. Sabrad had therefore submitted that as the wife had denied the averments in para 2, it was necessary for the husband to prove the contents of para 2 to show that the said allegations constituted cruelty upon the husband.

18. Learned advocate Mr. Sabrad submitted that the evidence given by the husband on the question of husband having relations with a lady by name Yamuna if perused would go to show that the husband had admitted that he had relations with Yamuna. He further submitted that cross-examination of wife would go to show that the husband had in terms of admitted his relations with Yamuna. Learned advocate Mr. Sabrad submitted that the argument advanced by him as regards the evidence of the wife on the question of relations

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between the husband and Yamuna are equally applicable as regards the evidence of Haribhau Jagtap, DW-2 i.e. father of Yamuna. According to learned advocate Mr. Sabrad, the wife has proved her case that the husband was having relations with Yamuna and, therefore, the stand of the husband that the wife inflicted cruelty upon the husband should not be accepted. Learned advocate Mr. Sabrad submitted that the learned trial Judge has rightly appreciated the evidence on the question of husband having relations with Yamuna and has rightly dismissed the petition.

19. On the basis of the submissions mentioned aforesaid, following points do arise for our determination.

(a) Whether the appellant husband has proved that the respondent wife treated him with cruelty ?

(b) If answer to point no.(i) is in the affirmative, whether the appellant husband is entitled to decree of divorce ?

(c) What order ?

Our answers to the above points are as under:-

(a) In the affirmative.

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(b) In view of answer to point no.1 in the affirmative, this point is answered in the affirmative.

(c) As per the final order.

20. With the assistance of learned advocates on both sides, we have considered the entire record. The grounds on which the divorce was sought are set out in the earlier part of the judgment. The grounds can be divided into three parts.

i. The first part consists of grounds where the husband claims that the wife did certain acts and those acts constituted cruelty. All those acts are mentioned in the earlier part of this judgment at item No.1 to (a) to (k) except item nos. (b) and (k).

ii. The Second part consists ground at Sr.No.(K) above where the husbands claims that while the husband was at Delhi for his office work, the wife surrendered the possession of the premises at Pimprigaon, which were held by the husband as tenant to landlord while without consent of the husband.

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iii. Part 3 consists of the ground taken by the husband at Sr. No. (b) that the wife had levelled allegations against the husband that the husband used to be out of the house till late night as he had some affair with a woman. The husband had also sought divorce as the wife alleged that husband had illicit relations with Yamuna.

21. It is noted that the husband alone has given evidence. He has not examined any other witness. So far as the wife is concerned, the wife has examined herself as DW-1 and her father Haribhau R. Jagtap, DW-2.

22. Firstly, it would be convenient to deal with the case appearing part (i) above. The husband claims that various acts alleged to have been committed by the wife caused mental cruelty on him. We have considered the said allegations. We have also considered the judgment delivered by the learned trial Judge so far as these grounds are concerned. The learned trial Judge has rejected the case of the husband so far as these grounds are concerned by holding that the husband has not adduced cogent evidence to

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support the various allegations. The finding of learned trial Judge is right in as much as the husband has not examined any other person to support his case. The husband could have examined the milkman, his sister, his brother's wife and his neighbours to support his case. He has not examined any of them. In our view, the learned trial Judge took a right view of the matter and declined to accept grounds covered by part (i) as sufficient to grant divorce.

23. Part(ii) above consists of the allegation levelled by the husband that the wife surrendered possession of the premises at Pimprigaon to the landlord without the consent of the husband. Insofar as this point is concerned, in para 12 of the petition, the husband states that while he was staying at Kondhava Budruk along with his son he had put his tenanted premises at Pimprigaon under his lock and key. He claims that the wife surrendered the possession of those premises. In the evidence, the husband has stated that he had been to Delhi and on return, he noticed some third person and on making inquiries, the landlord informed him that the wife had delivered the possession of the premises to him. The husband has admitted in para12 of the petition that he had addressed a letter dt. 21-8-1998

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(Exh.52) to the Superintendent of Police, Pune. We have perused the text of the letter at Exh.52 as well as the observations made by the learned trial Judge on the point raised by the husband as regards surrender of the premises by the wife without the consent of the husband. The letter at Exh.52 states that the landlord dispossessed the husband from the premises. The husband has equally stated in the said letter that he had heard that the landlord has taken possession of the premises by taking disadvantage of the dispute between the husband and his wife. The contents of this letter at Exh.52 if properly construed would go to show that it is not the case of the husband that the wife surrendered the possession of the landlord without his consent. If that would have been so, the husband would not have stated that the landlord had forcibly taken possession and that action should be taken against the landlord. The tenor of letter at Exh.52 clearly goes to show that the husband has come out with altogether different story than what is pleaded as a ground for divorce. The learned trial Judge has considered the effect of the evidence given by the husband on this count along with the text of letter at Exh.52. After having gone through the said material, we are inclined to observe that the learned trial Judge has

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taken a correct view of the matter and he has rightly rejected the stand of the husband that the wife surrendered the possession of the premises to the landlord without the consent of the husband. The learned trial Judge has also noted that it was not the case of the husband that the keys in respect of the said premises were in possession of the wife to enable her to surrender the possession to the landlord. In our view, the letter at Exh.52 is the document on the basis of which the husband initiated action against wife. It is to be noted that it is not the case of husband that the wife has broken open the locks and surrendered possession. This shows that the husband approached the Court with a false case that the possession of the said premises was surrendered by the wife to the landlord behind the back of the husband. For these reasons, we are not inclined to take a different view than the one which has been taken by the learned trial Judge so as to reject the stand of the husband that the wife had handed over possession of the premises at Pimprigaon to the landlord without the consent of the husband. Once this finding is reached, the husband cannot get divorce on ground contained in part (ii) above.

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24. The third part consists of the stand taken by the husband that the wife used to level allegations against the husband that the husband had affair with a woman. A reference to this allegation is found at two places namely para 2 of the petition and para 8 of the petition. At para 2 of the petition the relevant portion is as under.

> "The petitioner works in Defence Estate as a peon and he has to be out of home till late night on account of official duties. In such event, the respondent would suspiciously pass defamatory allegations against the petitioner that he was being out till late night as he had some affair with a woman. This was a great psychological trauma to the petitioner".

The relevant text of paragraph 8 of the petition is as follows.

> "After the respondent left the petitioner, she started passing false, baseless, illegal and mischievous allegations against the petitioner that he had kept a concubine. This caused great mental cruelty to the petitioner".

25. It would be necessary for us to refer to the relevant portions of the written statement so as to ascertain the stand of the wife on that ground. In reply to the portions quoted above forming part of

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paragraph 2, the wife has in para 3 of her written statement stated as follows.

> "It is not true and this respondent does not admit that she has suspicious tendency. It is a plump-lie to allege that this respondent has passed any defamatory imputations against the petitioner on flimsy pretext so stated in the said para."

26. In response to the portion of para 8 of the petition quoted above, the wife has not dealt with those allegations. Those allegations are not denied specifically or otherwise.

27. A perusal of these averments in the petition as well as written statement would clearly go to show that the wife has in no uncertain terms levelled allegations against the husband alleging therein that he has relations with Yamuna. It is true that the wife has not specifically denied those allegations as required in accordance with the provisions of Order 8 Rule 3 of Code of Civil Procedure. In fact, the portion quoted above, forming part of para 10 of her written statement clearly indicate that the wife specifically took stand in the written statement that the husband is having illicit relations with a

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lady by name Yamuna. The question before this Court is whether this conduct of the wife in levelling allegations as stated aforesaid would constitute cruelty.

28. We have perused the impugned Judgment and it is noticed that the learned trial Jude has rejected the stand of the husband in regard to the allegations levelled by the wife as mentioned aforesaid. The learned trial Judge has discussed this point in para 21 of his judgment and has observed that possibility cannot be ruled out that the husband was having relation with Yamuna and for that purpose, he had used to come late at night. The relevant portion of the para 21 is as under.

> "21. ..... In this regard, it is specifically alleged by the respondent that the petitioner has developed relations or affairs with one lady Yamunabai Adkar. In this regard, the cross-examination of petitioner is of vital importance. According to him, he himself and one Yamunabai booked a flat at Kondhava Budruk at one place he states that he does not know Yamunabai. On the other hand, he has deposed about booking of a flat jointly. Under the circumstances, this is nothing but self-contradictory statement made by the

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petitioner and the possibility cannot be ruled out that he was having relations with Yamunabai and for that purpose he used to come late at night."

29. A perusal of the aforesaid portion goes to show that the learned trial Judge came to the conclusion that there is possibility that the husband is having relations with Yamuna and, therefore, he did not accept the stand of the husband that the wife used to level wild allegations so far as husband's character is concerned and that is how he did not grant decree of divorce.

30. We are, therefore, required to test the case on the basis of the material placed before the Court. The stand of the husband that the wife used to level allegations against the husband is made out by the fact that the wife has in para 10 of the written statement ventured to say that the husband is having relations with Yamuna. We have already stated that the wife has not specifically denied the contents of paragraphs 2 and 8 of the petition. On account of the failure to specifically deny the allegations as mentioned above, we are inclined to hold that the wife has accepted the stand of the husband as regards contents of para 2 and 8. This view is taken on

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account of provisions of Order, Rule 3 and 5 of Code of Civil Procedure and judgment of Apex Court in the case of ***Balraj Taneja and Anr. Vs. Sunil Madan and Anr. reported in (1999) 8 SCC 396***.

31. We have perused the evidence. The husband entered the witness box as the first witness in the trial. A reading of his evidence at paragraph 15 goes to show that he has denied the suggestion made to him that he is in the habit of keeping relations with the another woman. He has stated that he does not know Yamuna. He has further stated that he does not know whether that lady is in service in telephone office located in front of his office. He has further stated that it is incorrect to say that he was having affair with that lady and therefore presence of the wife in his house was hurdle in his free life. He denied that he had driven the wife out of the house. In further cross-examination, he has stated as under.

> "18. It is incorrect to say that canteen of Yamunabai was adjoining to my office, therefore, I had occasion to meet her frequently. Therefore, we got close relations hence, started residing together at Kondhava. It is incorrect to say that the respondent noticed me and Yamunabai while

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cohabiting at Kondhava. Because of that disputes raised between me and respondent. It is incorrect to say that because of such instances, I sent divorce notice to the respondent instead of claim of restitution of conjugal rights."

32. After the evidence of husband was over, the wife stepped into witness box and in the examination-in-chief as regards the alleged relations between the husband and wife, the wife in paragraph 3 has stated as under.

"I came to know the name of that lady. She is Yamuna Genu Adalkar. She was working in front in Telephone Exchange in front of office of the Southern Command, Pune. In the enquiry, I came to know that the petitioner along with 2 children left Pimprigaon. I tried to find out them. The petitioner never disclosed his real address. From the school at Pimprigaon, I came to know that the sons are shifted to the School at Kondhava Budruk. Therefore, I went to Kondhava Budruk. I got information as the petitioner was residing at Kondhava Budruk. I went at his address. I came to know that Ramesh and Yamunabai are cohabiting there. Yamunabai was cohabiting with him as a wife. I went to that flat. I noticed Yamuna and my son. She replied she is wife of Ramesh. Yamuna confined me and my parents in that flat".

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33. She has further stated in paragraph 4 as follows :

> "I did enquiry with the flat owner Baburao. He told that Ramesh and Yamuna purchased that flat and they are cohabiting in that flat. The flat owner had given me xerox copy of that agreement. It is placed on record with list Exh. 40/1".

34.In the cross-examination at paragraph 10, she has stated as follows:

> "Our quarrel took place on the fact that the petitioner used to come to home late night and I was also came to know that after office hours he used to roam with one lady of different caste. This fact was told to me by the petitioner himself. When I came to know this fact from the petitioner, I complained of to my mother-in-law. She suggested me to solve my own problem".

35. Further cross-examination was conducted by the husband on this point. The relevant portion is at paragraph 13. It is as follows:

> "It is not true to say that lady Yamuna Adkar is a hadicap. I do not know as to whether that lady runs Telephone Booth outside the office premises of petitioner. It is not true to say that on the count of alleged relations with said Yamuna, I have illtreated the petitioner by giving cruel treatment. It is true to say that I made a complaint as regards alleged relationship against the petitioner in his

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office".

36. The father of the wife Haribhau was examined as DW-2. In the examination-in-chief at paragraph 2 he stated as follows :

> "On making enquiry it was noticed that the petitioner purchased one flat of one Dandekar and he along with that lady Yamunabai was residing over there. When I asked said Yamunabai how she was residing with the petitioner, she told that she is residing with the petitioner as his wife. Even today the respondent is willing to co-habit with the petitioner".

37. In the cross-examination conducted on behalf of the husband, this witness Haribhau, DW-2 has at paragraph 8 stated as under :

> "It is not true to say that I am deposing false that the petitioner has affairs with lady Yamunabai. It is not true to say that said Yamunabai is not working as Telephone Operator and she runs a Telephone Booth out of office of Southern Command. It is not true to say that said Yamunabai is totally handicap below the waist and the said booth is being run by her, since she is handicap. It is not true to say that the petitioner has no concern with said Yamuna".

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38. After having considered the evidence which is mentioned above, the question is whether this Court should accept the stand of the husband that the wife levelled allegations against the husband as regards the husband staying with a lady by name Yamuna and whether those allegations constitute cruelty. We have already observed that the wife had not denied the averments in the petition whereby the husband had stated that on account of the allegations levelled against the husband as regards staying with Yamuna, the husband had suffered cruelty. We have also noticed that the wife did not specifically deny the allegation. She has stated positively about the husband's conduct qua Yamuna. In addition to what is stated in para 10 of her written statement, the wife has stated about the relations between the husband and said Yamanua in the course of her evidence. Haribhau DW-2 has towed wife's line. In a situation like this, if it was the stand of the wife that the husband had illicit relations with Yamuna, it was her duty to prove the said fact by leading cogent evidence. In the present case, no doubt, the wife has given evidence as regards relations between Yamuna and the husband. She has even stated that she visited the house of the husband where she saw Yamuna.

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No doubt, the wife has examined her father also in support of her aforesaid stand. The question is whether the Court should accept the evidence of wife and her father as sufficient. In our view, the answer is in the negative. We are inclined to treat the father as an interested witness and, therefore, evidence of Haribhau, DW-2 will be of no avail to the wife. The wife has stated in examination-in-chief that she had met one Mr. Baburao, who according to her was the owner of the flat, where the husband and Yamuna were staying. She claims to have derived knowledge from said Baburao to support her stand. The wife has not examined said Baburao to support her case. Looking to the positive case of the wife that the husband started staying at Kondhava Budruk along with Yamuna, it was possible for her to examine any of the neighbours of the husband who could have deposed about the residence of Yamuna in the company of the husband. No such witness has been examined. In the evidence, the wife has stated that she went to Kondhava Budruk and she gathered information about the husband staying with Yamuna. From whom she had gathered this information is not stated. No evidence is produced by the wife in support of this claim that she has visited the house of the husband at Kondhava Budruk.

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Said Haribaho, DW-2 has stated in his examination-in-chief, the portion of which is quoted above, that on making inquiries, he noticed that the husband had purchased a flat of one Dandekar and he was staying with Yamuna in the said flat. Who told him about the purchase of the flat by the husband from one Dandekar is not mentioned. The date on which the said Haribhau visited the flat and noticed Yamuna in the said flat is not mentioned. Same is the case about the visit of wife to the flat. She also does not mention the date on which she visited the flat where she noticed Yamuna. In our view, the evidence which is quoted above coupled with the discussion mentioned above would go to show that the wife levelled unsubstantiated allegations against the husband as regards his alleged relations with Yamuna in the written statement as well as in the notes of evidence. These allegations have not been proved by the wife though she could have adduced adequate evidence. It is true that if one peruses the cross-examination conducted by the husband, one gets an impression that the husband knows one lady by name Yamuna and that she is handicaped. One also gets an impression that husband knew that said lady was running telephone booth outside the office premises of the husband's office. The wife

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herself has stated in para 3 of her examination-in-chief that said Yamuna was working in front of the Telephone Exchange in front of office of Southern Command, Pune. This will mean that the wife wanted to place on record the fact that the said Yamuna was working at his telephone exchange which is very close to the office premises of the husband. In our view, various suggestions given by the husband in the cross-examination of the wife as well as the father, may at the most go to show that the husband knew one lady by name Yamuna. The cross-examination conducted on behalf of the husband nowhere indicates that the husband accepted the case of the wife that the husband had illicit relations with Yamuna.

39. Learned advocate Mr. Sabrad appearing on behalf of the wife had drawn our attention to the cross-examination of the husband conducted on behalf of the wife. Relevant portion of husband's cross-examination conducted on behalf of the wife is as under.

> "Myself and said Yamunabai booked flat jointly at Kondhava Budruk, S.No.36/2 or that the flat was booked at Baburao Arjuna Dandekar".

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40. We have considered the portion quoted above. In our view, looking to the stand of the husband as a whole, it is just difficult to accept that that husband would admit his relations with Yamuna. In our view, the sentence quoted above appearing in para 16 of the cross-examination of the husband "myself and said Yamuna booked the flat jointly at Kondhava Budruk Survey No.36/2 or that flat was booked at Baburao A. Dandekar" is obviously wrongly typed. We have arrived at this conclusion looking to the evidence of the husband PW-1, evidence of wife DW-1 and evidence of wife of the father Haribhau, DW-2.

41. The net result of the aforesaid discussion is the wife treated the husband with cruelty by levelling unsubstantiated allegations that the husband is having illicit relations with Yamuna. We have already observed that the allegations levelled by the wife have not been proved. The Supreme Court in the case of ***Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhatia, AIR 2003 SC 2462*** was required to decide "whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty to claim decree of

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divorce under Section 13(1) (ia) of the Hindu Marriage Act. The Supreme Court in paragraph 7 of the aforesaid judgment has quoted as under.

> "The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1) (ia) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court.

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We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."

42. Applying the said ratio to the facts of this case, we are inclined to observe that the unsubstantiated allegations levelled by the wife in the written statement as well as in her evidence as also evidence of her father amounted to mental cruelty as the wife has failed to prove those allegations by examining appropriate witness in support of the said allegations. In our view, the bare word of the wife or her father Haribhau, DW-2 who is treated by us as an interested witness, is not sufficient to accept that the wife has made good the allegations against the husband. The allegations are certainly serious and the husband is bound to undergo mental pain, agony and suffering. For the reasons mentioned aforesaid, we hold that the husband has been able to prove that the wife has treated the husband with cruelty.

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43. It is required to be observed that the attention of the learned trial Judge was drawn to the relevant evidence and an effort was made by the husband to persuade the learned Judge to come to the conclusion that the unproved allegations by the wife should be treated to hold that the wife has treated the husband with cruelty. That submission was not accepted by the learned trial Judge. The learned trial Judge has dealt with the point regarding the allegations and the effect thereof at paragraph 21. The relevant portion of the judgment is as under.

> "In this regard, it is specifically alleged by the respondent that the petitioner has developed relations or affairs with one lady Yamunabai Adkar. In this regard, the cross-examination of petitioner is of vital importance. According to him, he himself and one Yamunabai booked a flat at Kondhava Budruk at one place he states that he does not know Yamunabai. On the other hand, he has deposed about booking of a flat jointly. Under the circumstance, this is nothing but self-contradictory statement made by the petitioner and the possibility cannot be ruled out that he was having relations with Yamunabai and for that purpose he used to come late at night".

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44. It is specifically alleged by the wife that the husband has developed relations or affair with one lady by name Yamunabai. It appears that the learned trial Judge relied upon the portion of the evidence where the husband has stated that the flat was booked jointly. The learned trial Judge should have appreciated that the husband could not have admitted that he has jointly purchased flat with Yamuna as it has been the consistent case of the husband that wife's case that he was having illicit relations with Yamuna is patently false. We do not agree with the observations of the learned Judge which are quoted above by which he has observed that a possibility cannot be ruled out that he was having a relations with Yamuna and for that purpose, he used to come late at night.

45. For the reasons aforesaid, we hold that the learned trial Judge erred in rejecting the stand of the husband that the husband failed to prove that the wife treated the husband with cruelty.

46. For the reasons mentioned above, point no.1 is answered in the affirmative. Having recorded a finding on point no.1 in the

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affirmative, the husband would be entitled to decree of divorce as per the provisions of Section 13(1) (ia) of the Hindu Marriage Act, 1955. Accordingly, the impugned judgment and decree dated 28th August, 2002 passed by learned 6th Joint Civil Judge, Senior Division, Pune in Hindu Marriage Petition No.207 of 1998 is required to be set aside and petition is required to be made absolute.

47. For the reasons mentioned aforesaid, the appeal is decided by passing following order.

**ORDER**

(i) Judgment and Decree dated 28th August, 2002 passed by learned 6th Joint Civil Judge, Senior Division, Pune in Hindu Marriage Petition No.207 of 1998 is set aside.

(ii) Accordingly, marriage between the appellant and the respondent solemnized on 12th February, 1987 is hereby dissolved in accordance with the provisions of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

(iii) In the facts and circumstances, there shall be no order as to costs.

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**CIVIL APPLICATION NO. 123 of 2011**
**IN**
**FAMILY COURT APPEAL NO. 4 OF 2003**

Ramesh Laxman Sonawane .. Applicant
V/s.
Mrs. Meenaxi Ramesh Sonawane .. Respondent

This civil application was filed by the appellant husband for bringing on record various documents which are set out in prayer clause (b) of the said application. One of the said document is the writing dated 20th July, 1998 purported to have been executed by and between Mr. Vithal N. Nanekar and the wife as regards surrender of the possession of tenanted premises at Pimprigaon. The other documents pertain to the stand of the appellant husband that he was required to be at Delhi from 18th July, 1998 till 1st August, 1998. In the first place, the husband is not in a position to demonstrate that these documents could not be brought on record before the trial Court inspite of due diligence. Further, we have rejected the case of the appellant husband that the respondent wife had surrendered the tenanted premises at Pimprigaon to the landlord behind the back of the appellant husband. We have made detailed observations so as to hold that the case of the husband that the wife had surrendered the possession of

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the tenanted premises to the landlord without his consent is not made out. We, therefore, hold that this Civil Application is required to be rejected. It accordingly stands rejected.

**(R.Y.GANOO, J.)** **(A.M. KHANWILKAR, J.)**

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