

CNR NO. MHSN02-000004-2018

Received on : 01.01.2018
Registered on : 03.01.2018
Decided on : 04.10.2018
Duration : Ys. 00 Ms. 09 Ds. 03

IN THE COURT OF 2ND JT. CIVIL JUDGE SR. DN. SANGLI
AT : SANGLI.

(Presided over by Shri. P. A. Sane)

Hindu Marriage Petition No.1/2018

Exh. No. 12.

Shri. Rajendra Vasant Bisure
Age -35 yrs. Occu.- Agriculturist
R/o. A.P. Janrawadi Tal. Miraj,
Dist. Sangli.

Petitioner

Vs.

Sou. Jayshree Vasant Bisure
Age -27 yrs. Occu. - Household
R/o.C/o. Kumar Babu Mane
Behind Kempwad Factory Cross
Bus Stop, Mole, Taluka-Athani,
District- Belgaon.

Opponent

Divorce Petition u/s. 13 (1) (i-b) Hindu Marriage Act.

Shri. R.A. Narwadkar, Advocate for petitioner
Shri.P.D. Deshpande, Advocate for opponent (No Say)

JUDGMENT

(Delivered on 04.10.2018)

Brief facts of petitioner's case runs as under -

1. The marriage of the petitioner and the respondent is solemnized on

15.07.2012 at Village Mole, Taluka-Athani, District- Belgaon. The petitioner performed the said marriage properly. Since thereon their exist the matrimonial ties between them. They have not born any issue. After solemnization of marriage, the respondent joined and started to reside at her matrimonial house with the petitioner at Village Janravwadi, Taluka-Miraj where she resided for some days happily, but thereafter on small things, she used to quarrel and used to ask petitioner to reside separately. She used to say that there is no interest and happy to reside with other family members. However, the petitioner stated her that it is not possible on his part to reside separately, but she do not use to listen. Hence the quarrel took place. The respondent was not behaving properly hence, she used to visit her parental house. Respondent used to threat the petitioner and his family members. After solemnization of marriage, the respondent after five days returned to her parental house. Thereafter, she joined company of the petitioner on 10.08.2012. Residing there for two months and since 8.10.2012, she went to her parental house. The petitioner tried to contact her but she tried to avoid the same. Thereafter, in the month of February, 2013 in last weeks, she resumed co-habitation but started quarrel. Thereafter, on 16.3.2013 taking her all belongings and without just and reasonable cause, she left the house. The petitioner tried to call her for co-habitation with the help of family members and friends but she refused to do so. Accordingly, the petitioner realized that the respondent is not interested to live happy marital life. Accordingly, she has deserted the petitioner since 16.03.2013 and accordingly the petitioner is constrained to file this divorce petition. Accordingly, the petitioner is asking to dissolve their marriage.

2. Notice was issued to the respondent. Respondent was duly served. She appeared in this matter but she failed to file written-statement hence, no written-statement order came to be passed.

3. The petitioner has led the evidence. The respondent failed to cross examine the petitioner's witness. No cross order came to be passed. The petitioner closed the evidence. Thereafter, the matter was posted for evidence of the respondent if any, but in spite of giving full and sufficient opportunity, the respondent failed to lead evidence. I heard the argument canvassed by the learned counsel for the petitioner. Further the respondent failed to argue the matter.

4. Considering the case of the petitioner and on hearing the argument canvassed by the learned counsel for the petitioner, following points arise for my determination to which I have recorded my findings before them for the reasons discussed below -

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
1	Whether the petitioner proves that the respondent deserted the petitioner and left company of the petitioner without any just and reasonable cause?	In the negative
2	Whether the petitioner is entitled for decree of divorce ?	In the negative
3	What order ?	As per final order

REASONS.

5 The petitioner has examined himself who filed affidavit in lieu of examination-in-chief at Exh 9 and examined one witness Prakash Nikam at Exh 10 and filed evidence closed pursis at Exh. 11.

As to Points No.1 and 2 :-

6. It is the case of the petitioner that the respondent is his wife and their

marriage is solemnized on 15.07.2012 as per the Hindu customs and rites and their exist the matrimonial ties between them. According to the petitioner, after solemnization of marriage, the respondent joined the company of the petitioner and started residing at the matrimonial house at Village Janravwadi, Taluka-Miraj. Thus, according to the petitioner, the respondent resided there for few days but her behaviour was not proper. She without any just and reasonable cause returned to her parental house. The petitioner examined himself who filed his affidavit in lieu of examination-in-chief at Exh 9 reiterated contentions in the plaint. He particularly stated that on small reasons, she used to quarrel. She asked the petitioner to reside separately. According to the petitioner, he informed her that it is not possible on his part to reside separately. The respondent was behaving adamantly and she do not use to work properly. She do not live properly with the family members of the petitioner. In the month of August, 2012, the respondent visited the matrimonial house where she resided for two months and thereafter she went away. Again he tried to persuade the respondent. Accordingly, she returned to her matrimonial house in February, 2013 and on 16.3.2013, she left the the matrimonial house by taking her belongings. Thereafter, he tried to convince the respondent with the help of the family members in order to joint the matrimonial ties but the respondent was not in a position to joint the matrimonial ties. Hence, according to him, he has produced marriage list and the photograph on record.

7. The petitioner has examined another witness viz. Prakash Gopal Nikam at Exh 10, who particularly stated that he know the petitioner and the respondent. Their marriage is solemnized on 15.7.2012 and the petitioner has performed the marriage in good condition. Since thereon their exists matrimonial ties between the petitioner and the respondent. As there are differences between the petitioner and the respondent, on

16.3.2013 the respondent went away with taking her all belongings. According to him, in April 2013, June 2013, August 2013, he and other relatives requested the respondent to resume co-habitation with the petitioner, but she failed to do so.

8. The learned counsel for the petitioner argued that the respondent without any just and reasonable cause has left the matrimonial house and it is submitted that there is reason to believe the evidence of the petitioner and there is nothing to discard or disbelieve the contentions of the petitioner.

9. Here it is to be noted that the present petition is filed for divorce on the basis of the contentions of desertion and accordingly in view of section 13 (1) (I-b) of the Hindu Marriage Act, it is required that on the point of desertion, one has to prove that for continuous period of not less than two years immediately presided, the presentation of the petition, the wife or spouse living separately. Here in order to decide desertion, one has to satisfy what efforts has taken by the parties in order to resume co-habitation. Here, so far as the contention of the petitioner that he used to contact the respondent through the family members in order to join her for co-habitation. Here it is to be noted that there is no any material evidence in order to substantiate that any notice is issued by the petitioner to the respondent to joint for co-habitation. It was very well possible on the part of the petitioner to issue notice to the respondent in order to show his willingness to resume co-habitation and that he was ever ready to reside with the respondent and to give an opportunity to the respondent to resume co-habitation. Here, moreover there is nothing on record as such any intention on the part of the petitioner to call his wife to resume co-habitation. Here considering the entire evidence, the petitioner is not taken any effective steps but asking divorce on the ground of desertion. One has to

demonstrate that what are reasonable grounds of desertion or for asking the divorce on the aspect as contemplated under section 13 of The Hindu Marriage Act that there is absolutely failure of the parties to reside together and the failure of marriage has to be established. Here, the petitioner stating that for few dates, the respondent visited the parental house and not residing with the petitioner. According to him, initially for few days the respondent resided with the petitioner. Thereafter, for two months she resided and thereafter she went away to her paternal house by taking her all belongings. Initially the question to be taken into consideration about grounds, what efforts the petitioner has taken in order to bring his wife back to reside with the petitioner, but absolutely except the bare words of the petitioner, there is no evidence on record to show that he ever tried to call for the respondent for the co-habitation. Here the petitioner examined himself and examined one witness- Prakash Nikam, who accepted his evidence. There is no any cogent evidence in order to demonstrate that the petitioner ever tried to call the respondent to joint the matrimonial ties and to live happy marital life. One has to satisfy that in stead of calling and giving the opportunity to another spouse deliberately avoided to join the matrimonial ties in order to live happy marital life. It is the contention of the petitioner that at the particular period, he and his family members visited the respondent and asked her to resume co-habitation. There is insufficient evidence which cannot be sufficient to say that there are strong circumstances as such that the inference to be drawn that another spouse has deserted the petitioner without any just and reasonable cause.

10. Considering the all the aforesaid reasons and facts in this case, I am of the view that the petitioner has failed to establish that the respondent has left the matrimonial house by deserting the company of the petitioner without any just and reasonable cause. Failure on the part of the petitioner to prove desertion, the petitioner is not entitled for the decree of divorce on

the said grounds. Hence, I answer points no. 1 and 2 in the negative.

As to Point No.3 :-

11. In view of my findings to points no. 1 and 2 in negative, the petitioner is not entitled for decree of divorce. Hence, petition requires to be dismissed with costs. Accordingly, I answer issue No.3 as per final order -

ORDER.

1. Petition is dismissed with cost.
2. Decree be drawn up accordingly.

Sangli
Date : 04.10.2018

Sd/-
(P. A. Sane)
2nd Jt. Civil Judge Sr. Dn.
Sangli.