IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.70 OF 2007

Dinesh Tukaram Chaudhari,
Age : 29 years, Occ. Service,
R/at : Plot No.6, Flat No.8,
Rohideshwar Co-operative Hsg.
Soc. Ltd., 2nd Floor, Section No.19,
Nerul, Navi Mumbai. ..Appellant

V/s.

Vaishali Dinesh Chaudhari,
Age Adult, Occ. Household,
R/at. Hatnoshi, Tal. Bhor,
District : Pune. ..Respondent

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Mr. Sandesh D. Patil, for the Appellant.
Mr. S.S. Deshmukh, for the Respondent.

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CORAM : A. S. OKA, AND
A. S. CHANDURKAR, JJ.

RESERVED ON : 13th JUNE, 2014
PRONOUNCED ON : 31st JULY, 2014

ORAL JUDGMENT : [PER A.S. CHANDURKAR,J.]

1. This appeal under Section 19 of the Family Courts Act, 1984 takes exception to the judgment dated 17.02.2007 passed in

Petition No.A-714/2006 by the learned Principal Judge, Family Court at Pune whereby the aforesaid Petition filed by the present appellant for divorce came to be dismissed.

2. The marriage between the parties was solemnized on 4.5.2001. According to the appellant-husband, in the month of July, 2001 the respondent-wife had on receiving a telephone message from her parents left the matrimonial house without assigning any reason or taking the appellant's permission. According to the appellant, the respondent was reluctant to mix with his family members without any reasonable cause. Again in February, 2002, the respondent had left the matrimonial house with her grandfather without any reason. On 26.07.2002, a male child was born out of the aforesaid wedlock. As the respondent was residing at her parents home, the appellant had no information about the birth of the child and hence was deprived of enjoying said occasion. According to the appellant, after intervention of some family friends the respondent returned to the matrimonial house on 27.02.2004. However, there was no change in her indifferent behaviour. In April 2004, the appellant's mother was seriously ill but the respondent did not take much care of her. Thereafter on 13.5.2004 when the appellant and his father were not at home, the respondent left the matrimonial house with the minor son and thereafter did not return back. Subsequently on 27.4.2005, the respondent lodged a police report against the appellant and his family members due to which they were required

to apply for anticipatory bail. In view of the aforesaid, the appellant on 20.6.2005 filed the aforesaid proceedings for divorce on the ground of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the said Act", for short).

3. The respondent contested the aforesaid proceedings by filing her written statement vide Exhibit-22. She denied the allegations as made in the Divorce Petition. She stated that she was always ready and willing to reconcile with the appellant and restitute conjugal rights. According to her, she had not left the matrimonial house on her own accord but had been physically and forcibly driven out by the appellant. She has further stated that the appellant's mother had ill-treated her during her stay in the matrimonial house. She has further denied that the appellant was not informed about birth of the child but was immediately informed about the same. She has further stated that the appellant had been making illegal demands of dowry and as the respondent could not fulfill the same, she had been compelled to leave the matrimonial house. She, therefore, prayed for dismissal of the proceedings.

4. The parties thereafter led evidence before the Family Court. While the appellant examined himself and his father – Tukaram, the respondent examined herself, Ramchandra Bhillare, Ananda Genu Kamble, Dattatraya Krushna Thopte in support of her case. The learned Judge of the Family Court thereafter by

judgment dated 17.2.2007 was pleased to hold that the appellant had failed to prove his case that the respondent was guilty of treating him with cruelty and further that he had also failed in proving that she had deserted him from the matrimonial house. In view of the said findings, the Divorce Petition filed by the appellant came to be dismissed.

5. Shri Sandesh D. Patil, the learned Counsel appearing for the appellant submitted that the learned Judge of the Family Court erred in dismissing the Divorce Petition filed by the appellant. It was submitted that the case as sought to be made out by the appellant for seeking divorce had been duly proved. There was sufficient material on record to come to the conclusion that the respondent was guilty of having committed cruelty within the meaning of Section 13(1)(ia) of the said Act. The case, as pleaded, was duly proved by leading evidence in that regard before the Family Court. Similarly, desertion by the respondent had also been duly proved and a case for divorce under the provisions of Section 13(1)(ib) of the said Act had also been made out. The learned Counsel submitted that the trial Court in the impugned judgment neither considered the evidence on record nor referred to other material on record that had been proved during the course of evidence. Without doing so the learned Judge had directly come to the conclusion that the case as sought to be made out by the appellant was not proved. It was submitted that on the proper consideration of the material on record, the appellant had proved

the grounds of cruelty and desertion and it was a fit case in which decree for divorce ought to have been passed. The learned Counsel in support of these submissions, relied upon the following judgments :

(i) (1964) 4 SCR 331
[Lachman Utamchand Kirpalani V. Meena]

(ii) (2002) 2 Supreme Court Cases 73
[Savitri Pandey Vs. Prem Chandra Pandey]

(iii) (1939) 41 BomL.R. 1234
[Raymond Thornton Vs. Marguerite Elaine Thornton]

(iv) A decision of the Madras High Court dt. 22.4.2013 in CMSA Nos.38 and 39 of 2008
[Shantakumari @ Santhi Vs. R. Venkatasubramani]

(v) A decision of the Madras Madras High Court dt. 19.7.2011 in CMA No.3265 of 2009
[S. Thavamani Vs. G. Sathyamoorthy]

(vi) (2002) 5 Supreme Court Cases 706
[Parveen Mehta Vs. Inderjit Mehta]

(vii) (1994) 1 Supreme Court Cases 337
[V. Bhagat Vs. D. Bhagat(Mrs.)

6. On the other hand, on behalf of the respondent it was submitted that the Family Court had rightly dismissed the Petition filed by the appellant.

7. We have gone through the respective pleadings of the parties. We have also gone through the entire record of the proceedings before the family Court along with the documents exhibited. We have given consideration to the respective cases as

pleaded and as proved. The following points arise for determination in this Family Court Appeal.

(1) Whether the appellant has proved that the respondent had acted in such a manner that resulted in cruelty ?

(2) Whether the appellant has proved that the respondent deserted him and left the matrimonial house without any just and sufficient cause ?

(3) Whether the judgment under appeal deserves to be interfered with ?

8. **As to point No.(1)**: In this regard the pleadings of the parties in the Divorce Petition will have to be first examined. According to the appellant, after their marriage on 04.05.2001, the respondent behaved properly for a few days. However, in the month of July, 2001 the respondent left the matrimonial house without any reason and without taking the appellant's permission. The respondent was reluctant to mix with the family members of the appellant and his relatives. Similarly, in February, 2002 the respondent again left the matrimonial house along with her grandfather without any reason. She did not return to the matrimonial house thereafter. Though, a male child was born on 26.07.2002, the same was not informed to the appellant or his family members. After getting information about the same, the appellant had been to the house of the respondent, but, he was not

treated properly and was abused in front of the relatives. Subsequently, on account of the efforts made by the relatives, the respondent returned to the matrimonial house on 27.02.2004. In April, 2004, when the appellant's mother was seriously ill, though she was hospitalized at a nearby place, the respondent did not take pains to see her and enquire about her health. Thereafter on 13.05.2004 when the appellant and his father had left the house for their business/service the respondent along with the minor child left the matrimonial house without the consent and knowledge of the appellant. According to the appellant, on 13.05.2004 at about 9:00 p.m. he received a telephone call from police station, Bhor. It was learnt that the respondent had lodged a report there. The respondent did not return back to the matrimonial house despite efforts taken. On 27.04.2005, the respondent lodged a complaint with Bhor police under Section 498A of Indian Penal Code against the appellant and his family members. Due to this, the appellant and his family members were required to apply for anticipatory bail. This resulted in causing mental torture to the appellant. It is further stated that though the respondent resided with the appellant from 27.02.2004 till 13.05.2004, there were no relations between the appellant and the respondent. These are the pleadings of the appellant with regard to seeking divorce on the ground of cruelty.

9. In reply, the respondent denied the case of the appellant. It was denied that the respondent was indifferent to the family

members of the appellant. It was further denied that the appellant was never informed about the birth of the child on 26.07.2002. It is stated that immediately after her delivery, the respondent's father had informed the appellant and his family members but none had turned up to see the respondent or the new born child. The respondent has further stated that as the appellant's mother was suffering from heart trouble, she herself felt that it would be better if she remains away from her mother-in-law as it was likely that she could get disturbed on seeing the respondent. She has further stated that she was compelled to leave the matrimonial house and she had been forcibly driven out by the appellant. There were illegal demands of dowry made by the appellant which could not be fulfilled. She has further stated that she had always shown her willingness to reconcile with the appellant and was ready for restitution of conjugal rights. She has further denied that any complaint was lodged against the appellant and his family members under Section 498A of Indian Penal Code. She has denied that there were no relations between the appellant and herself from 27.02.2004 to 13.5.2004. She, therefore, averred that she was not guilty of having caused cruelty to the appellant and hence the was not entitled for divorce on said ground.

10. If the evidence led by the appellant to bring home the ground of cruelty is examined, it can be seen that the appellant examined himself vide Exhibit-22 and his father Tukaram vide Exhibit-26. The appellant has stated that he was never informed

by the respondent about any ill-treatment by his mother nor were there any complaints in that regard. He has admitted in his cross-examination that the respondent could not attend his mother when she was hospitalized as there was nobody else to attend to the domestic work. He has denied being informed about the birth of his child by the respondent's father. With regard to the complaint lodged by the respondent, he has referred to the anticipatory bail application that was required to be filed on 8.6.2005 vide Exhibit-23.

. Insofar as the deposition of the appellant's father – Tukaram is concerned, the same is in general terms. He has denied that the respondent along with minor child had been residing at his house at Bajarwadi. He has referred to being informed by the police authorities on phone about the report lodged by the respondent. He has also referred to filing of the anticipatory bail application. In his cross-examination, he has specifically stated that the standard of living of the respondent' family was similar to that of his family. He has further stated that his family was not ready to take back the respondent for cohabitation.

11. Insofar as the deposition of the respondent on the aspect of cruelty is concerned she has stated that she was ill-treated by the appellant and his parents as she was unable to fulfill their demands for dowry. She has thereafter referred to the ill-treatment by her mother-in-law and the same compelled her to leave the matrimonial house on 13.05.2004. She has further

stated that thereafter she went to Bazarwadi. There the appellant's family had a house and she was residing there after breaking open the lock. She has also referred to the filing of the complaint under Section 498(A) of Indian Penal Code against the appellant and his family members. She has further stated that the appellant and his family were rude and they were not interested in taking the respondent back.. She has stated that she was ready to reside with the appellant. In her cross-examination she has admitted that all amenities that were available in the house of a middle class family and at her parents house were available at the appellant's house. She has admitted that she did not go to see her mother-in-law when she was admitted in hospital. She has admitted lodging the complaint dated 13.05. 2004 at Bhor police station (Exhibit-50). She has further denied that there were no relations with the appellant from February, 2002 onwards which resulted in mental cruelty.

12. A perusal of the aforesaid material indicates that the allegations as regards improper behaviour of the respondent towards the appellant and his family members especially his mother have not been duly substantiated in the evidence of the appellant and his father. His mother has not been examined. The respondent has also denied said allegations in her deposition. Even the appellant's case of not being informed about the birth of the male child on 26.07.2002 has not been substantiated by any cogent evidence. On the other hand, though the respondent has

stated about the demands of dowry, except her bare statement, there is nothing on record to prove the same. It is true that the respondent had lodged a report with Bhor police station on 13.04.2004 but the same is in general terms without any specific allegation. The depositions of the other witnesses on behalf of the respondent is also in general terms and no specific instances are proved by them.

13. However, insofar as the complaint made by the respondent with the Bhor police station on 13.05.2004 (Exhibit-50) and the events thereafter requiring the appellant and his family members to seek anticipatory bail on 08.06.2005 (Exhibit-23) the same would require consideration while examining the case of the appellant as regards cruelty. In the complaint dated 13.05.2004, the respondent has stated that though she was residing with her husband, on account of harassment by the appellant and his parents, she was leaving the matrimonial house and was proceeding to go to reside at Bazarwadi in the premises owned by her father-in-law. Even in the said complaint, there is no allegation as regards demand of dowry and there is a general statement that because of the harassment by the appellant and his parents, she was leaving the matrimonial house. After about 11 months from leaving the matrimonial house, the respondent lodged a report with Bhor Police Station on 27.04.2005. The police authorities called the appellant and his family members on 29.04.2005 and 30.04.2005. In view of said enquiries being made

by the police authorities, the appellant and his parents filed Criminal Misc. Application No.974 of 2005 for grant of anticipatory bail. On 13.06.2005 the Sessions Court at Pune directed the concerned police authorities not to arrest the appellant and his parents without giving 72 hours prior notice. The police inspector, Bhor police station on 13.06.2005 reported vide Exhibit-22 that no offence was registered against the appellant and his parents with Bhor police station. Subsequent thereto, neither was there any offence registered nor were any further steps taken by the respondent in that regard.

14. The appellant in his deposition has specifically referred to the aforesaid incident and has stated that the same resulted in causing mental torture to him and his family members. The respondent has not disputed lodging the report on 13.05.2004. She has admitted filing of complaint dated 13.05.2004 and subsequent complaint dated 16.08.2004 (Exhibit-54). It is thus clear that after leaving the matrimonial house, the respondent lodged a report on 13.05.2004. The said report, however, is in general terms and besides general statements regarding ill-treatment, no specific allegations are made therein. Similarly, in para 8 of her affidavit-in-lieu of evidence she has stated that on 27-04-2005 a complaint under Section 498-A of the Indian Penal Code was made by her. However, police authorities did not register any offence against the appellant and his parents on the basis of the aforesaid report and as the respondent did not carry

the matter further, it is evident that the respondent was not serious about the aforesaid allegations. She did not pursue the matter further. On the other hand, the appellant and his family members were required to apply for anticipatory bail in the Sessions Court, Pune. Thus, the conduct of the respondent of lodging a vague report on 27.04.2005 about 11 months after leaving the matrimonial house and her further conduct of not prosecuting the said complaint in any manner whatsoever will have to be taken into account. Similarly the effect of the enquiries made by the police authorities with the appellant and his parents, the act of applying for anticipatory bail and the report of the police authorities that no offence was registered against the appellant and his family members will have to be taken into account as according to the appellant, the same has resulted in causing mental torture to him and his family members.

15. In ***K. Srinivas Rao Vs. D. A. Deepa***[1], the aspect of mental cruelty arising on account of filing of false complaint and issuing notices was considered. In para-14 it was observed thus :

> *"14. ..... Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."*

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. It has, therefore, been held by the Supreme Court that filing of a false complaint, in the facts of a case, can amount to causing mental cruelty to the other spouse. Considering the facts of the present case, it is evident that the report dated 13.05.2004 (Exhibit-50) was lodged by the respondent without there being any basis for the same. The report was in general terms. Similarly, as regards the complaint dated 27.04.2005, the police authorities stated on record that no offence was registered against the appellant and his parents. However, the appellant and his parents were required to apply for anticipatory bail by approaching the Sessions Court at Pune. Considering the fact that the aforesaid proceedings were initiated without any legal basis after about 11 months from leaving the matrimonial house and the fact that the appellant and his family members were required to take legal redress for no justifiable reasons, it is clear that such an act of lodging a frivolous complaint has resulted in causing mental cruelty to the appellant in terms of provisions of Section 13(1)(ia) of the said Act.

16. A further doubt is created as regards the stand of the respondent that she was compelled to leave the matrimonial house on 13.05.2004. In her affidavit in lieu of examination-in-chief, she has stated that she was driven out along with her minor son by her mother-in-law at 11:30 a.m.. However, in the cross-examination she has admitted that it was true that she left the house of the appellant on 13.05.2004 at about 12:30 p.m. on 13.05.2004.

Considering the aforesaid statements, it cannot be said that the respondent was driven out by her mother-in-law at 11:30 a.m. on 13.5.2004, but, on the contrary according to the respondent she herself left the house on the said day at 12:30 p.m.

17. We find that besides this act of lodging a frivolous and baseless complaint that has resulted in causing mental cruelty, no other instances relied upon by the appellant in his Petition can be said to be proved as having caused cruelty.

18. The learned Judge of the Family Court, however, while considering the aforesaid aspect, has totally ignored filing of the aforesaid report and resultant act of the appellant and his family members being required to apply for anticipatory bail. The said aspect has not at all been considered by the Family Court in the impugned judgment. We are, however, satisfied that the aforesaid act has resulted in causing mental cruelty to the appellant. Hence, the point No.(1) is answered in the affirmative.

19. **As to point No.2** : The appellant has sought divorce on the ground of cruelty in view of the fact that according to him the respondent left the matrimonial house in the month of February, 2002. According to him, thereafter a male child was born on 26.07.2002, but, the respondent did not return back to her matrimonial house. It was only on 27.02.2004 that the respondent returned back. Though the respondent stayed at the matrimonial house for a short period till 13.05.2004, there was no cohabitation

between the parties for the period from 27.02.2004 till 13.5.2004. Thus, according to the appellant the desertion by the respondent was from February, 2002 itself and the same continued till filing of the Petition for divorce on 20.06.2005.

20. According to the respondent, she had left the matrimonial house in February, 2002 but with the consent of the appellant and his parents. She has further stated that she returned back from her parents house after 15 to 20 days stay there. Thereafter again she went to her parents house in July, 2002 and a male child was born on 26.07.2002. She has further stated that she was forcibly driven out from the matrimonial house on 13.05.2004 due to which she was required to take shelter of her uncle's house. She has further stated that she was residing in the house of the appellant at village Bazarwadi but the appellant had not cared to take her back.

21. Thus, while considering the case of the appellant for grant of divorce under provisions of Section 13(1)(ib) of the said Act, it will have to be appreciated that the same is based on the pleading that the respondent had deserted the appellant from February, 2002. Though, she had returned to the matrimonial house and resided there for the period from 27.02.2004 till 13.05.2004, there was no cohabitation between the parties. According to the appellant, though both of them stayed under the same roof for the period from 27.02.2004 till 13.05.2004, the same was of no consequence whatsoever and the desertion as such

would have to be treated from February, 2002 itself. Under the provisions of Section 13(1)(ib) of the said Act, the desertion has to be for a period of two years prior to filing of the Petition for divorce. The petition for divorce was filed on 20.06.2005.

22. In this context, it would be necessary to consider the law laid down by the Supreme Court in ***Savitri Pandey (Supra)***. It was observed therein that to constitute desertion, the factum of separation and intention to bring cohabitation permanently to an end is necessary. In paragraphs–9 and 10 of the said judgment, it has been observed thus :

> "9. Following the decision in Bipinchandra Case (AIR 1957 SC 176) this Court again reiterated the legal position in *Lachman Utamchand Kirpalani v. Meena (AIR 1964 SC 40)* by holding that that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as deserting spouse is concerned, two essential conditions must be there (1) the factum of separation and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and

subsequent to the actual acts of separation.

10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case."

23. Insofar as the factum of separation is concerned, it is not in dispute that the respondent had left the matrimonial house in February, 2002. The respondent at that point of time was pregnant and delivered a male child on 26.07.2002. It is the case of the appellant that the respondent had left the matrimonial house in February, 2002 without the consent of the appellant. This fact, however, has been denied by the respondent and according to her she had gone to her parents house as she was pregnant. It is not in dispute that a male child was born on 26.07.2002. In this backdrop, the effect of the respondent going to her parents house in February, 2002 on account of her pregnancy will have to be taken into account. According to the appellant, the birth of the child was not informed to him and he got knowledge about the same from his aunt. He has stated so in his cross-examination. Similarly the respondent had not returned to the matrimonial house shortly after her delivery. She continued to reside at her parents house till

February, 2004. According to her after there were certain talks between the family members of the appellant and the respondent, she had returned back to the matrimonial house.

24. In this background, it will have to be observed that though the aspect of the respondent leaving the matrimonial house and going to her parents house on account of her pregnancy will have to be held as a justifiable reason to leave the matrimonial house, the subsequent conduct of not returning to the matrimonial house shortly after her delivery and her continuous stay at her parents house till 27.02.2004 will have to be held to be unjustified. The respondent has not been able to give any justifiable reason as to why she did not return to her matrimonial house shortly after her delivery on 26.07.2002. Broadly it can be expected that after a period of about two to three months of delivery, a lady is expected to return to her matrimonial house. Hence, it cannot be said that the respondent had intentionally left the matrimonial house in February, 2002 when she was pregnant till about three months after delivering a male child on 26.07.2002. However, the respondent has not been able to justify the reason for staying away from the matrimonial house and not returning back at least after October, 2002. The factum of separation for aforesaid period is undisputed.

25. It is not in dispute that on 27.02.2004 the respondent returned to the matrimonial house and stayed there till 13.05.2004. According to the appellant during the said period, there was no cohabitation between the parties. It is to be noted that this was the

specific case set up by the appellant in his pleadings and his examination-in-chief. However, there is no suggestion given to the appellant in his cross-examination that his case of there being no cohabitation during said period was either false or untrue. Though the respondent in her written statement has denied the same, the aspect of the appellant not being cross-examined on this crucial aspect will have to be taken into account. Similarly the act of the respondent of not meeting her mother-in-law when she was hospitalized in April, 2004 on account of a heart ailment is another relevant factor. The appellant has stated that he had desired that the respondent ought to have attended to his mother when she was hospitalized. He has further stated that at that point of time the respondent was busy in household work. Nevertheless, absence of even a single visit by the respondent to enquire about her mother-in-law is an indicator of the respondent's attitude. Though the aforesaid incidents may by themselves not prove much, if the same are considered collectively they would indicate that the respondent was not serious of residing in the matrimonial house.

26. On 13.05.2004, the respondent left the matrimonial house. Though it was pleaded by her in her written statement that she was driven away by her mother-in-law, in para–18 of her cross-examination she has stated that she left the matrimonial house at about 12:30 p.m. on 13.05.2004. Thereafter she lodged a complaint at Bhor police station. The complaint is also silent of the respondent being forcibly driven out of the matrimonial house.

Thereafter went to the house of the appellant's father at Bazarwadi. The said house was locked and the appellant entered therein by broking open the said lock. These facts can be gathered from the deposition of the respondent.

. The above facts, therefore, indicate a clear intention to bring cohabitation permanently to an end (*animus deserendi*). The respondent has admitted in her cross-examination that she did not take any steps whatsoever to resume cohabitation nor she issued any notice to the appellant to take her back. It is, therefore, clear that the respondent had decided to stay away from the matrimonial house on her own accord. This fact is further fortified by the subsequent conduct of the respondent. After about 11 months of leaving the matrimonial house, the respondent lodged a complaint under Section 498A of the Indian Penal Code on 27.04.2005. It is not in dispute that after 13.05.2004, the parties did not meet nor was there any fresh cause of action on the basis of which the act of the respondent of lodging aforesaid report could be said to be justified. The state of mind of the respondent can be gauged from this factor also inasmuch on account of aforesaid police report, the appellant and his family members were required to adopt legal proceedings to prevent their arrest. It is therefore clear from the aforesaid material on record that the respondent had in effect deserted the appellant for no reasonable cause at least from November, 2002 till filing of the divorce petition on 20.06.2005. There is no material placed on record to indicate that on account of

the conduct of the appellant or his family members, the respondent was compelled to leave the matrimonial house.

27. Thus from the aforesaid, it will have to be held that the appellant has succeeded in proving that the respondent had deserted him within the meaning of Section 13(1)(ib) of the said Act. Said desertion was for a period of more than two years prior to filing of the divorce Petition. The same was for the period from November, 2002 till 20.06.2005. Hence point No.2 will have to be answered accordingly by holding that the appellant had proved that the respondent had deserted him and left the matrimonial house without any just and sufficient cause.

28. **As to point No.3:** Perusal of the judgment passed by the learned Principal Judge, Family Court at Pune reveals that the entire material on record has not been referred to while answering the issues as framed. Without adverting to the material on record, the learned Judge proceeded to record a finding that the appellant had failed to prove his case as regards cruelty as well as desertion, the grounds on which the appellant has sought divorce. In absence of the relevant material on record not being considered, the judgment under challenge cannot be sustained. The same will accordingly have to be set aside. We, therefore, set aside the judgment and decree dated 17.02.2007 passed by the learned Principal Judge, Family Court at Pune in Petition No.A-714/2006. Instead, we hold that the Petition for divorce filed by the appellant deserves to be allowed and decree of divorce on the grounds of

cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the said Act deserves to be passed.

29. After the conclusion of the hearing, the learned Counsel for the appellant filed on record an affidavit sworn by the appellant on 17.06.2014 in which it is stated that the appellant was willing to deposit an amount of ₹5 Lakhs in this Court to be invested in a fixed deposit account. It is further stated that the interest accrued on said fixed deposit could be paid to his son by way of maintenance till he became major. It is further stated that the principal amount thereafter be returned to the appellant after his son attains majority.

30. The appellant being the father of the child born on 26.07.2002, he is responsible to provide for his maintenance. Said son now must be about 12 years of age. The appellant can therefore be directed to deposit a sum of ₹5 lakhs in the Family Court at Pune. The said amount can be directed to be invested in a fixed deposit account and the interest amount accrued can be paid to said minor son as amount of maintenance through his mother, the respondent. On attaining majority the parties can apply for modification of this direction considering the requirement of educational expenses of the son. The aforesaid direction is without prejudice to the rights of the parties with regard to any application that may be moved under Section 25 of the Hindu Adoptions and Maintenance Act, 1955. The undertaking of the appellant is accepted to the aforesaid extent. The aforesaid amount

of ₹5 lakhs be deposited within a period of six weeks from today. The appellant shall however continue to deposit monthly maintenance as per order dated 30.07.2007 till 31.12.2014 as some period would be required for interest to accrue on the amount of fixed deposit.

31. In the result, we pass the following order :

:: O R D E R ::

(i) Family Court Appeal No.70 of 2007 is allowed;

(ii) The judgment and decree dated 17.02.2007 passed by the learned Principal Judge, Family Court at Pune in Petition No.A-714/2006 is quashed and set aside;

(iii) A decree for divorce is hereby passed under provisions of Section 13(1)(ia) and 13(1)(ib) of the said Act and the marriage solemnized between the appellant and the respondent stands dissolved;

(iv) Directions contained in para-30 of the judgment shall operate as order of the Court;

(v) There will be no order as to costs;

(vi) Decree be drawn in aforesaid terms.

(A. S. CHANDURKAR, J.) (A. S. OKA, J.)