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

## FAMILY COURT APPEAL NO. 48 OF 2012

**Ambika Ramakant Uniyal** ]
Indian Inhabitant, Adult, ]
Aged about 26 Years, Occ. Housewife, ]
R/at C/o. Mr. Ramanand Kanswal Sabbal ]
Singh Ki Chawl, Ghavtan Pada No. 1, ]
S.V. Road, Dahisar (E), Mumbai - 400 068. ] Appellant
(Org. Petitioner)

Versus

**Mr. Ramakant Shriram Uniyal** ]
Indian Inhabitant, Adult, ]
Aged about 30 years, Occ. Service, ]
R/at B/501, Prince Castle, ]
Behind St. Joseph School, Station Road, ]
Vikroli (W), Mumbai. ] Respondent
(Org. Respondent)

**WITH**
## FAMILY COURT APPEAL NO. 50 OF 2012

**Ambika Ramakant Uniyal** ]
Indian Inhabitant, Adult, ]
Aged about 26 Years, Occ. Housewife, ]
R/at C/o. Mr. Ramanand Kanswal Sabbal ]
Singh Ki Chawl, Ghavtan Pada No. 1, ]
S.V. Road, Dahisar (E), Mumbai - 400 068. ] Appellant
(Org. Respondent)

Versus

**Mr. Ramakant Shriram Uniyal** ]
Indian Inhabitant, Adult, ]
Aged about 30 years, Occ. Service, ]
R/at B/501, Prince Castle, ]
Behind St. Joseph School, Station Road, ]
Vikroli (W), Mumbai. ] Respondent
(Org. Petitioner)

Mr. Mandar Limaye, for the Appellant

Mr. Ramakant S. Uniyal, Respondent-in-Person present.

**CORAM : SMT. V.K. TAHILRAMANI &**
**MR. V.L. ACHLIYA, JJ**

**Reserved on : 22nd OCTOBER, 2013.**
**Pronounced on : 18th NOVEMBER, 2013.**

**COMMON JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :-**

1. These appeals are filed by the appellant against the common Judgment & Order dated 13.02.2012 passed by the Judge, Family Court at Bandra, Mumbai in Petition No. A-1727 of 2008 and Petition No. A-1538 of 2009. By the said Judgment and Order, Petition No. A-1727 of 2008 was dismissed and Petition No. A-1538 of 2009 was allowed and marriage of the appellant and the respondent was dissolved by a decree of divorce. Petition No. A-1727 of 2008 was filed by the appellant-wife claiming a decree

of restitution of conjugal rights under Section 9 of the Hindu Marriage Act 1955 and Petition No. A-1538 of 2009 was filed by the respondent-husband for a decree of divorce on the ground of cruelty and desertion. In FCA No. 48 of 2012, the appellant has challenged the order whereby the petition for decree of restitution of conjugal rights was dismissed and FCA No. 50 of 2012 is directed against the order allowing the petition for divorce filed by the respondent. As both the appeals are directed against the Judgment and Decree dated 13.02.2012, both the appeals are being disposed of together.

2. It is admitted fact that the marriage between the appellant and the respondent was solemnized on 28.02.2002 at Mumbai as per Hindu Vedic rites and customs. Thereafter, the appellant went to the respondent for cohabitation.

3. In Petition No. A-1727 of 2008, the appellant has averred that two sons i.e Hitendra and Chirayu @ Krishna were born from this wedlock. The elder son Hitendra was born on 21.06.2004 and

second son Krishna was born on 15.08.2006. It is an admitted fact that custody of elder son Hitendra is with the respondent-father and the custody of younger child Krishna is with the appellant-mother. It is the case of the appellant that initially, the appellant was treated well. Thereafter, the mother of the respondent had taken all the stridhan and ornaments from her on the pretext of safety and not returned them to her.

In 2005, the appellant was suffering from Tuberculosis and the respondent and his mother compelled her to go her parental house for medical treatment. After the birth of younger son Krishna, the respondent and his family members started doubting her character and stated that her younger son is an illegitimate child. On 28.02.2007, the respondent and his parents picked up a quarrel in relation to dowry amount of Rs. 5 Lacs and one flat which was demanded from her father. As the appellant showed inability to pay the dowry amount and to give the flat, therefore, the appellant was thrown out from her matrimonial home along with her younger son Krishna. Since then, she is residing at the house of her parents. She requested the respondent to take her

back for cohabitation but he did not do so. Thereafter, she issued notice on 26.05.2008 for reunion, however, the respondent did not take her for cohabitation, therefore, she filed the said petition for restitution of conjugal rights in the month of August 2008.

4. The respondent had filed Petition No. A-1538 of 2009 for a decree of divorce on the ground of cruelty and desertion. According to the respondent, the appellant deserted him on 28.02.2007, hence, he filed the petition for divorce on the ground of desertion and cruelty in the month of July 2009. It is his further case that the appellant subjected him to physical and mental cruelty. The respondent has given specific instances in his evidence about cruelty caused to him by the appellant. According to him, the appellant was residing at her parent's home at the time of by-pass surgery of his father on 16.07.2004 and gall bladder operation of his mother though she was expected to reside in her matrimonial home, hence, it is cruelty to him. The appellant did not attend the marriage ceremony of his brother Haricharan on 21.01.2008. The appellant also did not attend the

marriage ceremony of his sister Nirmala on 29.02.2008 though she and her father had been specially invited for the same. The appellant remained absent only to lower the image of the respondent and his family in the eyes of other relatives and society, therefore, it has caused mental cruelty to him. It is the further case of the respondent that the appellant did not remain present at St. Joseph High School for interview relating to admission of elder son Hitendra inspite of request by the respondent. Due to this, one year's loss in education career was caused to son Hitendra due to not getting admission. This also caused severe mental trauma to the respondent.

5. The respondent has stated in his evidence about the specific instances of cruelty on 04.06.2006. He has stated that he invited RW 3 Vinay Gupta at his home for dinner. On that day, the appellant did not greet him. When RW 3 Vinay Gupta insisted to meet the appellant, she came out of the bedroom and started giving abuses to the respondent and his friend Vinay Gupta. Thereafter, she picked up stainless steel jar full of water and

banged it on the respondent's head. This incident has been specifically corroborated and supported by RW Vinay Gupta. Both the respondent and RW 3 Vinay Gupta were cross-examined but no vital admission was got from them to cause us to disbelieve their evidence.

6. According to the respondent, second child Chirayu @ Krishna is not his biological child which shows that the appellant had extra marital relations due to which the respondent underwent severe mental suffering. Thus, mental cruelty was caused to him by the appellant.

7. It is the further case of the respondent that in June 2005, the appellant was suffering from Tuberculosis, hence, she stayed at her parent's house till January 2006 to recuperate. When she came back to her matrimonial home, she was three months pregnant and the second child Krishna was born on 15.08.2006. Though the evidence of the appellant shows that the respondent is biological father of the child, the evidence of respondent shows

that the appellant was suffering from Tuberculosis, therefore, she went to her parent's home for taking medical treatment for six months and thereafter, when she returned to her matrimonial home, at that time, she was three months pregnant. Therefore, at the relevant time, there was no access between the appellant and the respondent. His evidence further shows that when he came from outstation and went to fetch the appellant after 28.02.2007, at that time, the appellant handed over the custody of elder son Hitendra stating that he is biological father of the son Hitendra and she did not handover the custody of younger son Krishna stating that he is not biological father of son Krishna.

8. It is pertinent to note that the respondent has filed an application vide Exh. 7 for holding DNA test of the appellant as well as child Krishna, it was dismissed on 12.05.2009. Thereafter, the respondent again filed Review Application at Exh. 38 and it was allowed by the Family Court on 15.05.2010. The appellant filed Writ Petition against the said order passed below Exh. 38. The said Writ Petition was dismissed on 27.09.2010 by the High

Court holding that if the child is sent for DNA test, then clear picture will come before the Court. Thereafter, Exh. 68 was sent to the Forensic Science Laboratory and Chemical Analyzer to Government, Santacruz, Mumbai. Thereafter, they issued letter dated 21.07.2010 about compliance of the formalities. After complying the formalities, the Asst. Chemical Analyzer to Government, Executive Science Laboratory, Mumbai sent a letter to this Court dated 29.07.2010 at Exh. 69 stating that the respondent Ramakant was present for giving blood sample for DNA test but the wife Ambika was absent, therefore, he could not take sample of blood of Ambika. It is further pertinent to note that the appellant wife has filed an affidavit cum reply at Exh. 83 stating that she is not ready for DNA Test and she refused to undergo DNA test. She contended that there is strong reason for refusal of DNA test and she will put it forward before the Court at appropriate time about her refusal for DNA test but it is seen that even as of today, the appellant has not put forward any ground for refusal to undergo DNA test of herself and her son Krishna. In such case, the evidence of the respondent that Krishna is not his

biological son is probable and believable. On the contrary, the evidence of the appellant is not trustworthy and believable.

9. The appellant has admitted in her pleadings as well as examination-in-chief that she was suffering from Tuberculosis and she stayed in parent's home for six months. She has also admitted that after the period of six months, when she came back to her matrimonial house, at that time, she was three months pregnant. In such case, the onus shifts on the appellant to prove that the respondent is the father of her son Krishna. She has to prove that there was access between her and the respondent during the period of conception of her son Krishna. The appellant has neither pleaded about conceiving of second child in the written statement nor in her evidence that she conceived the child from the respondent when she was residing in her parent's home for six months.

10. Reliance was placed by the learned counsel for the appellant on the fact that in cross-examination, the appellant has

stated that the respondent used to come to her parent's home. But the appellant has not specifically, pleaded in her written statement or stated in her evidence that when the husband used to come to her parent's home, at that time, he had physical relations with the appellant and she conceived the second child Krishna.

11. Admittedly, the second child Krishna was born on 15.08.2006. It means that the child might have been conceived in the month of November 2005 during which time the appellant was residing with her parents. In such case, the law demands specific pleadings and evidence of the appellant that in the month of November 2005, the respondent came to her parent's home and there was access between the appellant and the respondent, however, there is no specific pleadings as well as evidence adduced by the appellant to show that in the month of November 2005, the respondent had come her parent's house and there was access between them so as to conceive the child.

12. Respondent has stated in his evidence that in July 2005, the appellant went to her parent's home and she was in her parent's home till January or February 2006. The appellant, in cross-examination, has stated that she went to her parent's home but she does not remember if the date was 15.07.2005, however, she has admitted in her cross-examination that after six months, she returned to her matrimonial home and at that time, she was pregnant. She has stated in her evidence that on the first occasion, she resided at her parent's house for six months and on the second occasion, she went to her parent's house on 28.02.2007, since then she is residing in her parent's house.

13. The appellant is required to prove that the respondent is the biological father of child Krishna by adducing cogent, supportive and corroborative evidence, however, this has not been done by the appellant in the present case. In the present case, there is no evidence to corroborate the case of the appellant. We also find that her evidence is not trustworthy and reliable. The appellant was required to adduce positive evidence,

however, though the appellant has examined her father PW 2 Ramanand to support her case, it is seen that the evidence of PW 2 Ramanand is absolutely silent on the point that in November 2005, the respondent visited their house and there was opportunity of access between the appellant and the respondent. On the other hand, the respondent in his affidavit has stated that during the period from June 2005 to January 2006, he had no access at all to the appellant and during the said period, there was no physical relations or sexual intercourse with the appellant. If really, the respondent is the biological father of child Krishna, then the appellant would have no hesitation to undergo DNA test to prove the same but she has refused to undergo DNA test for herself and child Krishna. It is well settled that if any person refuses to undergo DNA test, then adverse inference can be drawn against the person who refuses to undergo DNA test, hence, in such case, the Family Court was right in drawing an adverse inference against the appellant.

14. Thus, the appellant has failed to discharge the onus on her

that Krishna is the biological child of the respondent. In this connection, we may refer to the decision of this Court in the case of **Leonard Mark Hillarlo Vs Seby Hillarolo**[1], wherein this Court has observed that in order to decide paternity evidence of mother, it must be corroborated and supported by the evidence of other witnesses. In the above authority, the respondent-father refused for undergoing DNA test, therefore, it has held that the woman has succeeded to prove the paternity by relying on her and her other witnesses. But in the present case, the appellant's evidence itself is not trustworthy. Her other witnesses have also not deposed about the access of the appellant and the respondent at the relevant time of conceiving her younger son Krishna. Moreover, the appellant has denied for DNA test.

15. After the amendment of 1976, a single act of adultery is also sufficient to grant a decree of divorce. In the present case, the appellant has refused for DNA test, therefore, adverse inference is required to be drawn against her that respondent is not biological father of her younger son Krishna. The appellant has failed to

1 2007(1) Bom.C.R. (Cri) 577 (Panaji Bench)

establish that the respondent is biological father of the second child Krishna. This means that second child Krishna is not legitimate child of the respondent. In such case, a clear conclusion can be drawn that the birth of the second child Krishna took place due to voluntary sexual intercourse by the appellant with some other person other than the respondent. In such case, it can certainly be said that grave cruelty was caused to the respondent. In such case, the Family Court was right in holding that the respondent has proved that the appellant treated him with cruelty.

16. Learned counsel for the appellant submitted that the instances of cruelty which have been stated by the respondent do not fall under the term of cruelty but they are part of the daily wear and tear of matrimonial life. He placed reliance of the decision of the Supreme Court in the case of **Savitri Pandey Vs Prem Chandra Pandey**[2] to support this contention. However, we find that it is observed in the very same decision that mental cruelty consists of conduct which causes mental or emotional

2 (2002) 2 SCC 73

suffering. In the present case, there was grave mental and emotional suffering to the respondent when the appellant did not attend the wedding of brother as well as sister of the respondent, when the appellant did not appear for the interview in relation to the admission of elder child Hitendra due to which Hitendra lost one year in his educational career. The major point in relation to cruelty in the instant case is that the appellant had given birth to Krishna who was not the biological child of the respondent. There cannot be greater form of cruelty than this which can be meted out by a wife to her husband. This cruelty is such that it causes mental as well as emotional suffering.

17. Thereafter, the learned counsel for the appellant placed reliance on the decision of the Supreme Court in the case of **Vinita Saxena Vs Pankaj Pandit[3],** wherein it is observed that the general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It must be proved

3 (2006) 3 SCC 778

that one partner in the marriage, however mindless of the consequences has behaved in a way which the other spouse could not, in the circumstances, be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The Court has then to decide whether the sum total of the reprehensible conduct was cruel. We are of the view that the decision would not apply to the facts of the present case. The instances of cruelty which have been proved by the respondent are such as to render the continued living together of spouses harmful or injurious. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than physical harm and create in the mind of the injured person such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such willful treatment of the party which caused

suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

18. The word "cruelty" has not been defined and it has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact of the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

19. The legal concept of cruelty, which is not defined by statute, is generally described as conduct of such character as to have

caused danger to life, limb or health (bodily or mental) or to give rise to reasonable apprehension of such danger. In the present case, there has been physical cruelty by the appellant to the respondent. The evidence shows that she picked up a stainless steel jar full of water and banged it on the respondent's head when RW 3 Vinay Gupta had come home for dinner. This is also corroborated by the evidence of RW 3 Vinay Gupta. There are many instances of mental cruelty which has been caused by the appellant to the respondent which have been stated by him in detail in his evidence. Nothing has emerged in cross-examination so as to disbelieve his testimony on the point of cruelty. We have already dealt with in detail the point of mental cruelty in as much as the material on record points out to the fact that the appellant had an illegitimate child.

20. The Family Court has granted divorce on the ground of desertion as well as cruelty. As far as the ground of desertion is concerned, the Family Court has observed that the respondent had voluntarily deserted the petitioner on 28.02.2007 and was

residing at her parent's home at Dahisar on her own accord for not less than two years preceding the filing of the petition for divorce and that she has deserted the petitioner (present respondent) without sufficient cause.

21. It is the case of the appellant that on 28.02.2007, the respondent and his mother made demand for dowry of Rs. 5 Lacs and a flat as she could not fulfill the same, on that day, she was thrown out of the house in her wearing clothes along with younger son Krishna, therefore she is residing with her parents since 28.02.2007. However, the evidence on record shows that the respondent was out of station on that day. His mother was also not present in the house on 28.02.2007. In fact, the respondent's mother was at her daughter's house on that day. The appellant has admitted that it is true that her mother-in-law was at Kandivali since prior to 12-13 days of her leaving the house. It is seen from the evidence that on that day, the appellant called her father and went to her parent's home. The appellant has specifically admitted in her cross-examination that

when she went to her parent's home at that time, she was accompanied by her father. Her father PW 2 Ramanand has specifically stated in his examination-in-chief that on 28.02.2007, he brought his daughter i.e the appellant to his home. He has further clearly admitted in his cross-examination that the respondent and his family members did not drag his daughter out of the house. This clearly shows that the appellant was not driven out by the respondent or any of his relatives from her matrimonial home. The admissions of the appellant and her father clearly establish that on 28.02.2007, the respondent as well as his mother were not present in the matrimonial home. In this connection, we may refer to the additional affidavit of the appellant at Exh. 25A which shows that her mother-in-law picked up a quarrel with her and the respondent supported her mother and driven her out of the matrimonial home on 28.02.2007. Her admission that on 28.02.2007, the respondent husband and his mother were not present in the matrimonial home belie this stand taken by her. Hence, her contention that the respondent and his mother picked up a quarrel with her and they have driven her out

of the matrimonial home on 28.02.2007, does not appear to be trustworthy and believable. The admission of the father of the appellant establishes that she was not driven out of the house by the respondent or his mother but she had left her matrimonial home of her own accord with her father along with her son in absence of the respondent-husband and her mother-in-law, therefore, her defence that the respondent and his mother had driven her out from the matrimonial home on 28.02.2007 by giving abuses and ill treatment is itself falsified by her own admissions and the admissions of her father, therefore, the evidence of the appellant that the respondent husband had driven out the appellant from the society of the respondent without any just and reasonable cause is not trustworthy and reliable. The evidence on record shows that the appellant has resided at her parent's home from 28.02.2007 and the petition for divorce was filed in the month of July 2009. This shows that for a period of more than two years and four months prior to the respondent filing the divorce petition, the appellant had left the house. The evidence on record shows that after 28.02.2007, the appellant

visited the house of the father of the appellant, however, his wife i.e the appellant refused to accompany him and he was threatened with dire consequences. Respondent was told that they will file a case under Section 498-A of IPC. On account of this, he filed written complaint in Dahisar Police Station on 04.03.2007 which is at Exh. 72. This shows that though the respondent made efforts to bring back the appellant for co-habitation, she has refused. Exh. 72 further supports this fact. Thus, it is seen that the appellant is taking advantage of her own wrong. Thus, the respondent husband has proved that the appellant was residing in her parent's home by deserting him without any fault on his part.

22. The learned counsel for the appellant submitted that admittedly on 26.05.2008, notice for reunion was given by the appellant, however, thereafter, cohabitation did not take place. Thereafter, in the month of August, 2008, the appellant has filed the petition for restitution of conjugal rights. He contended that thus, it is seen that the appellant has demonstrated her readiness

and willingness to discharge her continuing obligation to return to the matrimonial home. He submitted that from the notice for reunion and filing of the petition for restitution of conjugal rights, it is seen that the appellant had no intention of bringing cohabitation permanently to an end by deserting the spouse. In such case, the order of granting divorce on the ground of desertion is incorrect.

23. Reliance was placed on the evidence of PW 3 Basantidevi which shows that she tried to send the appellant for co-habitation to the respondent, however, as observed earlier by us, the evidence of the appellant herself is not trustworthy and believable. In such case, the evidence of PW 3 Basantidevi is not useful to the appellant.

24. Learned counsel for the appellant has placed reliance on the evidence of RW 3 Vinay Gupta who has stated that the appellant told him in the court premises that she wanted to live with the respondent, however, she had two conditions i.e first she did not

want to stay with the respondent in her matrimonial house and second, she did not agree for D.N.A. test in relation to dispute relating to his second son.

25. On the point of desertion, the learned counsel for the appellant placed reliance on the decision of the Supreme Court in the case of **Adhyatma Bhattar Alwar Vs Adhyatma Bhattar Sri Devi**[4]. He submitted that in the said case, it is observed that in order to prove desertion, the essential ingredients have to be proved i.e (i) separation in fact and (ii) animus deserendi, the intention of bringing cohabitation permanently to an end by the deserting spouse and on behalf of deserted spouse the absence of consent and absence of conduct motivating the desertion.

That there was a separation in this case is seen from the fact that the appellant left the house on 28.02.2007 and that the petition for divorce was filed in the month July 2009. The evidence on record shows that the appellant left the matrimonial house of her own accord and as the respondent husband was not at home on that day and he was not even aware that the

4 (2002) 1 SCC 308

appellant was leaving the house, there is complete absence of consent on his part. It is further seen that there is absence of any conduct on the part of the respondent motivating the desertion. The intention of bringing cohabitation permanently to an end by the appellant is seen from the fact that on 28.02.2007, she walked out of the house with her bags. Her father was accompanying her at that time. Learned counsel for the appellant tried to place reliance on the evidence of RW 3 Vinay Gupta wherein he has admitted that when the appellant met him in the Court premises, she had told him that she wanted to cohabit with the respondent and she was not interested to give him divorce. As far as this piece of evidence is concerned, it is seen that at that time, the appellant had put two conditions; first one was that she would not stay with the respondent in her matrimonial home and second was that the respondent should not insist for DNA test in relation to the dispute regarding paternity of the second child. As the main issue in this case appears to be paternity of the second child and the case of the respondent is that the second child was not his biological child, he would obviously not drop his prayer for DNA

test to be conducted on the appellant and on the second child. From the conditions put by the appellant wife, it is seen that her intention was to bring cohabitation permanently to an end as she knew that her husband i.e the respondent would not agree to her conditions. From the facts of the present case, it is seen that the appellant wife had left the house without reasonable cause and without the consent of her husband. In this very decision of Adhyatma Bhattar Alwar, it is observed that two elements are essential as far as the deserted spouse is concerned, the first is absence of consent and the second is absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. In the present case, there was clear absence of consent on the part of the respondent and the evidence on record shows that there was absence of conduct on the part of the respondent and absence of conduct giving reasonable cause to the appellant for leaving the matrimonial home. Thus, it is seen that this decision is of no help to the appellant.

26. It appears that the notice for reunion as well as the petition for restitution of conjugal rights has been filed by the appellant in order to claim maintenance from the respondent and not because the appellant wanted to actually cohabit with the respondent.

27. The appellant had claimed permanent maintenance of Rs. 20000/- per month for herself and Rs. 10000/- per month for her second child Krishna. We have already observed that the evidence on record shows that respondent is not biological father of child Krishna, therefore, legally the respondent is not liable to maintain second child Krishna. Hence, Krishna is not entitled to get any permanent maintenance from the respondent.

28. As far as maintenance to the appellant is concerned, we have already observed that the appellant is voluntarily residing in her parent's home by deserting the respondent-husband. It is settled law that if the wife is voluntarily residing in the parent's home by deserting the respondent, then she is not entitled to get maintenance.

29. The appellant is also claiming return of her stridhan. She has contended that she was thrown out of matrimonial house in her wearing apparels but the evidence on record shows that the appellant went to her parent's house on 28.02.2007 with her father. At that time, the respondent as well as his mother were not at home. Obviously, in such case, when she left her the house with her father and the respondent and his mother were not at home, she would have taken all her belongings including ornaments, jewelery and clothes. It is pertinent to note that her father PW 2 Ramanand has admitted in cross-examination that he took articles of the appellant and her children and went to his home along with his daughter i.e the appellant. This admission clearly shows that the appellant went to her parent's home along with her articles. It is to be noted that in the present case, the appellant has not given detailed list of articles and belongings etc. She has not produced any authentic list of articles given at the time of marriage as required under the provisions of The Dowry Prohibition Act. We have already observed that her evidence does not appear to be trustworthy and believable. On the contrary, the

evidence of her father is in direct contrast to her evidence. He has stated that the appellant went to her parent's home along with her articles and children, therefore, in our opinion, the Family Court has rightly held that the appellant has failed to prove that she is entitled to get articles and belongings from the respondent.

30. Though before the Family Court, the appellant had claimed permanent custody of her elder son Hitendra, it is to be noted that before this Court, no submissions were made on this aspect which shows that there is no grievance about the fact that permanent custody of her elder son Hitendra was granted to the respondent.

31. In this view of the matter, we are of the opinion that the decision of the Family Court does not call for interference. There is no merit in both the Appeals. Both the Appeals are dismissed.

On request of the learned counsel for the appellant, stay to the decree for divorce is continued for eight weeks.

**[MR. V.L. ACHLIYA, J ]** **[SMT. V.K. TAHILRAMANI, J ]**

रविंद्र आंबेरकर