



on 30.01.1990, the appellant-wife left the matrimonial home and the child who was about five weeks at Dadra and deserted him.

When there was a series of civil and criminal proceedings, the husband filed a petition for divorce on 13.02.1992 at District Court, Dadra and Nagar Haveli at Silvassa. The appellant-wife filed a written statement on 29.07.1992 disputing the claim of the husband. Before the District Court, the husband apart from examining himself as PW-1 also examined one independent witness by name Mr. Natwarlal Shah as PW-2. The wife has examined as RW-1. By order dated 26.11.1999, the District Court, Silvassa, dismissed husband's petition for divorce.

...2/-

:2:

Questioning the dismissal of his divorce petition, the husband filed First Appeal No.635 of 2000 before the High Court of Bombay. The High Court, after considering all the materials including the evidences of PW-1, PW-2 and RW-1 and after finding that (a) wife has no justifiable reason to stay away from her husband, (b) refusing to cohabit, (c) leaving one month child uncared for, accepted the case of the husband and granted decree for divorce by dissolving their marriage. Challenging the said order of the High Court, the wife filed the above appeal by way of special leave petition.

Heard learned counsel for the appellant as well as for the respondent.

We perused the relevant materials such as specific assertions in the form of the petition and counter, evidence of PW-1, PW-2 and RW-1 as well as the orders passed by the District Court and the High Court. There is no reason to disbelieve the evidence of independent witness, Mr. Natwarlal Shah (PW-2). From the materials, the following facts have been found proved by the High Court:

- i) The wife left the matrimonial home leaving the infant child of five weeks, on 30.01.1990.
- ii) There was no justification for the wife to leave the matrimonial home on 30.01.1990.
- iii) The wife unjustifiably threw the entire responsibility of bringing up the child of five weeks on the Respondent husband.

..3/-

:3:

- iv) The appellant-wife refused to cohabit with the husband during several reconciliation attempts made during the pendency of the proceedings.
- v) Obstinate attitude adopted by the appellant-wife in refusing the husband's bona fide offer of reconciliation.

In addition to the above factual findings, the High Court has also concluded that the wife is guilty of desertion for a continuous period of more than two years without any justification and on this ground also the husband is entitled for a decree of divorce.

It is also pointed out that there is an irretrievable break down of the marriage between the spouses who have lived separately for nearly 20 years from 30.01.1990.

Taking note of all these aspects, factual findings by the High Court based on acceptable evidence, conduct of the appellant-wife in leaving the matrimonial home immediately after giving birth to a child and refusal to join matrimonial home, we feel that the High Court was fully justified in granting decree for divorce in favour of the husband. We do not find any merit in the appeal filed by the wife, consequently, the same is dismissed. No cost.

.....J.  
(P. SATHASIVAM)

.....J.  
(Dr.B.S. CHAUHAN)

New Delhi,  
September 08, 2010.