

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 14 OF 2015

Shubhangi w/o Nitin Kulkarni
age 36 years, occ. Household
r/o c/o Kantrao Daskhedkar
Adarsh nagar Near Ganesh Mandir
Pangri Road, Beed
Tq. Dist. Beed

.. APPELLANT

VERSUS

Nitin s/o Sudhakar Rao Kulkarni
age 39 years, occ. Service
r/o 15, Jivheshwar colony,
Behind Katkat Gate, Aurangabad
Dist. Aurangabad.

.. RESPONDENT

Mr. G.K. (Naik) Thigale, advocate for appellant.

Mr. P.K. Nikam, advocate for respondent.

=====

CORAM : R.M. BORDE &

A.I.S. CHEEMA, JJ.

DATE : 30th NOVEMBER, 2015.

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Admit. Taken up for final disposal with consent of parties.
3. Appellant is challenging the order passed by Family Court, Aurangabad, on 23.01.2015 granting decree of divorce in favour of respondent-husband.
4. Respondent – husband presented application under section 13(1)(i-a)

(i-b) of the Hindu Marriage Act, 1955, seeking decree of divorce against appellant-wife on the ground that the appellant-wife during their co-habitation did not behave in proper manner which resulted in harassment to the husband. Respondent-husband alleged that appellant had made false unsustainable allegations against him. The allegations are in respect of keeping illicit relations with his sister-in-law. According to husband, raising such unsustainable, false allegations in respect of adulterous conduct amounts to cruelty.

5. Perusal of record shows that the appellant-wife did not defend the application diligently and remained continuously absent. She did not present written statement for considerable period. She also did not care to produce evidence on her behalf. Thus, there was no other alternate available to the court except granting decree as prayed for by respondent-husband.

6. Learned counsel for appellant-wife submits that since appellant is required to shoulder the responsibility of maintaining a minor daughter born to the couple during the wedlock, she could not prosecute the proceeding before the Family Court diligently. She resides at Beed and it was difficult for her to attend the proceeding initiated at Family Court, Aurangabad. It is also contended that due to her ill health and ill health of her daughter, she could not pay proper attention to the proceeding initiated in the Family Court, Aurangabad. It is further contended that since the matter relates to matrimonial dispute between the parties and since the

appellant could not diligently prosecute the proceeding before the Family Court, it would be in the interest of justice to grant one opportunity to appellant-wife to place her defence before the Family Court and to produce witness on her behalf and to remit the matter to the Family Court.

7. It is a matter of record that appellant-wife did not adduce her evidence to substantiate her case. In these circumstances, with a view to extend one more opportunity to the appellant to defend her case and to lead evidence in support of her contention, we deem it appropriate to remit the matter back to the Family Court. Appellant-wife undertakes to co-operate the Family Court in disposal of the matter. We do not propose to go into the merits of the contentions raised by the parties and, merely with a view to extend additional opportunity to the appellant-wife, we remit the matter back to the Family Court for re-consideration. It would be open for the respondent-husband also to adduce further evidence, if he desires. Appeal as such stands allowed.

8. Impugned order passed by the Family court is quashed and set aside and the matter stands remitted back to the Family court for re-consideration. The parties shall cause appearance before the Family Court on 14th December, 2015 and as such, no separate notice requiring their presence before the Family Court shall be necessary. It would be open for the appellant-wife as well as respondent-husband to adduce evidence before the Family Court. Appellant-wife undertakes to co-operate the Family Court in disposal of the appeal. The Family Court shall decide the matter, as

expeditiously as possible, preferably within a period of four months from today. No costs.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE

dyb