

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

SECOND APPEAL NO. 517 OF 2012

Rohini W/o Vishwanath Vispute
Age : Major, Occu. Household,
R/o Gandhi Chowk, Mayur Jewellers
At present Varangaon, Tq. Bhusawal
Dist.Jalgaon

.. APPELLANT
[Orig.Defendant]

Versus

Shri Vishwanath S/o Jagadnath Vispute
Age : Major, Occu-Service
R/o Girna Colony, Tq. Bhadgaon
Dist.Jalgaon

.. RESPONDENT
[Orig.Plaintiff]

...

Miss Surekha Mahajan, Advocate for appellant
Shri V.B.Patil, Adv. for respondent.

...

CORAM : N.W.SAMBRE, J.

DATED : 1st JULY, 2015

ORAL ORDER :-

This Second Appeal is filed by original defendant who suffered decree for divorce in Hindu Marriage Petition No.327/2005 by judgment and order dated 22/2/2008 passed by Second Joint Civil Judge, Senior Division, Jalgaon and Appeal at the behest of present appellant in

Civil Appeal No.101/2008 before District Judge-2, Jalgaon also came to be dismissed on 1/2/2011 confirming decree passed by Civil Judge, Sr.Division, as such present Second Appeal.

2] The facts as are necessary for decision of this Appeal are as under :

That the parties to the Appeal married on 27/5/1992 and out of said wedlock, son Rishikesh @ Ganesh was born.

3] It appears that since thereafter, parties to the Appeal were not getting along well. The proceeding for divorce came to be filed by respondent-husband under the provisions of Section 13(1) (i-a) and 13 (1) (i-b) of Hindu Marriage Act, 1955.

4] The proceedings were resisted by present appellant by filing written statement at Exh.15 opposing the claim for divorce.

5] Based on the pleadings of the parties, learned trial Court framed issues at Exhs.16 and 55.

6] In support of the claim Petition, respondent-husband relied upon notice Exh.22, acknowledgment

Exh.23, Will Deed of the father of respondent-husband Exh.24, certified copy of Criminal Application No.47/2004, so also purshis filed in the said proceeding Exh.26, Criminal Application No.512/2004 filed by husband Exh.27, alongwith other documentary evidence. In support of claim for divorce, respondent-husband examined himself at Exh.18, his maternal uncle at Exh.38, another maternal uncle at Exh.39.

7] The appellant-wife filed her affidavit in support of her defence at Exh.41 and examined her elder sister Mangala at Exh.42, father Murlidhar at Exh.43 and her brother Jitendra at Exh.51.

8] Based on the analysis of the pleading and evidence brought before it, the learned Court of Civil Judge, Senior Division, Jalgaon allowed the claim for divorce by its judgment and order dated 22/2/2008.

9] In Appeal, present appellant raised an issue as regards the denial of opportunity, as according to appellant, additional witnesses who were sought to be examined were not permitted. According to appellant, the judgment was passed without hearing her, as such, the appellate Court having regard to the claim before first appellate Court dismissed the Appeal on 1/2/2011.

10] Heard the learned counsel for the appellant

Miss.Mahajan and the learned counsel for respondent Shri Patil.

11] Learned counsel for appellant for consideration of this Court sought to raise two substantial questions of law as under :

A] Whether denial of opportunity to the present appellant in examining additional witnesses calls for interference in the second appellate jurisdiction ?

B] Whether denial of opportunity of hearing by learned trial court has caused prejudice to the present appellant ?

12] So as to substantiate these contentions, learned counsel for appellant has taken me through observations framed by both the Courts below.

13] While countering above referred submission, learned counsel for respondent-husband urged that sufficient opportunity was given to the present appellant-wife. He would urge that in fact the appellant has examined in all four witnesses in her favour and subsequent thereto, she deliberately preferred to remain absent. According to him, the Appeal is liable to be dismissed.

14] So as to analyze the submissions made by respective learned counsel, it is required to be noted that on behalf of the present appellant, the appellant has examined in all four witnesses including herself. She has examined her elder sister Mangala, her father Murlidhar and her brother Jitendra at Exhs.41,42,43 and 44 respectively.

15] The appellant having completed her evidence subsequent thereto, has approached learned trial Court for tendering additional evidence. At the behest of appellant, matter was adjourned on 3/2/2010. The appellant thereafter remained absent throughout including that for the purpose of leading evidence or even for the hearing of the matter.

16] If the substantial question (A) as cited to hereinabove is to be considered, then the conduct of the present appellant, in my opinion, disentitles such relief as claimed, particularly when appellant herein has chosen to remain absent. Apart from above, appellant herself has chosen to remain absent during the course of the hearing of the said proceeding for divorce.

17] Apart from above, this Court with an intention to analyse the contentions of the appellant on merit, has gone through the observations made by both the Courts below i.e. the learned trial Court and the first appellate Court. It is

noticed that both the Courts below have taken into account the documentary and the oral evidence brought on record by husband and as having analysed the same in the background of the evidence of the present appellant were pleased to allow the Petition for divorce.

18] In my opinion, the present Second Appeal which is devoid of any substantial question of law, is liable to be dismissed and is dismissed accordingly.

19] In view of dismissal of Appeal, Civil Application No.14348/2011 does not survive and the same is disposed of.

(N.W.SAMBRE,J.)

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