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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APEPAL NO. 273 OF 2015
WITH
CIVIL APPLICATION NO. 601 OF 2015

Shri Sunil Banda Jadhav ... Appellant

Vs.

Sou.Sarita Sunil Jadhav ... Respondent

Mr.Padmanabh D.Pise, Advocate for Appellant.

CORAM : R. G. KETKAR, J.

DATE : 18th APRIL, 2015

P.C. :

. Not on board. At the request of Mr.Padmanabh D.Pise, taken up in the Production Board.

2. Heard Mr.Padmanabh D.Pise, learned Counsel for the appellant.

3. By this appeal under section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original petitioner has challenged the judgment and decree dated 30/01/2015 passed by the learned Ad-hoc District Judge-5, Kolhapur in Regular Civil Appeal No. 111 of 2012. By that order, the learned District Judge allowed the appeal preferred by the respondent and remitted the matter to the trial Court for re-hearing the same on merits by giving an opportunity to the respondent to submit her say and adduce evidence. The trial Court was also directed to expedite the hearing and dispose of the

matter within 6 months. The decree was ordered to be drawn accordingly.

4. Mr.Pise submitted that since the learned District Judge directed drawing of a decree, he has preferred Second Appeal. It is evident from record that the petition instituted by the appellant under sections 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (for short 'Act') was allowed by the trial Court on 21/10/2008. Aggrieved by that decision, respondent preferred appeal which is allowed by the District Judge. The learned District Judge remitted the matter to the trial Court for re-hearing the same on merits by giving opportunity to the respondent to submit her say and adduce evidence. The learned District Judge also directed for drawing of the decree accordingly.

5. Section 2(2) of C.P.C. defines the expression “decree” to mean the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include – (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Section 2(14) of C.P.C. defines the expression “order” to mean the formal expression of any decision

of a Civil Court which is not a decree.

6. Perusal of the order passed by the learned District Judge shows that the learned District Judge has not decided the rights of the parties conclusively as contemplated by definition of expression “decree” in section 2(2) of C.P.C. The order passed by the learned District Judge is, therefore, referable to section 2 (14) of C.P.C., by which the learned District Judge has remanded the matter. Understood thus, in my opinion, Appeal From Order under Order 43(1)(u) of C.P.C. will be maintainable.

7. In view thereof, reserving a liberty to the appellant to prefer Appeal From Order challenging the impugned order, Second Appeal is disposed of as not maintainable. It is made clear that I have not examined the merits of the case and all the contentions of the parties on merits are expressly kept open.

8. In view of disposal of the appeal, Civil Application No. 601 of 2015 does not survive and the same is disposed of accordingly.

(R. G. KETKAR, J.)