

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL No. 210 OF 2014

Manju Rynal Tixeira. ..Appellant.
Versus
Rynal Tixeira. ..Respondent.

Ms. Rohini Dandekar for the Appellant.
Mr. Shoaib A. Menon for the Respondent.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **August 13, 2015.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. By this appeal, the Appellant-wife is challenging the judgment and decree dated 16th July 2014 passed by the Family Court at Bandra, Mumbai, whereby the Respondent's marriage petition under the provisions of section 27(1)(d) of the Special Marriage Act, 1954 is allowed and the marriage between the Appellant and the Respondent is dissolved.

2. On 26th October 2009 the Appellant and the Respondent got married as per the provisions of the Special Marriage Act, 1954. Unfortunately, the marital ties could not settle down. The Respondent filed marriage petition bearing No. A-1456 of 2012 before the Family Court at Bandra, Mumbai seeking dissolution of marriage under

section 27(1)(d) of the Special Marriage Act, 1954.

3. The Appellant was not in a position to engage the services of Advocate, therefore, in the proceedings before the Family Court, services of the advocate from Legal Aid Committee were provided to her. Since the legal aid advocate did not take proper interest in the matter, Appellant later on appointed private advocate and filed written statement.

4. The impugned judgment and decree reveals that on 3rd October 2013, issues were framed. The Respondent filed his affidavit of evidence along with a list of documents on 15th January 2014. The cross-examination of the Respondent was closed on 21st May 2014 as the Appellant failed to cross-examine the Respondent. The Appellant also could not file her affidavit of evidence despite opportunity. Subsequently, the Appellant filed an application for setting aside the “no-cross” order. On 23rd June 2014, the said application was listed before the Family Court. The Court was hearing another matter and, therefore, directed the Advocate appearing on behalf of the Appellant to stay back for a while till he disposes of the matter in hand. Unfortunately, the said advocate of the Appellant left the Court without informing Family Court. Thereafter Court proceeded to decide the petition on the basis of the Respondent's evidence and passed the

impugned judgment and decree.

5. The learned Counsel appearing for the Appellant submitted that true it is that Advocate representing the Appellant on 23rd June 2014 did not wait for hearing on the application taken out by the Appellant for setting aside “no-cross” order, but in fact on that day the said advocate had received a call from his residence to rush back immediately as his father was not keeping well and therefore in a hurry without informing the Court, said advocate left the Court. She submitted that in these peculiar facts and circumstances, the application of the Appellant for setting aside “no-cross” order came to be rejected and ultimately the petition has been decided by the Family Court only on the basis of the Respondent's affidavit of evidence.

6. The Appellant has given explanation as to why her advocate was required to leave Court on 23rd June 2014 without attending hearing on application for setting aside “no-cross” order. The explanation given by the Appellant, in our view, is sufficient to condone the so called lapses. Even otherwise, the litigant should not suffer for the fault of lawyer. In our view, the marriage petition is required to be decided on merits after granting an opportunity to the Appellant to cross-examine the Respondent and his witnesses and to lead her own evidence. In the circumstances, petition is made

absolute in following terms :

- (I) The appeal is allowed. The impugned judgment and order dated 16th July 2014 passed by the Family Court at Bandra, Mumbai in Petition No. A-1456 of 2012 is hereby quashed and set aside.
- (ii) The Family Court shall decide the said marriage petition afresh on merits after giving an opportunity to the Appellant to cross-examine the Respondent and his witnesses and lead her evidence, if she so desires.
- (iii) The Family Court is requested to dispose of the said petition as expeditiously as possible and at any rate within the period of six months from the date of receipt of a copy of this order.
- (iv) Parties shall appear before the Family Court on 24th August 2015, on which date the Family Court shall fix the schedule. The Appellant shall not seek any adjournment.

7. In view of the disposal of main appeal, application taken out in this Appeal, does not survive and the same is accordingly disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]