

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1629 OF 2014
IN
SECOND APPEAL NO.33 OF 2012**

Shri Dnyandeo Vitthal Netake

Applicant

Vs

Sou Laxmibai D. Netake & Anr.

.. Respondents

Mr. Dilip Bodake, Advocate for Applicant.

Ms Jyoti Khade i/b Law Juris, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 16/04/2015

PC:

1. Not on Board. At the request of Mr.Bodake, taken up in production Board. Heard Mr. Dilip Bodake, learned counsel for the applicant and Ms. Jyoti Khade, learned counsel for respondent no.1.

2. This is an application for stay of the Judgment and decree dated 20.8.2011 passed by learned District Judge-1, Solapur in Civil Appeal No.50 of 2007. In support of this Application, Mr Bodake submitted that the applicant has instituted Hindu Marriage Petition No.21 of 2004 under section 13 of the Hindu Marriage Act, 1955 (for short, 'Act') praying for dissolution of marriage between the parties. By Judgment and decree dated 21.12.2006 the learned trial Judge allowed the Petition and the marriage between the parties was dissolved by a decree of divorce under section 13(1)(i-b) of the Act. Aggrieved by that decision, respondent no.1 preferred Civil Appeal No.50 of 2007.

By Judgment and decree dated 20.8.2011 the learned District Judge-1, Solapur allowed the Appeal and quashed and set aside the trial Court's Judgment and decree. The petition instituted by the applicant was dismissed.

3. By this Application, the applicant is praying for stay of the decree passed by the learned District Judge and in the alternative for continuing clause (2) of trial Court's order.

4. Having regard to the fact that the learned District Judge has dismissed the petition instituted by the applicant for divorce, there is no question of granting stay to the decree of dismissal of the petition. As far as alternative prayer (b) is concerned, by that order, the applicant prays for continuation of clause (2) of the operative part of the trial Court's order whereby the marriage between the parties was dissolved by a decree of divorce under section 13(1) (i-b) of the Act. As noted earlier, the learned District Judge has set aside the Judgment of the trial court. Unless and until Appeal is finally decided, prayer (b) cannot be granted at this stage. That apart, by reviving clause (2) of the operative part of the trial Court's order, the Appeal stands allowed without deciding the same on merits. In view thereof, no case is made out for granting prayer clause (a) or in the alternative prayer (b) of Application. Hence, Application is dismissed. Costs in cause.

(R.G.KETKAR, J.)