

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

FAMILY COURT APPEAL NO. 31 OF 2014

Sarala W/o Shaligram Kalyankar
Age: 34 years, Occu. Household,
R/o.: Shankar Natuba Lad, R/o
Amkhede Post Soygaon, Ta.
Soyagaon, Dist. Aurangabad

...APPELLANT
(Ori. Respondent)

versus

Shaligram Baliram Kalyankar,
Age: 41 years, Occu. Service,
R/o N-6, M-2, 31/8, Sinhgad Colony,
Cidco, Aurangabad.

...RESPONDENT
(Ori. Petitioner)

.....

Mr. Shankarrao G. Shinde, Advocate for appellant
Mr. R.G. Joshi, Advocate for respondent.

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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 5th APRIL, 2016.

Order :-

1. The appellant - wife has challenged the judgment and decree dated 09-12-2013 passed by learned Judge, Family Court, Aurangabad allowing petition filed by present respondent - husband for dissolution of marriage.

2. Mr. Shinde, learned counsel for the appellant - wife submits that though the appellant had filed written statement on 27-02-2012, however, thereafter could not remain present. Present appellant and respondent have two sons from their wedlock. According to learned counsel, the appellant could not participate in the proceeding after

filing of written statement due to economic condition. So also, fact that the appellant had to travel more than 50 k.m. alone. According to learned counsel, one opportunity be given to the appellant to contest said proceeding on merits. The appellant – wife could not engage advocate to defend her case before the Family Court because of economic condition and even written statement had been filed by her in person.

3. Mr. Joshi, learned counsel for respondent submits that after written statement was filed on 27-02-2012 much opportunities were given to the appellant. Present respondent – original petitioner had led his evidence, as appellant remained absent, hence 'no-cross order' was passed on 29-09-2013. Thereafter, second witness was examined by respondent - husband, in respect of said witness 'no-cross order' was passed on 10-10-2013. Present respondent – husband had also examined third witness, the present appellant remained absent and had also not cross examined this witness, therefore, 'no cross order' was passed on 12-11-2013. Thereafter, the matter was kept for evidence of present appellant. The appellant did not adduce any evidence the Court was required to pass no evidence order against her on 20-11-2013. Thereafter, the matter was kept for oral argument on 04-12-2013. The appellant did not appear on said date also and as such the Court had no option but to pronounce the judgment.

4. The learned counsel further states that the learned Judge of Family Court has followed the entire procedure. No flaws can be attributed in the procedure followed by the learned Judge of Family

Court. Appellant consistently remained absent and the ground of illness raised by present appellant is also from 18th December 2013 and not prior to that. There was no sufficient cause to the appellant to remain absent.

5. We have considered the submissions canvassed by learned counsel for respective parties. The matter concerns with matrimonial dispute. From the facts narrated on behalf of the respondent by the learned counsel, it does appear that the Court had given opportunity to the appellant time to time but after filing written statement the appellant did not participate in the proceedings. It is stated that maintenance of Rs. 1500/- per month is awarded to the appellant and respondent - husband was paying the same regularly. The appellant - wife has withdrawn the maintenance amount only after pronouncement of the Judgment by the learned Judge of Family Court.

6. It also cannot be lost sight of the fact that appellant is housewife and residing at village Amkheda post Soygaon, taluqa Soygaon, i.e. in remote rural area and even could not engage the advocate to defend the case on her behalf, she herself had filed written statement in person. She could not have attended the court/proceedings alone. Said aspects of the matter requires consideration.

7. Considering above conspectus of the matter and also the fact that present matter is concerning the matrimonial dispute, we are inclined to exercise the discretion in favour of the appellant by granting one more opportunity to defend the proceeding on merits, however, the

appellant deserve to be mulct with cost.

8. In the light of above, we pass the following order:-

- (a) The impugned judgment and decree dated 09-12-2013 in Petition-A 366 of 2011 passed by learned Judge, Family Court , Aurangabad is set aside and the matter is remitted back to the Family Court, at Aurangabad.
- (b) Petition-A 366 of 2011 is restored to its original position subject to payment of cost of Rs. 3000/- (Rupees three thousand) to be payable to the respondent – husband by the appellant - wife on or before 30-04-2016. If cost is deposited, respondent – husband is entitled to withdraw the same.
- (c) Payment of cost is condition precedent.
- (d) If cost is paid, appellant - wife is entitled to cross-examine the respondent, his two witnesses and adduce her evidence.
- (e) Parties to the proceeding shall appear before the Family Court, Aurangabad on 30-04-2016 and co-operate the Court for expeditious disposal of the proceeding.
- (f) Considering the fact that the matter is remitted back, the Judge, Family Court, Aurangabad shall decide the proceedings as expeditiously as possible and preferably within a period of six (06) months from the date of appearance of the parties.

Sd/-

Sd/-

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

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