

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

**FAMILY COURT APPEAL NO. 08 OF 2015
WITH
CIVIL APPLICATION NO. 6473 OF 2015**

Jyoti W/o Sunil Meharkar,
Age: 30 yrs, Occu. Household,
R/o. At pre Bhadarpura, Kandhar,
Tq. Kandhar, Dist. Nanded.

...APPELLANT
(Ori. Respondent)

versus

Sunil Baburao Meharkar,
Age: 32 years, Occu.; Private Service,
R/o : Sambhaji Chauk, CIDCO
Nanded

...RESPONDENT
(Ori. Petitioner)

.....
Mr. Shrinivas H. Pandhal, Advocate for appellant
Mr. Amit Mukhedkar, Advocate for respondent
.....

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

DATED : 29th MARCH, 2016.

Order :-

1. Heard finally with consent of the parties.
2. Mr. Panchal, learned counsel for appellant submits that respondent – husband had filed proceeding bearing Petition-A 36 of 2014 (Old No. Hindu Marriage Petition No. 172 of 2011) for divorce before the Family Court, Nanded. In said petition, though present appellant - wife had appeared and filed her written statement, however, could not attend further proceedings as she was residing at Kandhar, District Nanded and the petition for divorce was pending at Nanded Court.

3. According to learned counsel, absence of the appellant is not intentional one but due to reasons that she could not attend the court at Nanded because of the distance and also because of the fact that she is having a son and appellant did not have any source of income to attend the court at Nanded. The appellant - wife could not attend the Court at Nanded alone as distance from Kandhar to Nanded is more than 50 k.m.. According to learned counsel, one more opportunity be given to the appellant - wife to defend the proceeding on merits.

4. Mr. Mukhedkar, learned counsel for the respondent – husband submits that in the year 2009 decree for restitution of conjugal rights was already passed and present appellant did not abide by said decree and subsequently respondent - herein was required to file the petition for divorce and the same has been allowed. In fact, the appellant -wife did not have any defence. No purpose would be served by remitting the matter back to the trial court. The conduct of the appellant does not entitle her for any discretionary orders by this court.

5. We have considered the submissions. It is a fact that present appellant did not cross-examine the respondent nor adduced any evidence and such decree would tantamount to be *ex-parte* decree as held by the Apex Court in the case of *Praksh Chander Manchanda and another V. Smt. Janki Manchanda* reported in *AIR 1987 Supreme Court 42*. Present appellant is lady having a son from the wedlock with respondent. Appellant resides at far away distance. Certainly we can consider the grounds stated by the appellant – wife that it would not be

possible for her to attend the court alone. Considering the grounds put forth by the appellant, 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 costs.

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

- (a) The impugned judgment and decree dated 19-03-2015 in Petition-A 36 of 2014 (Old No. Hindu Marriage Petition No. 172 of 2011) passed by learned Principal Judge, Family Court , Nanded is set aside and the matter is remitted back to the Family Court, at Nanded.
- (b) Petition-A 36 of 2014 is restored to its original position subject to payment of costs of Rs. 5000/- (Rupees Five thousand) to be payable to the respondent – husband by the appellant - wife on or before 18-04-2016. If costs is deposited, respondent – husband is entitled to withdraw the same.
- (c) Payment of costs is condition precedent.
- (d) If costs is paid, appellant - wife is entitled to cross-examine the respondent and adduce her evidence.
- (e) Parties to the proceeding shall appear before the Family Court, Nanded on 18-04-2016 and co-operate the Court for expeditious disposal of the proceeding.
- (f) Considering the fact that the matter is remitted back, the Principal Judge, Family Court, Nanded shall decide the proceedings as expeditiously as possible and preferably

within a period of nine (09) months from the date of appearance of the parties.

- (g) Record and Proceedings be sent to the concern court forthwith.

7. In view of aforesaid, civil application does not survive and stands disposed of accordingly.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK