

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 2682 OF 2016

PRATIMA W/O. LALIT JAWALE
VERSUS
LALIT REVA JAWALE AND ANOTHER

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Advocate for Appellant : Ms Vidya P.Patil (Dhorde)
Advocate for Respondents : Mr. S. S. Patil.

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CORAM : **P. R. BORA, J.**
DATE : 29th July, 2016.

ORDER:

. It is the contention of the Appellant that the impugned order is passed *ex-parte*. The learned counsel for the Appellant submitted that no notice of miscellaneous application was served upon the Appellant and hence she could not enter her appearance in the said matter. The learned counsel has, therefore, prayed for remitting the matter back to the Trial Court for deciding it afresh on merits.

2 The learned counsel for the Respondent has opposed the request so made. The learned counsel submitted that in para 2 of the impugned order, the Court has categorically observed that the notice was served on the present Appellant and order was passed by the Trial Court to proceed *ex-parte* against Respondent No.2 i.e. present Appellant. The learned counsel submitted that the Appellant has not

made out any case even for remitting the matter back for the reason that the she was not diligent in prosecuting the matter in the Court below.

3 Having considered the submissions advanced by the learned counsel appearing for the respective parties, It appears to me that for whatsoever reason the matter has not been decided on merits. Instead of entering into the discussion as to whether in fact notice was served or otherwise, I find it appropriate to remit back the matter to the Trial Court for deciding it afresh so that the present Appellant may have an opportunity to put forth her contention and contest the application so filed by the present Respondent on merits. Hence the following order –

O R E D R

- I. The appeal is allowed.
- II. The impugned order dated 8th January, 2016, passed by the learned District Judge-2, Bhusawal, in Civil Miscellaneous Application No.45 of 2015, stands quashed and set aside.
- III. The matter is remitted back to the District Judge-2,

Bhusawal for deciding it afresh on merits expeditiously by giving an appropriate opportunity to the present Appellant for filing her say and to adduce evidence, if any, on her behalf.

- IV. It is clarified that till the decision of the application afresh by the District Judge-2, Bhusawal, the custody of the child would remain with Respondent No.1.
- V. The parties are directed to appear before the Trial Court on 8th August, 2016, so no fresh notice may be issued for appearance of the parties before the Trial Court.

[P. R. BORA, J.]