

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

FAMILY COURT APPEAL NO. 12 OF 2015

Rupali Mahendra Pattebahadur .. Appellant

Versus

Mahendra Mahadeo Pattebahadur .. Respondent

Ms. Maya R. Jamdhade, Advocate for the Appellant.

Shri M. B. Sandhanshi, Advocate for Respondent.

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

DATE : 04TH APRIL, 2016.

PER COURT :

. Miss Jamdhade, the learned counsel for the appellant submits that, the decree passed is an ex-parte decree. At the time when present respondent filed petition for dissolution of marriage, the present appellant was residing with the respondent in the same house. The present appellant never thought that the respondent has initiated proceedings for dissolution of marriage. According to the learned counsel on false and frivolous allegations, the respondent had filed a petition for dissolution of marriage. Bald allegations were made against the appellant with regard to her character by the present respondent. According to the learned counsel, the notice was not served on the appellant at any point of time, as such, the

appellant could not remain present. The learned counsel for the appellant relies on the judgment of the Apex Court in a case of **Sushil Kumar Sabharwal Vs. Gurpreet Singh and others** reported in ***AIR 2002 SC 2370***.

2. Mr. Sandanshiv, the learned counsel for the respondent submits that, the respondent had filed a petition for dissolution of marriage on valid grounds. The present appellant had caused mental harassment to the present respondent. Even false complaint was lodged by the appellant against the respondent with the Womens Cell, S. P. Office, Nanded. The averments made in petition for dissolution of marriage were based on true and correct facts. The present appellant had refused to accept the notice/summons. The process server has submitted the report to that effect. The learned counsel submits that, there are no allegations of fraud or that the process server has joined hands with the present respondent. When the process server has given report that the present appellant has refused to accept the service that has to be proper service. The learned counsel relies on the judgment of the Apex Court in the case of **Parimal Vs. Veena Alias Bharti** reported in ***(2011) 3 SCC 545***.

3. The learned counsel for the respondent submits that, subsequent developments have taken place that after the appeal period is over, the respondent has remarried. According to the learned counsel for the appellant, the notice of present appeal

was served on the respondent before the marriage.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. Only aspect which is to be considered by this Court is whether a decree can be termed to be an ex-parte decree and that the appellant was not properly served.

6. The relationship between the parties is not disputed. The bailiff report Exhibit 6 is on record. The said report states that, the respondent has refused to accept the notice, when he went to the house stated in the notice. However, could not get any person from the side of the present respondent for conducting panchanama of refusal and further reported that, the summons could not be served.

7. Order V Rule 17 of the Code of Civil Procedure is required to be considered. The allegations are that the present appellant has refused to accept the service. The process server neither affixed the copy of summons and the plaint on the conspicuous place of the residence of the present appellant, nor any panchanama was made about its refusal, nor any person was shown to have identified the present appellant.

8. If in case the appellant would have refused to accept the

notice, the process server could have affixed the notice/summons on the conspicuous place of the house. The same was not done, nor there is any panchanama of refusal to accept notice, nor there is any public notice issued in any local news paper.

9. Even the report was submitted by the process server that the notice could not be served as there was nobody available to draw panchanama about refusal of the summons.

10. Considering the aforesaid aspects of the matter, the impugned judgment is quashed and set aside. The parties are relegated before the Family Court, Nanded. The parties shall appear before the Family Court, Nanded on 25.04.2016. In view of the fact that, the date for appearance is given, no fresh summons will be required to be issued to the parties. The present appellant shall file written statement within a period of 30 days from the date of appearance before the Family Court. Considering the fact that, the matter is remitted back, the Family Court, Nanded shall decide the proceedings expeditiously and preferably within a period of nine (09) months from the date of appearance. The Record and Proceedings shall be sent back forthwith.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]