

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

963 WRIT PETITION NO. 6353 OF 2016

PRACHI RAHUL BHOSALE
VERSUS
RAHUL TUKARAM BHOSALE

Shri. D.A. Bide, Advocate, for petitioner.

Shri. Pankaj A. Bharal, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 25 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 45 in Hindu Marriage Petition No.21/2015 by the 2nd Joint Civil Judge, Senior Division, Ahmednagar. Both the sides are heard.

2) The petition is filed for relief of divorce on the ground that respondent wife is of unsound mind. It appears that the application at Exhibit 45 was filed by the husband with the contention that the wife is of unsound mind and somebody needs to be appointed as next friend to represent the wife. This application is allowed by the trial Court.

3) The learned counsel for the petitioner submitted that procedure as laid down in Order 32 Rule 15 of the Civil Procedure Code is not followed which is mandatory in nature and particularly when the husband is seeking divorce on the same ground, the trial Court ought to have strictly followed that procedure. Learned counsel for the petitioner placed reliance on one case reported as **AIR 2003 SC 3450 (Sharda v. Dharmpal)** in which some observations are made with regard to the ground of unsound mind in divorce proceeding and the extent of proof required for that and the nature of inquiry which needs to be made. Reference to Order 32 Rule 15 of the Civil Procedure Code is also made. Admittedly this procedure was not followed.

4) In view of these circumstance this Court holds that the order cannot sustain in law. The petition is allowed. The order is set aside. The matter is remanded back to the Court for fresh hearing of the said application in which the procedure as envisaged in the aforesaid provision needs to be strictly followed.

Sd/-
(**T.V. NALAWADE, J.)**

rs1