

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL NO.309 OF 2014  
 WITH  
 CIVIL APPLICATION NO.175 OF 2014  
 IN  
 FAMILY COURT APPEAL NO.309 OF 2014

...

|                                               |               |
|-----------------------------------------------|---------------|
| Deepa Jaiprakash Hirepatta                    | ...Appellant  |
| v/s.                                          |               |
| Shri Jaiprakash Shivkumar Hirepatta           | ...Respondent |
| ...                                           |               |
| Mr.Nagesh Chavan for the Appellant-wife.      |               |
| Mr.Ashok B.Tajane for the Respondent-husband. |               |

...

**CORAM : A.S.OKA &**  
**A.A. SAYED, JJ.**

**DATED : 4 JULY 2016**

**ORAL JUDGMENT:** ( *Per A.S.Oka, J.*)

The parties were put to notice that the Appeal will be taken up for final disposal at the admission stage.

2. By this Appeal, the Appellant-wife has taken an exception to the Judgment and Decree dated 26 November 2013 passed by the learned Principal Judge of the Family Court at Solapur.

3. The marriage between the parties was solemnized on 24 May 2010. The Respondent-husband filed a Petition seeking a decree of divorce on 11 December 2012 under clauses (i-a) and (i-b) of sub-section 1 of section 13 of the Hindu Marriage Act, 1955 (for short "the said Act").

Though the notice of the Petition was served to the Appellant-wife, the Petition was not contested. By the impugned decree, the learned Principal Judge of the Family Court proceeded to dissolve the marriage by passing a decree of divorce on both grounds of cruelty and desertion.

4. Various contentions have been raised by the Appellant. Firstly, it is contended that on the returnable date, her minor son was unwell and therefore, she could not appear. Second ground is that though she engaged an advocate, for certain period, the advocate abstained from the Court in support of a demand for the Bench of this Court at Kolhapur.

5. We have perused the finding recorded by the learned Judge in paragraph 5. The relevant part of paragraph 5 read thus:

“They cohabited for few days at Solapur. They have begotten one son on 27-6-2011. His wife used to quarrel with him on petty grounds. She went at her maiden house on 16-11-2010. He tried to fetch her back through mediators. She failed to give response. She asked for divorce by sending S.M.S. He issued notice dated 28-9-2012 and requested for cohabitation. But, she filed a case against him u/s 498-A of I.P.Code. The respondent has treated him with cruelty and deserted him.”

6. The only other relevant paragraph of the judgment is paragraph 6, wherein the learned Judge has merely held that that as the case of the husband has gone unchallenged, his version will have to be accepted.

7. Perhaps, the learned Judge has completely overlooked the requirement of clause (a) of sub section 1 of Section 23 of the said Act. It lays down that whether a proceeding under the said Act is defended or not, the Court has to be satisfied that any ground for granting relief prayed for under the said Act exists. Therefore, a Petition seeking divorce under the said Act cannot be decreed only on the ground that the same was not contested. On the basis of the material placed on record, the learned Judge ought to have recorded a satisfaction that the ground for divorce pleaded by the husband existed and was established by the evidence on record.

8. Faced with this difficulty, the learned Counsel appearing for the husband, on instructions, states that by setting aside the impugned decree the matter be remitted to the Family Court.

9. Hence, we pass the following order.

**ORDER**

- (i) The impugned Judgment and Decree dated 26 November 2013 is quashed and set aside;
- (ii) Petition No.A-663 of 2012 is restored and is remitted to the Court of the learned Principal Judge, Family Court, Solapur for a fresh decision;
- (iii) We direct the Appellant and the Respondent to appear before the learned Principal Judge of the Family Court at Solapur on Tuesday, 23 August 2016 at 11 a.m.;
- (iv) It will be open for the Appellant to file a written statement within two weeks from the aforesaid date. We make it clear that no further time will be granted to the Appellant to file the written statement;
- (iv) As the Matrimonial Petition is of the year 2012, it is obvious that the learned Principal Judge will give necessary priority to the disposal of the Petition in accordance with law;
- (v) All contentions on merits of the restored Petition are kept open;
- (vi) The Appeal is partly allowed in the above terms with no order as to costs;

(vii) The Registry to immediately transmit the writ of this order to the Family Court at Solapur.

10. Civil Application No.175 of 2014 does not survive and the same is disposed of.

**(A.A. SAYED, J.)**

**(A.S.OKA, J.)**