

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8489 OF 2015

Mr. Rakesh Prithvisingh Rao.] ... Petitioner

Versus

Mrs. Darshana Rakesh Rao.] ... Respondent

Mr. Aniket U. Nikam for Petitioner.

Mr. Rakesh Prithvisingh Rao, Petitioner, present in person.

None for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- FEBRUARY 08, 2016

P. C. :-

1. The challenge in this petition is to the order dated 10/07/2015, by which the Family Court has allowed the respondent's application for setting aside *ex-parte* Judgment and Decree in Petition No.A-218 of 2013 made on 16/03/2015.

2. Mr. Aniket U. Nikam, learned Counsel for petitioner, has pointed out that the petitioner was not served in the application made by the respondent for setting aside the *ex-parte* decree. That apart, he pointed out that the respondent, despite notice, had remained absent on 12/09/2013, 11/11/2013, 20/02/2014, 23/05/2014, 26/08/2014 and 01/11/2014. The respondent also did not remain present before

the Marriage Counselor. Mr. Nikam pointed out that the only reason set out in the impugned order is that the proceedings before the Family Court had been stayed by the Apex Court vide order dated 15/09/2014 made in Transfer Petition (Civil) No.1209 of 2014. Mr. Nikam pointed out that on 08/07/2015, the respondent had, in fact, withdrawn the Transfer Petition (Civil) No.1209 of 2014. Thus, on the date when the impugned order was made, neither the transfer petition nor the impugned order of stay made therein, was operative. Mr. Nikam pointed out that this circumstance was not brought to the notice of the Family Court by the respondent. For all these reasons, he submitted that the impugned order deserves to be set aside.

3. If the impugned order is perused, then, it is clear that *ex-parte* decree was made on 16/03/2015. On that date, by virtue of the order dated 15/09/2014 made by the Hon'ble Apex Court in Transfer Petition (Civil) No.1209 of 2014, the proceedings in Petition No.A-218 of 2013 had in fact been stayed by the Hon'ble Apex Court. True, there was some dispute with regard to the actual communication of this stay order. The impugned order indicates that this stay order was communicated only on 12/06/2015, by which time, the *ex-parte* decree had already been made. The fact however remains that on the date when the *ex-parte* decree was made, the proceedings before the Family Court had been stayed by the Hon'ble Apex Court. The circumstance that later on i.e. on 08/07/2015, the transfer petition was withdrawn and the stay granted therein came to an end, is not really relevant. What is relevant is the date on which the *ex-parte*

decree was made. On this date, admittedly, the proceedings before the Family Court had been stayed by the Hon'ble Apex Court.

4. The Family Court, in view of the aforesaid reason, has recalled the *ex-parte* decree dated 16/03/2015. The Family Court in the facts and circumstances of the present case, was indeed right in doing so. That apart, if the application of the respondent is perused, then, therein she has stated that she resides in Hisar and the proceedings are instituted in the Family Court at Thane which is almost 1500 kilometers away. The respondent has already instituted transfer proceedings before the Family Court at had even obtained a stay on the proceedings before the Family Court. All these constitute sufficient reason as to why the respondent could not remain present. Even based upon such facts, the Family Court would have been justified in recalling its *ex-parte* decree dated 16/03/2015.

5. There is some issue as to whether or not the petitioner was served in the matter. Therefore, the learned Counsel for petitioner, was afforded full opportunity to make good his case as to why the *ex-parte* decree dated 16/03/2015 ought not to be recalled. The learned Counsel, has made the aforesaid submissions. Even if the aforesaid submissions are taken into consideration, the facts and circumstances of the present case, do not really warrant a different view. No doubt, some prejudice is bound to occasion to the petitioner. However, the same can be redressed by issuing direction for expeditious disposal of Petition No.A-218 of 2013.

6. The learned Counsel for petitioner, on basis of instructions from the petitioner who is present in Court, points out that the respondent has instituted yet another transfer petition before the Family Court and that there is a stay granted on further proceedings in Petition No.A-218 of 2013. If this be so, it would be possible to issue direction for expeditious disposal of the said petition. However, the stay is eventually vacated. The Family Court is directed to dispose of the petition as expeditiously as possible.

7. The petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)