

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

**SECOND APPEAL NO. 189 OF 2015
WITH
CIVIL APPLICATION NO. 373 OF 2015
IN
SECOND APPEAL NO. 189 OF 2015**

**Mr. Sanjay Bandu Patil
Versus
Sou. Aruna Sanjay Patil**

**...Appellant

...Respondent**

Mr. V.Y. Sangvikar, with Mr. Umesh Mankapure, for the Appellant.

None for the Respondent.

**CORAM : R.D. DHANUKA, J.
DATE : 21st November 2016**

ORDER :

1. By this Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellant (original Defendant) has impugned the judgment and decree dated 17th July 2014 passed by the learned District Judge, Kolhapur dismissing the Regular Civil Appeal No. 89 of 2010 filed by the Appellant, wherein the Appellant had impugned

the judgment and decree dated 2nd March 2010 passed by the learned Civil Judge thereby passing a decree against the Appellant directing the Appellant to pay Rs. 2,000/- per month towards the maintenance to the Respondent (original Plaintiff) from the date of filing of the Suit. There is no dispute that the Appellant and the Respondent had taken divorce by mutual consent. In the order passed by the learned Civil Judge, granting divorce to the parties by mutual consent, there was no order that the Appellant was not required to pay maintenance to the Respondent.

2. The learned Trial Judge after considering the evidence has allowed the claim for maintenance in favour of the Respondent at the rate of Rs. 2,000/- per month from the date of the Suit.

3. The Appellate Court by the judgment and decree dated 17th July 2014 dismissed the Regular Civil Appeal No. 89 of 2010 filed by the Appellant.

4. The learned Counsel for the Appellant submits that there was a divorce by mutual consent and thus, the Respondent (original Plaintiff) was not entitled to receive any maintenance from the Appellant. He submits that the Respondent was remarried after obtaining divorce from the Appellant and on that ground also she

was not entitled to claim maintenance from the Appellant.

5. A perusal of order passed by the learned District Judge indicates that the Respondent had applied for maintenance in the sum of Rs. 7,000/- per month from the Appellant.

6. The Appellant could not produce any evidence before the learned Trial Judge in support of the plea that the Respondent was remarried. In paragraph 13 of the impugned judgment and decree passed by the Appellate Court, a finding is rendered that mere statement of the Appellant that the Respondent was now married to another person is not sufficient. The first Appellate Court also considered the fact that the order dated 3rd December 2010 passed in Marriage Application No. 138 of 2010 showed that the issue of maintenance was not decided, as it was subjudice in another proceedings.

7. In my view, there is no substance in the submission of the learned Counsel for the Appellant that since parties had mutually consented for divorce, the Respondent was not entitled to seek maintenance from the Appellant. In my view, the first Appellate Court has rightly held that obtaining divorce by mutual consent is not sufficient and the Appellant-husband is liable to pay maintenance to

the Respondent-wife.

8. In my view, the Appeal is devoid of merits and is accordingly, dismissed.

9. The Appellant is directed to comply with the decree passed by the Courts below expeditiously.

10. In my view, there is no substantial question of law arises in this Second Appeal. I therefore, pass the following order:-

(i) The Second Appeal is dismissed.

(ii) No order as to costs.

(iii) In view of dismissal of this Second Appeal, the Civil Application does not survive and is accordingly, dismissed.

[R.D. DHANUKA, J.]