

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

**FAMILY COURT APPEAL NO.7 OF 2014**

**Mr. Sandip P. Vasantrao Ahire** ..... **Appellant**

**V/s**

**Mrs. Pallavi Sandip Ahire** ..... **Respondent**

Mr. Viral Rathod i/b Mr. Harshad E. Palwe for the Appellant.

Mr. Sachin Gite for the Respondent.

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

**DATED : 28 JULY 2016**

**ORDER:**

1 The learned Counsel appearing for the Appellant states that though the Appellant had assured him to remain present in the Court, today he is not present in the Court.

2 This is an Appeal preferred by the Appellant husband for challenging the decree dated 19 September 2013 by which a Petition for divorce filed by him under clause (ia) and (ib) of sub section 1 of section 13 of the Hindu Marriage Act, 1955 has been dismissed. The said Petition was filed on the ground of desertion and cruelty.

3 When the Appeal was called out on 18 March 2016, the learned Counsel appearing for the Respondent wife tendered on record a true copy of birth certificate issued by the Chopda Municipal Council which shows that a baby girl was born to the Appellant and one Asha Sandip Ahire. The contention of the learned Counsel appearing for the Respondent was that the Appellant has married to said Asha during the pendency of the proceedings. The learned Counsel appearing for the Respondent wife also tendered on record two photographs wherein a small girl is seen in the company of the Appellant. When the said photographs were shown to the Appellant who was personally present in Court on the earlier date, he stated that the photographs are of the daughter of his sister Asha Walhe. As per the directions of the Court, the Respondent along with an Affidavit dated 23 March 2016 has placed the aforesaid documents on record. As per the order dated 18 March 2016, the Appellant was directed to file an Affidavit-in-Reply before the next date (21 April 2016). The matter did not reach on 21 April 2016, 23 June 2016 and 14 July 2016. When the Appeal was called out on 14 July 2016, the learned Counsel appearing for the Appellant sought time on the ground that the Appellant has not given him any instructions. This Court granted time of one week to the Appellant. On 21 July 2016 time was again granted to the Appellant till today.

4 Even as of today, the Appellant has not given any instructions to his Advocate. The Appellant has not replied to the Affidavit filed by the Respondent way back on 23 March 2016. Though on 18 March 2016 he stated before the Court that the child seen in his company in the photographs produced by the Respondent is the child of his sister, he has not come forward to file an Affidavit to substantiate the said statement.

5 The learned Counsel appearing for the Appellant has placed on record a photocopy of a letter dated 23 July 2016 addressed by the Advocate for the Appellant to the Appellant along with the receipt issued by the Courier service. The same is taken on record and marked "A-1" for identification.

6 Due to failure of the Appellant to dispute the correctness of the contents of the Affidavit dated 23 March 2016, we have no option but to accept the correctness on the statements made therein which show that the Appellant has married to one Asha.

7 Considering this conduct of the Appellant of marrying during the subsistence of his marriage with the Respondent and that also after dismissal of his Petition for divorce, the present Appeal deserves to be dismissed.

8      Accordingly, we dismiss the Appeal. We make it clear that the Appellant will be entitled to apply for restoration of the Appeal, provided he files an Affidavit disputing the correctness of the statements made in the Affidavit of the Respondent dated 23 March 2016.

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

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

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