

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

FAMILY COURT APPEAL NO. 28 OF 2017

Anuja w/o Chandresh Joshi,
Age 33 years, Occu. Service,
R/o N-9, CIDCO, Aurangabad

..Appellant

Versus

Chandresh s/o Padmakar Joshi,
Age 46 years, Occu. Nil
R/o Plot No.8, N-8, CIDCO,
Aurangabad

..Respondent

Mrs R.R. Mane, Advocate for appellant
Mr A.D. Kasliwal, Advocate for respondent

**CORAM : T.V. NALAWADE AND
A.M. DHAVAL, JJ**

DATE : 4th October 2017

ORAL JUDGMENT (Per T.V. Nalawade, J.)

Heard.

2. Appeal is admitted. Notice, after admission. Learned Counsel Mr Kasliwal waives service of notice for respondent.

3. The appeal is filed against the judgment and decree dated 23th June 2017 in Hindu Marriage Petition No.A-364 of 2016, which was pending in Family Court, Aurangabad. The proceeding was filed by respondent-husband under the provisions of Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage.

4. The submissions made and the record show that the wife, who is suffering from cancer, could not attend the Court, as she was under treatment at the relevant time. In the circumstances, trial Court

passed order by no cross in respect of evidence given by the husband. Though there was written statement of the wife, due to her absence evidence of the husband was closed and she did not give her evidence in rebuttal. Due to these circumstances, trial Court has granted decree on the basis of unrebutted evidence given by the husband.

5. Divorce is an extreme step, which is available to the couple. The Courts are not expected to give the divorce only on the basis of evidence given by the husband and further granting or refusing divorce is within the discretion of the Court. In the present matter, the husband had filed the proceedings on two grounds like desertion and cruelty. In view of nature of contentions and nature of evidence given, this Court holds that opportunity needs to be given to the wife to contest the matter. In these circumstances, this Court holds that it is necessary to remand the matter to the trial Court to decide afresh on merit after giving opportunity to the wife to contest the matter.

6. In the result, Family Court Appeal is allowed. The judgment and decree dated 23.6.2017 passed by the Principal Judge, Family Court, Aurangabad in Petition No.A-363/2016 is set aside. Matter is remanded to the trial Court. As the husband has contended that he separated since 2008, the trial Court is expected to dispose of the matter, as expeditiously as possible and preferably within four months from the date of receipt of order of this Court.

7. Both the sides are allowed to lead their evidence.

8. Parties to appear before the Family Court, Aurangabad on 12th October 2017.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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