

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

**FAMILY COURT APPEAL NO.7 OF 2017
WITH
C.A.NO.15318 OF 2016
IN
FAMILY COURT APPEAL NO.7 OF 2017**

Vaishali W/o Shriniwas Kamble
(Degloorkar) @ Vaishali D/o
Kishanrao Gawali, Age 30 years,
Occ.Service as Teacher,
R/o Shivkrishna Niwas,
Swami Vivekanand Nagar,
Bhawsar Chowk, Taroda (Kh.),
Tq. and Dist.Nanded. ... Appellant.

Versus

Shriniwas S/o Jaiwantrao Kamble
(Degloorkar), Age 33 years,
Occ.Service as Teacher,
R/o Samartha Nagar, Nanded,
Tq. and Dist.Nanded. ... Respondent.

...

Mr.A.R.Vyawahare, advocate holding for
Mr.G.P.Shinde, advocate for the appellant.
Mr.M.M.Parghane, advocate for Respondent.

...

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Date : 21.3.2017.

PER COURT :

1. The learned counsel for appellant states that the decree of divorce in favour of Respondent is an ex parte decree. The summons were never served upon the appellant. It is shown to have been served upon the mother of the appellant. The learned counsel submits that the decree is passed on 23.8.2016. On 20.8.2016, the statement is made by the Respondent in the Police Station that the appellant and Respondent would reside together and that henceforth he would not beat the appellant nor will impart any physical or mental agonies. The learned counsel submits that the appellant was not aware of any such proceedings pending. Even in the said statement, the Respondent nowhere stated about the pendency of the divorce proceedings.

3. The learned counsel for the Respondent submits that the appellant resides with her mother. The copy of the summons along with the copy of the plaint is served upon the mother as the appellant is in service. The learned counsel submits that the ground raised in the present

appeal that the appellant was not aware of the divorce proceedings is false. The Court in the impugned judgment has observed that the service was effected. In spite of ample time been given, the appellant did not appear. The evidence of the present Respondent is recorded and thereafter the decree of divorce is rightly passed.

4. We have considered the submissions. The bailiff report shows that the summons has not been served upon the appellant but it is shown to have been served upon the mother of the appellant. The question would be of proper service of summons.

5. It appears that the statement was made by Respondent in the Police Station that they would reside together. The said statement is three days prior to the impugned judgment and decree. In that statement also, nowhere it is stated by the Respondent about the pendency of the divorce proceedings.

6. As summons does not appear to have been

properly served, we are inclined to grant one more opportunity to the appellant.

7. In the result, we pass the following order :

a) The impugned judgment and decree is quashed and set aside. The parties are relegated before the Family Court. The parties shall appear before the Family Court on 10.4.2017. The appellant shall file her Written Statement on 10.4.2017. The Family Court thereafter shall decide the proceedings before it expeditiously on its own merits, preferably within six (6) months from the date of appearance. The parties shall cooperate in expeditious disposal of the said proceedings.

b) The appeal is partly allowed. No costs.

c) In view of disposal of appeal, the

Civil Application also stands disposed of.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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