

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FAMILY COURT APPEAL NO.136 OF 2017
WITH
CIVIL APPLICATION NO.89 OF 2017
IN
FAMILY COURT APPEAL NO.136 OF 2017**

Sou. Shetal Aniruddha Dalvi ... Appellant

Versus

Shri Aniruddha Deepak Dalvi ... Respondents.

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Mr. Anand S. Patil for the Appellant-Applicant.
Mr. Amit S. Patel i/b. Ms. Turpti M. Khamkar for the Respondent.

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**CORAM : Smt. Vasanti A Naik &
Sarang V. Kotwal, JJ.**

DATE : 19th December, 2017.

P.C. :

The family court appeal is **Admitted** and heard finally at the stage of admission.

By this family court appeal, the appellant-wife challenges the ex-parte judgment of the Family Court, dated 09.02.2017 in petition no. A-67/2015 granting a decree of divorce in favour of the respondent-husband and dissolving the marriage solemnized between the parties on 20.11.2013 by a decree of divorce under Section 13(1)(a) of the Hindu Marriage Act.

Few facts giving rise to the family court appeal are stated thus:

The appellant-wife and the respondent-husband were married at Mumbai on 20.11.2013 as per the Hindu rites and custom. The appellant-wife started residing with the respondent-husband in the matrimonial home at Mumbai. It is the case of the husband in the petition filed by him for the decree of divorce that the wife has suppressed some material facts and had made some wrong disclosure in respect of the material facts pertaining to the matrimony. Several other allegations relating to the quarrelsome nature of the wife and that she did not perform her daily chores were also levelled against her. The wife failed to file the written statement and hence by an order dated 10.10.2015, the petition was proceeded against the wife without a written statement. An application was filed by the wife for return of *streedhan* articles. The Family Court had fixed the matter for hearing after the husband had examined himself on affidavit and by the ex-parte judgment dated 09.02.2017, the petition filed by the husband was decreed.

The learned counsel for the wife submitted that the Family Court was not justified in passing an ex-parte judgment and decree against the wife. A reference is made by the learned counsel to the *Rojnama* in the petition filed by the husband to point out that on most of the dates of hearing the wife was present though on some of the dates of hearing the counsel for the wife was not present as she was contesting an election. It is submitted that since the petition filed by the husband was for a decree of divorce, it was

necessary for the Family Court to have taken a lenient view in the matter and to have granted an opportunity to the wife to file the written statement and also defend the petition filed by the husband for a decree of divorce. It is submitted that on the basis of the *Rojnama*, it could be held that the wife was diligent in defending the petition. It is stated that if her counsel was not present when the petition was called for hearing, the wife should not be made to suffer.

The learned counsel for the husband has supported the ex-parte judgment passed by the Family Court. It is submitted by referring to the reply of the husband that on several dates of hearing, the wife and her counsel were absent. It is stated that the matter was adjourned by the Court from time to time and though an opportunity was granted to the wife she had failed to avail the same. It is submitted that apart from the counsel who was contesting the elections, the wife had also appointed advocate Mr. Arun Satpute and therefore the wife cannot effectively plead that her counsel could not remain present as she was contesting the elections. It is submitted that since the wife did not diligently file a written statement and also did not defend the matter on several dates of hearing, the Family Court had no other alternative but to pass an ex-parte decree of divorce in favour of the husband.

On hearing the learned counsel for the parties, it appears that the following points arise for determination in this appeal:-

- (a) Whether the ex-parte judgment and decree is liable to be set aside in the circumstances of the case?

(b) Whether the matter is liable to be remanded to the Family Court?

(c) What order?

On hearing of the learned counsel for the parties and on a perusal of the judgment of the Family Court and the certified copy of the *Rojnama* tendered by the appellant-wife, it appears that by taking a lenient view, an opportunity needs to be granted to the wife to defend the petition filed by the husband. On a perusal of the *Rojnama*, it appears that on most of the dates of hearing the wife was present. The wife had put in her appearance on 29.06.2015 and though she was absent on couple of dates after 29.06.2015, she had remained present in the court on 15.12.2015, 12.02.2016 and 29.03.2016. It appears that the wife was absent on 11.05.2016 but she remained present on 23.06.2016 and was also present on every other date of hearing except 05.07.2016. Since the wife was present on most of the dates of hearing, the family Court ought not have observed that the wife was not diligent in defending the matter. The wife had also filed an application for the return of *streedhan* articles. Merely because the counsel for the wife had not appeared in the Family Court on a couple of dates of hearing, the wife cannot be made to suffer. It is well settled that a client cannot be made to suffer for the mistake of his counsel. In the circumstances of the case, it would be necessary to grant an opportunity to the wife to defend the matter.

Hence, for the reasons aforesaid, the Family Court appeal is partly allowed. The judgment of the Family Court is hereby set aside. The matter is remanded to the Family Court for deciding the petition filed by the husband in accordance with law. The appellant-wife undertakes to file the written statement before the Family Court within four weeks. The parties undertake to appear before the Family Court on 08.01.2018 so that the issuance of notice could be dispensed with. Since the husband had filed the petition in 2014, the Family Court is requested to decide the petition within six months from the date on which the wife files the written statement. Order accordingly. No costs.

(Sarang V. Kotwal, J)

(Smt. Vasanti A Naik, J)