

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 81 OF 2017**

Shubhangi Amil Satarkar

..Appellant

Vs.

Amit Mohan Satarkar

..Respondent

**Mr. Sujay Hemant Gangal i/b Mr. Kuldip T Pawar for the Appellant
Mr. Rahul Walvekar for the Respondent**

**CORAM :R. M. SAVANT, &
SMT. SADHANA S JADHAV J
DATE : 15th JUNE, 2017**

P.C.

1 The above Family Court Appeal takes exception to the judgment and order dated 3-9-2015 passed by the Learned Judge of the Family Court Kolhapur, by which order, the Petition for divorce being Petition No.A-19 of 2015 filed by the Respondent came to be allowed and resultantly the Marriage Petition between the Petitioner and the Respondent came to be annulled. The challenge to the said order is on the ground that the same is an exparte order as the Appellant was not aware of the filing of the said Marriage Petition. Considering the challenge raised the above Family Court Appeal is heard finally at the admission stage with the consent of the Learned Counsel for the parties.

2 In so far as the Marriage Petition being No.A-19 of 2015 is concerned, the Petitioner in the said Marriage Petition i.e. the Respondent –

husband, it seems had moved an application for serving the Appellant herein i.e. the wife by RPAD. The said application came to be allowed by the Learned Judge of the Family Court, pursuant to which notice of the said Marriage Petition was sought to be served on the Appellant by RPAD. The envelope was returned with the remark 'not claimed'. The Trial Court proceeded on the basis that the Appellant-wife was served and in view of the fact that she is not appearing, passed the exparte decree for divorce.

3 It is required to be noted that no court notice was served to the Appellant-wife. The Appellant-wife is a resident of District Dharwad in Karnataka and it is her case that she became aware of the decree of divorce only when the decree was produced before the Court in Dharwad wherein she has filed an application for maintenance. It is her case that the said RPAD packet was never served upon her nor brought to her notice.

4 In our view, having regard to the fact that the present proceedings are matrimonial proceedings, unless the party does not appear pursuant to the court notice, the matter could not be proceeded with exparte. The Learned Counsel appearing for the Respondent-husband seeks to justify the impugned order but not with any deal of conviction. In our view therefore, the impugned judgment and order dated 3-9-2015 is required to be set aside and the matter is required to be relegated back to the Family Court, Kolhapur for a

denovo consideration of the said Marriage Petition No.A-19 of 2015. Hence the following directions :

(i) The impugned order dated 3-9-2015 is set aside and the matter is relegated back to the Family Court, Kolhapur for a denovo consideration.

(ii) The Learned Counsel appearing for the Appellant waives notice of the Marriage Petition. The Learned Counsel states that the Written Statement would be filed by the Appellant within 6 weeks from date.

(iii) The parties to appear before the Family Court on 27-6-2017 with a copy of the instant order.

(iv) The Learned Judge of the Family Court is directed to hear and decide the Marriage Petition latest by 31-12-2017. Needless to state that the same would be decided on its own merits and in accordance with law.

5 The Family Court Appeal is allowed to the aforesaid extent and is disposed of.

[SMT SADHANA S. JADHAV, J]

[R.M.SAVANT, J]