

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****FAMILY COURT APPEAL NO.110 OF 2015****ALONG WITH****CIVIL APPLICATION NO.203 OF 2015**

Sou. Puja Prakash Patil

Age – 40 yrs., Occ: Housework

R/o.279/24, First Floor (Mala),

Chile Colony, Neharu Nagar,

Near Isolation Hospital,

Tal-Karveer, Dist-Kolhapur

]

... Appellant / Applicant

Versus

Shri Prakash Vasantrao Patil

Age – 45 yrs., Occ : Service,

R/o.279/24, First Floor (Mala),

Chile Colony, Neharu Nagar,

Near Isolation Hospital,

Tal-Karveer, Dist-Kolhapur

]

... Respondent

Mr. Sandeep S. Koregave for Appellant / Applicant.

Mr. Anand S. Patil a/w Ms. Sukanya Kolhe for Respondent.

**CORAM :- SMT. VASANTI A. NAIK &
SARANG V. KOTWAL, JJ.****DATE :- 14 DECEMBER, 2017****JUDGMENT (PER : SARANG V. KOTWAL, J.) :**

Admit. By consent of the counsel for both the parties, the appeal is heard finally.

The present appeal is preferred by the appellant Puja Patil who

was the original respondent in Petition No.A-255 of 2013 before the Family Court, Kolhapur, at Kolhapur challenging the judgment and order passed on 19/03/2015 by the said Court. By the said impugned judgment and decree, the petition for divorce filed by the respondent – husband on the ground of cruelty was allowed. The appellant herein had initially appeared through her Advocate in the said petition. However, thereafter she failed to file her written say and the petition proceeded and was decided in those circumstances.

The respondent had filed the said Petition No.A-255 of 2013 before the Family Court at Kolhapur with the pleadings that their marriage had taken place on 29/07/1997 at Chikodi, Taluka Chikodi, District Belgaum as per Hindu rites. After the marriage, the couple started residing together at Kolhapur. After about two years, the appellant started harassing his parents. It is the case of the respondent that the appellant herself was not willing to cohabit with him and was demanding divorce from him and on her own accord, left his house. With the intervention of the committee of District Legal Aid Authority, some attempts were made to patch up the relations between them. However again since about 2006, the appellant started ill-treating the respondent's parents. It was the respondent's case that the appellant used to raise quarrels in public and was mentally harassing him and his parents. The appellant started residing alone in the respondent's house separately on the first floor and the situation continued for about 6 to 7 years. The respondent was denied of his conjugal rights. According to the respondent, the appellant was causing mental cruelty and therefore on that ground, in those circumstances, he filed the aforementioned petition before the Family Court.

The appellant appeared through her Advocate but did not file the written say and therefore the evidence led by the respondent in the form of his affidavit at Exh.25 along with other documents remained unchallenged and ultimately the decree of divorce came to be passed and the marriage was dissolved on the ground of cruelty by the judgment and decree dated 19/03/2015 passed by the learned Judge of the Family Court at Kolhapur.

The appellant has challenged the said judgment and decree dated 19/03/2015 by way of the present appeal. Along with the present appeal, the appellant has preferred Civil Application No.203 of 2015 for stay of the implementation, operation and execution of the said judgment and decree pending decision of the appeal. In this Civil Application, the appellant has offered some explanation as to why she did not attend the proceedings before the Family Court at Kolhapur. According to the appellant, after filing of the petition, the respondent started talking very sweetly with her and it was also represented to her that he would withdraw his divorce petition and that they would live happily together. Led by such representation, the appellant did not take further steps and did not remain present before the Court. It is the case of the appellant that she came to know about the decree having been passed only on 05/05/2015 and thereafter she took steps to prefer the present appeal and the Civil Application.

We have heard Mr. Sandeep S. Koregave, learned Counsel for the Appellant / Applicant and Mr. Anand S. Patil, learned Counsel for the Respondent.

Mr. Koregave submitted that it is only because of the misrepresentation and sweet talks of the respondent, the appellant did not remain present before the Family Court and did not defend the petition filed by the respondent. He submitted that it was, in fact, the respondent who had treated her with cruelty because she could not conceive in all these years.

Following points arise for our determination and we record our findings thereon as under ;

POINTS	FINDINGS
1. Whether the Judgment and Decree impugned in this Appeal needs to be set aside and whether the Petition No.A-255/2013 is liable to be remanded back to the Family Court, Kolhapur?	- Yes
2. What order?	- As per final order

In the proceedings before the Family Court at Kolhapur, the appellant had in fact filed her appearance through her advocate. Hence, it is clear that she had every intention to participate in the proceedings. But she did not file her written statement and take further part in the proceedings. Therefore we find force in the submissions made by the learned counsel for the appellant that the appellant was misled by the respondent on the representation that he would not pursue the Divorce Petition and they would live together. In our opinion, in this circumstance, if the appellant did not participate in the proceedings, no fault can be found

with the appellant, so as to deprive her a reasonable opportunity to participate in the proceedings and oppose the prayers in the petition. The learned counsel for the respondent fairly submitted that the respondent had no objection for pursuing the petition before the Family Court on merits. Looking at the nature of allegations made against the appellant, in the petition before the Family Court, the appellant deserves a fair opportunity to defend her case. Therefore in our opinion, this is a fit case in which, in the interest of justice, the matter needs to be remanded back to the Family Court for the decision on merits of the case. Hence, the following order :

ORDER

- (i) The judgment and decree dated 19/03/2015 passed by the learned Judge, Family Court at Kolhapur in Petition No.A-255 of 2013 is set aside.
- (ii) The Petition No.A-255 of 2013 is restored on the file of the Family Court at Kolhapur. The said petition shall be decided in accordance with law.

In view of disposal of the appeal, Civil Application does not survive and the same is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(SMT. VASANTI A. NAIK, J.)