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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7789 OF 2017

Vinayak P. Balasaheb Sonar ... **Petitioner.**

V/s.

Sou. Bhagyashri V. Sonar ... **Respondent.**

Ms. K. G. Sarangi I/by Ms. B. R. Mangale, for
the petitioner.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 5th OCTOBER, 2017.

P.C.

1] Heard learned counsel for the petitioner.

2] By this petition, petitioner is challenging the order dated 15.5.2017, passed by the Family Court, Solapur, in Misc. Application No.3 of 2017, thereby setting aside the exparte judgment passed in H.M.P. NO.A-159 of 2016.

3] The said marriage petition was filed by the petitioner herein for decree of divorce under section 13(1) (1-a) and (1-b) of the Hindu Marriage Act. According to the petitioner,

summons of the petition was served on the respondent under Order V, Rule 15 of Code of Civil Procedure. Thereafter instead of appearing in the Court to contest the said petition, respondent approached the Hon'ble High Court and sought transfer of the said petition from the court at Solapur to Court at Beed. In the said Transfer Application, no order of stay to the proceeding before Family Court, Solapur was sought or passed. As a result thereof, the Family Court at Solapur proceeded with the hearing of the petition and granted decree of divorce.

4] Thereafter respondent has filed application before the trial Court to set aside the exparte decree. The submission of learned counsel for petitioner is that in the first place, it is not exparte judgment in the strict sense as summons of the petition was duly served on the respondent and hence it was necessary for her to appear in the petition. She has not done so, she has also not obtained or applied for stay to the proceeding before the Family Court. In such circumstances, it is urged that the Family Court has committed an error in allowing the application, to set aside the exparte decree of divorce.

5] The next submission advanced is that the petitioner has already performed the second marriage and therefore no purpose would be served by setting aside such ex parte decree of divorce.

6] Though notice of this petition is duly served on the respondent and an affidavit of service to that effect is filed, respondent has not remained present.

7] It can be seen that on the receipt of summons of HMP No.A-159 of 2016, respondent has approached the High Court and filed an application for transfer of the said petition to the Court at Beed. On filing of said application, she was under bonafide impression that the proceeding in the Family Court will not be conducted. The impugned order of the trial Court shows that though the petitioner was aware of the transfer application pending in the High Court, he did not inform to the Family Court that such transfer application was filed. As a result, the proceedings before Family court were conducted ex parte.

8] It is always desirable that such matrimonial proceeding should be conducted on the merits, especially when respondent has given sufficient cause for her remaining absent. Hence the impugned

order passed by the trial court of setting aside exparte decree appears to be just, legal and correct.

9] As regards the ground of petitioner's performing the second marriage, it is pertinent to note that exparte decree of divorce was passed on 3rd December, 2016 and immediately thereafter, the petitioner has performed second marriage on 6.1.2017 which shows that the petitioner has not even waited for the appeal period to get over. So he cannot take advantage of his own wrong to contend that learned Judge of Family Court has committed an error in setting aside the exparte decree. Hence, on this ground also I do not find any substance in the submission advanced by learned counsel for the petitioner. The impugned order, thus, does not suffer any illegality and hence Writ Petition holds no merit. Therefore, stands dismissed.

(DR. SHALINI PHANSALKAR-JOSHI, J.)