

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.208 OF 2013
WITH
CIVIL APPLICATION NO.105 OF 2016

Shobha Raju @ Ravindra Jadhav	...Applicant
vs.	
Raju @ Ravindra Jadhav	...Respondent

Mr. Ameya Tamhane i/b. Ms. Seema Sarnaik, for the Applicant.
Mr. Pravartak Pathak, for the Respondent.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.**

DATE : JULY 26, 2017

P.C.:

. This Appeal is directed against the judgment and decree dated 24th April, 2013 passed by the learned Judge, Family Court, Nashik in Petition No. A-246 of 2010.

2. According to the learned counsel for the Appellant, though the Appellant-wife did not file written statement and remained absent before the trial Court. Still it was incumbent upon the trial Court to have recorded the positive finding in regard to the proving of the grounds raised by the Petitioner-husband in the

Petition. He submits that the learned Judge has taken the Petitioner's evidence as gospel truth without there being any corroboration to the same and allowed the Petition. In the circumstances, he has prayed to set aside the impugned order and to grant the Appellant-wife an opportunity to defend the Petition filed before the learned Judge, Family Court at Nashik.

3. We have gone through the impugned judgment and the grounds raised by the Appellant in this Appeal. Having gone through the same, we are in agreement to the submission made by the learned counsel for the Appellant. We also take note of the fact that the Appellant is having a son who is mentally challenged and therefore the interest of justice will be well served if the matter is remanded so that a by parte adjudication will be done. In this background we feel it proper to accord an opportunity to the Appellant to defend the Petition.

4. As a result, we set aside the impugned judgment and decree dated 24th April, 2013 and remand the matter back to the Family Court, Nashik to decide the Petition A-246 of 2010 afresh.

5. As we are setting aside the impugned judgment and decree, the Appellant-wife is permitted to file the written statement before the trial Court on the next date of hearing.

6. In regard to the reliefs claimed in the Civil Application No. 105 of 2016, the same is allowed to be applied before the Family Court.

7. The parties to appear before concerned Family Court at Nashik on 12th September, 2017.

8. With the aforesaid direction, the Appeal stands disposed of.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)