

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.10 OF 2019
WITH CA/1893/2019 IN AO/10/2019

SUJIT VASANTRAO KARAD
VERSUS
REKHA SUJIT KARAD

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Advocate for Petitioner : Shri Kendre N.D.
Advocate for Respondent : Shri Mane D.M. h/f Shri Nagargoje A.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 11, 2019

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PER COURT :-

1. The appellant is aggrieved by the order dated 19.11.2018, vide which, the judgment and decree dated 7.8.2018, delivered by the trial Court in HMP No.18 of 2018, has been quashed and set aside and the proceedings are remitted to the trial Court as the respondent / wife had not participated in the proceedings.

2. The grievance of the appellant is that the appellate Court can remand the matter only in view of Order XLI Rule 23 and Order XLI Rule 23A of the Civil Procedure Code. Reliance is placed upon the judgment of the Honourable Apex Court in the case of Municipal Corporation, Hyderabad Vs. Sunder Singh [(2008) 8 SCC 485] and an order of this Court in the matter of Rampyare Ram Hiranman Prasad Vs. Usha Prasad Rampyare Ram Hiranman [2017 (5) Mh.L.J. 378].

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the grounds formulated by the appellant in the memo of the appeal.

4. There is no dispute that the appellant had approached the trial Court for seeking a divorce on the ground that the wife was not happy with the marriage, she came from an urban background and did not like the atmosphere in Latur district because it is a rural and backward area. Further allegation is that the wife desired that the husband should move into a prime locality in Latur. Despite the allegations, the marriage was cohabited and a male child was born.

5. The wife cited reasons in support of her contention that she was unable to participate in the proceedings filed by husband. Though she has caused an appearance, through an Advocate, she failed to file her written statement and could not cross-examine the husband and did not lead evidence.

6. Though it appears that there are certain lapses on the part of the wife, the fact remains that she does not desire a divorce and is opposing the divorce petition. She probably intends to save her marriage. On account of a lapse in the conducting of the proceedings

before the trial Court, if an opportunity is not granted to her, she would be remediless against the divorce granted by the trial Court.

7. The judgments cited by the appellant are distinguishable on facts and it cannot be said that the facts emerging from these proceedings are similar to those appearing in the reported judgments.

8. I do not find that the impugned judgment of the appellate court could be termed as being perverse or erroneous or likely to cause gross injustice to the appellant / husband.

9. In view of the above, this Appeal is dismissed. The Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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