

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.34 OF 2019
(Shashikant @ Amit Dnyandev Bade Vs. Maya Shashikant Bade)
WITH
CIVIL APPLICATION NO.7412 OF 2019

Mrs.M.A.Kulkarni, Advocate for the appellant.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/07/2019

PER COURT :

1. The appellant is aggrieved by the judgment and order dated 05/02/2019 delivered by the First Appellate court in RCA No.277/2015 vide which the judgment and decree of the Trial Court dated 28/04/2011 allowing HMP No.435/2010 has been set aside on the ground that the wife had not filed her written statement and the said judgment was ex-parte. Costs of Rs.10,000/- was imposed upon the wife and the proceedings are remanded to the Trial Court to enable the wife to file her written statement and contest the matter. The grievance of the appellant is that after he acquired an ex-parte decree of dissolution of his marriage, he has re-married and he also have one girl child from the said marriage.

2. The learned Advocate has drawn my attention to the 7 grounds

raised in the memo of the appeal and it is submitted that the case is governed by Order IX Rule 13 of the CPC, when it comes to setting aside an ex-parte decree.

3. Having considered the submissions of the learned Advocate and having gone through the record available, though it is apparent that the wife refused to accept the summons of the Court, she has subsequently appeared in the proceedings. Without a written statement, the matter has proceeded virtually rendering her defenceless. It is after considering the said factors, that the Appellate court was of the view that the matter could be remanded so as to enable the wife to file a written statement and contest the proceedings. Costs of Rs.10,000/- has also been granted and the wife is therefore under an obligation to deposit the costs amount.

4. It does appear that the wife of the appellant, who was estranged and was under mental pressure, had refused to accept the Court summons. As a consequence, the suit was decided ex-parte and after the appeal period was over, the appellant has re-married as is submitted by the learned Advocate.

5. These are further complications in the matter and which the

litigating parties would be able to sort out before the Trial Court.

6. Merely because a second view is possible, would not mean that this Court should interfere with the impugned judgment.

7. In view of the above, this appeal is dismissed. Pending civil application, does not survive and stands disposed off.

8. Needless to state, it would be open for the parties to resolve their dispute keeping in view that the appellant/husband has already re-married and a child has been born from the said marriage.

(Ravindra V.Ghuge, J.)