

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

**CIVIL APPLICATION NO.157 OF 2016
IN
FAMILY COURT APPEAL NO.40 OF 2016**

Sou. Renuka Prabhakar Reshmikar Applicant

versus

Prabhakar Shivyogi Reshmikar ... Respondent/
Original Appellant

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- Mr.Ravindra Vishnu-Laxmi Sankpal i/b. Mr.R.V. Sankpal & Associates a/w Mr.Shirin Irani, Advocate for Applicant.
- Mr.Ashok Tajane, for Respondent/Original Appellant.

**CORAM : INDRAJIT MAHANTY &
SMT. S. S. JADHAV, JJ.
DATE : 09th JANUARY, 2019.**

P.C. :

1. Heard learned Counsel Mr.R.V. Sankpal for the Respondent/Wife in Appeal and learned Counsel Mr.Ashok Tajane for the party Appellant/Husband in Appeal.

2. The subject matter of the present Application is to challenge the order dated 06/02/2016, by which order the

Application under Order 9 Rule 13 of CPC filed by the Respondent/Wife, seeking to set aside the exparte decree of divorce, on the ground that she had not been served with the notice from the Family Court, had come to be allowed.

3. The learned Counsel appearing for the Appellant has sought to challenge the said order by which the exparte Decree dated 21/06/2014 passed in Petition No.A-117/13, seeking the Dissolution of Marriage by Decree of Divorce on the ground of cruelty, came to be set aside. It has been asserted by the Respondent/Wife in her Application under Order IX Rule 13 of CPC that she learnt of the exparte decree only on 08/04/2015, i.e., when the Appellant/Husband produced the copy of Decree before the Sub-Inspector of Mangalwar Peth Police Station. She submitted that, prior to that, she had no knowledge about the matrimonial proceedings and further she has averred in her Application that her signature on the summons does not belong to her and is a forgery.

4. Learned Judge, Family Court, Solapur has dealt with the issues raised both by the Respondent/wife in her Application under Order IX Rule 13 of CPC, as well as, the objection raised by the Petitioner. We find that in paragraph No.9, the learned Family Judge has dealt with the issue that the bailiff's report contained two signature of the same person (Respondent/wife). One of them was in English and another was in Marathi. In the Application under Order IX Rule 13 of CPC, signature of the Respondent/Wife is also found and on comparison of the same, the learned Judge came to hold that the same is distinguished and different and the signature of the Respondent/Wife in the Application is not the same as that of the signature indicated in the bailiff's report.

5. The learned Counsel appearing for the Appellant/Husband, inter alia, contended that although he raised plea of limitation, the same was not considered on its own merit nor any finding was given by the learned Family Judge, Solapur. He further averred that since the summons has

been served through the bailiff appointed by the Court, the bailiff ought to have been called as a witness in order to prove the signature of the Respondent/wife.

6. Learned Counsel for the Respondent/wife on the other hand contended that the Respondent had never been served the copy of summons and the bailiff had obtained the signature fraudulently and attempted to pass off a signature as that of the Respondent/Wife. The Court having accepted the said invalid service as adequate, proceeded to pass the exparte decree. It is only on 08/04/2015 that the Appellant/Husband produced the copy of the exparte decree before the Sub-Inspector of Mangalwar Peth Police Station and on the said date itself the Respondent/Wife learnt and became aware about passing of exparte decree. Consequently, the Application under Order IX Rule 13 of CPC was filed on 06/05/2015 i.e. within a month from the date of her knowledge of passing of the impugned decree. Consequently, we find no substance in the contention raised by the learned counsel for the Appellant/Husband insofar

as the plea of limitation is concerned, since the Application under Order IX Rule 13 of CPC Appeal was filed within a period of one month from the date of her knowledge of passing of exparte decree.

7. Insofar as the second contention is concerned, we find that although the bailiff was never called as a witness before the learned Judge, Family Court, Solapur, yet the bailiff's report itself was available on the records of the learned Family Judge. We have also, in course of the present Appeal, gone through the original documents and pleadings and as we can see with the bare eyes that, the signature of the Respondent/Wife, as indicated in her Application under Order IX Rule 13 of CPC is completely different from the signature found in the body of the bailiff's report. We find no reason as to why to differ with the views expressed by the Family Judge, Solapur, in this regard.

8. Learned Counsel appearing for the Appellant/Husband further submits that attempt should be made for mediation for

any settlement between the parties. In the course of hearing, the learned Counsel for the Appellant/Husband brought on record an additional affidavit in the Court today raising various contentions etc. on the merit of the claims.

9. We are of the considered view that since the present Appeal has been filed by the Appellant/Husband seeking to set aside the order passed by the learned Family Judge, Family Court, Solapur, under Order IX Rule 13 of CPC, liberty is granted to both the parties to raise any such plea and/or lead evidence, as may be required in order to substantiate their claims and/or stand.

10. However, after hearing learned Counsel for the parties, perusing the order impugned as well as going through the original record, produced before us, we are of the considered view that no justifiable cause nor any lawful reason subsists for entertaining the Appeal and we are in complete agreement with the conclusion arrived at by the learned Family Judge, in passing

the impugned order. Consequently, the present Appeal stands dismissed. In view thereof the interim order stand vacated. Original record may be sent back to the concerned Family Court for taking up the issue refresh.

11. If any Application is made by either of the party, seeking mediation, the Family Court shall do well to consider the same in accordance with the law and proceed with the matter expeditiously.

12. All connected applications, stand disposed of as not pressed, with liberty to both parties to make necessary application before the Family Court, if so advised.

(SMT. S. S. JADHAV, J.)

(INDRAJIT MAHANTY, J.)