

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

FAMILY COURT APPEAL NO.74 OF 2017

**WITH
CIVIL APPLICATION NO.94 OF 2017
IN
FAMILY COURT APPEAL NO.74 OF 2017**

Mrs.Vanita Ninad Sonkavde Appellant/
Applicant

versus

Ninad Nagnath Sonkavde ... Respondent

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- Mr.Laxman Deshmukh, Advocate for Appellant/Applicant.
- Ms.Tejas Kapre, Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.**

DATE : 03rd APRIL, 2019.

P.C. :

1. The Appellant has challenged the Judgment and Decree dated 05/01/2017 passed by the Principal Judge, Family Court, Solapur, in Petition No.A-278/15. It is observed in the judgment of the trial Court that the case was not defended on behalf of the Appellant-Wife. Accepting the evidence of the Respondent-Husband, the trial Court passed the decree of divorce.

2. Learned Counsel for the Appellant has pointed out that in the past, the husband had filed Petition for divorce vide Petition No.A-398/14 before the Family Court at Thane, for the same relief.
3. Learned Counsel for the Appellant pointed out that the wife had approached the Hon'ble Supreme Court for transfer of that case at Thane to the Court at Hyderabad. Vide order dated 07/08/2015, the Hon'ble Supreme Court had issued notice to the husband and had stayed the further proceedings in Petition No.A-398/14 pending on the file of Principal Judge, Family Court, Thane. After this order was passed, the husband had filed another Petition for divorce before Family Court, Solapur, vide Petition No.A-278/15. That Petition was filed on 30/10/2015. In that Petition there was not a whisper about the pending proceedings before the Family Court, at Thane. There was no mention of the order passed by the Hon'ble Supreme Court on 07/08/2015.

4. Learned Counsel for the Respondent-Husband submitted that the husband was not aware of the order passed by the Hon'ble Supreme Court on 07/08/2015. She further submitted that the husband had instructed his lawyer to withdraw the Petition at Family Court at Thane and he was under bonafide belief that the said Petition was withdrawn. It is the case of the husband that under such bonafide belief, he filed fresh Petition for divorce in the Court at Solapur.

5. We have gone through the memorandum of Petitions in both the Courts i.e. at Thane and at Solapur. Both the Petitions are similar. Wife had not defended the Petition at Solapur and therefore the factum of pendency of proceedings in the Hon'ble Supreme Court as well as those in the Family Court at Thane, was not brought to the notice of the Family Court at Solapur. With the reason, impugned Judgment and Order was passed by the learned Principal Judge, Family Court, Solapur.

6. Today, the learned Counsel for the wife has handed over a copy of the order passed by the Hon'ble Supreme Court on 24/10/2017 passed in Transfer Petition (Civil) No.1122/15, whereby the proceedings pending before the Family Court, Thane, vide Petition No.A-398/14 were transferred to the Family Court, LB Nagar/Ranga Reddy District, Andhra Pradesh. The copy of the said order is taken on record and marked 'X' for identification.

7. The fact that the earlier Petition was filed by the husband in Family Court at Thane, was not brought to the notice of the Family Court at Solapur. The Hon'ble Supreme Court had stayed the Petition at Thane. These important facts were not brought to the notice of the trial Court at Solapur. Ultimately, the Hon'ble Supreme Court has transferred the Petition No.A-398/14 on the file of the Family Court at Thane to the Court at L. B. Nagar, Andhra Pradesh.

8. In these circumstances, we are inclined to set aside the impugned Judgment and Order granting divorce to the husband. It is open for the Appellant-Wife to point out all these facts to the trial Court at Solapur. We are inclined to remand back the matter for fresh consideration, taking into account all the past litigations and the orders passed by the Hon'ble Supreme Court in these proceedings. Hence, the following order :

ORDER

- (i) The Judgment and Order dated 05/01/2017 passed by the learned Principal Judge, Family Court, Solapur, in Petition No.A-278/15 on his file, is set aside.
- (ii) Petition No.A-278/15 before the Family Court, Solapur, is remanded back to its original file before that Court.
- (iii) The Appellant-Wife shall file a written statement within a period of 8 weeks from today.
- (iv) In her written statement, the Appellant-Wife shall point out the details of all the past litigations and the orders passed by the Hon'ble Supreme Court.

- (v) The Learned Principal Judge, Family Court, Sopalur shall take into account the orders passed by the Hon'ble Supreme Court and all the past litigations between the parties.
- (vi) The Appeal is disposed of in the aforesaid terms.
- (vii) With the disposal of the Appeal, pending Civil Application does not survive and is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)