

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

SECOND APPEAL NO.99 OF 2017

Mr.Parshuram Mukund Vaity

..Appellant

V/s.

Mrs.Vanita Parshuram Vaity

..Respondent

Mr.Nitin V. Gangal a/w Mr.Ashok Kadam and Ms.Pruna Shukla
for the Appellant.

Mr.Sanjay A. Ghaisas for the Respondent.

CORAM : S.C. GUPTA, J.

DATE : 06th NOVEMBER 2019

P.C.

1. Heard learned counsel for the parties.

2. This Second Appeal challenges orders passed by the Trial Court and the First Appellate Court in a Marriage Petition. The Marriage Petition was filed by the respondent for divorce on the ground of cruelty. The impugned orders dismissed the Marriage Petition. The main grievance for challenging the impugned orders of the Courts below is that despite there being an order to take documents on record, several documents were not actually taken on record. These documents were part of an application, being Exhibit-43. That application was allowed and the documents were

accepted in evidence on payment of cost. The order was of 04th January 2012. Cost ordered was paid by the appellant. Despite this order and payment of cost in pursuance thereof, the documents were not taken on record and eventually, the petition was dismissed on the ground that there was no documentary proof in support of the petitioner's case of cruelty. This seems to be highly irregular and raises substantial questions of law. Considering, however, the controversy in the matter, learned counsel for the respondent agrees to have the impugned orders of the Trial Court as well as of the First Appellate Court set aside and the matter remanded to the Trial Court viz., the Court of Civil Judge Senior Division, Thane (now, Family Court) for a fresh hearing in accordance with law. It is also agreed between counsel that as and when the Court rehears the matter it will have to either admit the documents in evidence or if it is of the view that the contents of the documents are not proved, give an opportunity to the petitioner to prove the contents by oral evidence; likewise, an opportunity should have to be given to the respondent to bring in further documentary evidence, if any, in rebuttal of the documents.

3. In the premises, the following order is passed :

ORDER

(i) The impugned orders of the District Court at Thane and the Court of Civil Judge Senior Division, Thane are quashed and set aside and Marriage Petition No.159 of 2008 is remanded to the Family Court at Thane for a fresh hearing in accordance with law and keeping in view the observations of this Court in the order above.

(ii) Considering the fact that the Marriage Petition is of the year 2008, the Family Court is requested to dispose of the petition as expeditiously as possible and preferably within a period of one year from today.

(iii) All concerned to act on an authenticated copy of this order.

(iv) Such copy may be produced by either party before the Family Court at Thane, whereupon the Court may fix the schedule of hearings in the petition.

(v) The Second Appeal is disposed of accordingly.

4. This order is passed in the presence of both the parties and on their instructions.

(S.C. GUPTE, J.)