

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 124 OF 2019

Kshitija Govind Sarangi

.. Appellant

Versus

Govind Kirshnahari Sarangi

.. Respondent

-
• Mrs. Taubon F. Irani for the Appellant
.....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : AUGUST 2, 2019.

P.C.:

1. The respondent could be served only through substituted service, however, he has not appeared in response to such publication. The appellant is the wife and the respondent is the husband. The appellant has filed Family Court petition seeking dissolution of marriage on the ground of cruelty and desertion. In such Family Court proceedings also, the husband never remained present. The Family Court despite absence of the respondent, dismissed the petition of the wife by impugned judgment dated 26.12.2017 primarily on the ground that her evidence did not establish either desertion or cruelty.

2. Having heard the learned counsel for the appellant, we notice that the respondent – husband had neither remained present before the Family Court nor before us. All through out, he has not defended the proceedings. Learned counsel for the appellant further submitted that his whereabouts are also not known to the appellant. Ever since the couple started residing separately in the year 2012, the husband has not cared to maintain the wife and two children. She submitted that these are sufficient grounds to establish desertion and cruelty both.

3. These specific averments and facts are not clearly and specifically brought on record before the Family Court. Some of these submissions and averments are relating to the period after the Family Court passed its impugned judgment. Under these circumstances, we do not find any fault in Family Court in not allowing the appellant's divorce petition. However, it would be open for the appellant to file a fresh petition for the same and additional grounds which have come around after passing the judgment of the Family Court. If the appellant files such fresh petition within a period of

four weeks from today before the competent Family Court, the same shall be decided, unmindful of the observations in the impugned judgment of the Family Court but bearing in mind the observations made in this order. The Family Court may attempt to dispose of such fresh petition within the period of six months from its filing.

4. Family Court Appeal is disposed of in the above terms.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]