

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14257 OF 2018

Ashish Niranjana

...Petitioner

Versus

Moni Niranjana

...Respondent

....
Mr. Vikram Deshmukh i/b. M/s. P.S. Legal, for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 28th MARCH, 2019

P.C.

1. Heard Mr. Vikram Deshmukh, learned counsel for the petitioner, at length.
2. This Petition takes exception to the order dated 13.08.2018 passed by the learned Judge, Family Court No.6, Mumbai in Petition No.Civil M.A.-237 of 2015. By that order, the learned Judge rejected the application made by the petitioner-husband for restoration of Petition No.A-542 of 2008, which was dismissed in default.
3. The petition was heard on 4.1.2019 and notice for final disposal was issued to the respondent returnable on 17.1.2019. It was made clear that the petition will be disposed of finally at the stage of admission and that despite service if the respondent fails to appear the Court will proceed to decide the petition on its own merits.

4. Office remark dated 7.3.2019 shows that the sole respondent is duly served as per the Bailiff's report dated 22.1.2019. Despite service, the respondent has neither appeared nor entered appearance. Today, none appears on behalf of the respondent.

5. With the assistance of Mr. Deshmukh, I have perused the impugned order dated 13.8.2018. The petitioner has instituted Petition No.A-542/2008 on the ground of cruelty and desertion as contemplated by Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (for short, 'Act'). Said petition was dismissed on 25.6.2013. The application for restoration was filed on 7.11.2015 that is to say after more than two years from the date of dismissal. By the impugned order, the learned trial Judge rejected the application principally on the ground that no sufficient cause was made out in the application which was filed after two years of date of dismissal of the petition.

6. Having regard to the fact that the petitioner had instituted petition for divorce under Sections 13(1)(ia) and 13(1)(ib) of the Act, in my opinion, instead of dismissing application for restoration, the learned trial Judge could have put the petitioner to terms. By refusing to restore the petition, the petition for divorce stands dismissed. Such a drastic order was not called for.

7. In view thereof, the impugned order dated 13.8.2018 is set aside. Civil M.A. No.237/2015 is allowed. Petition No.A-542/2008 is restored to its original position. The learned trial Judge will issue notice to the respondent and thereafter proceed with the matter in accordance with law. All contentions of the parties on merits are expressly kept open. The petition is disposed of in aforesaid terms with no order as to costs.

8. All concerned parties, including the trial Court, to act upon an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)