

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.11961 OF 2018

Yogesh Arvind Aher	]	Petitioner
Vs.		
Priyanka Yogesh Aher	]	Respondent

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Mr. Uday B. Nighot, learned Counsel for the Petitioner.
Ms. Aditi Naikare i/b Mr. P.J. Thorat, learned Counsel for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 21ST FEBRUARY, 2019.

P.C.

Heard Mr. Nighot, learned Counsel for the petitioner and Ms. Naikare, learned Counsel for the respondent.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 24th September, 2018 passed by the learned Judge, Family Court, Nashik in Civil Misc. Application No.14 of 2017. By that order, the learned trial Judge allowed the application made by the respondent under Order-IX, Rule-13 of the Code of Civil Procedure, 1908 (for short 'C.P.C') and set aside ex-parte decree dated 15th February, 2017 passed in 'A' Petition No.390 of 2016. The learned trial Judge restored that Petition to its original position.

3. In support of this Petition, Mr. Nighot strenuously contended that the respondent was sent notice at her parental place. She refused to accept that notice and, therefore, it amounts to a valid service. The learned trial Judge

was, therefore, justified in decreeing Divorce Petition instituted by the petitioner on the basis that the respondent refused to accept the service. The learned trial Judge has not considered this aspect and observed that the respondent has given her residential address of Aurangabad and the petitioner did not give alternative address of Aurangabad. He submitted that once the summons was refused by the respondent, there is presumption under section 27 of the General Clauses Act regarding service of the notice. He, therefore, submitted that the Petition requires consideration.

4. On the other hand, Mr. Thorat has invited my attention to the findings recorded by the learned trial Judge in paragraphs 7 and 8 of the impugned order. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. The matter was heard on earlier occasion and was adjourned till today so as to enable the parties to explore possibility of settlement. It is evident from the submissions made by learned Counsel for the parties that settlement is not possible at this stage.

6. The short question is whether the respondent was served in Petition A-390 of 2016 instituted by the petitioner. The learned trial Judge noted that the respondent had filed Criminal Misc. Application No.253 of 2016 under the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). In that proceeding, she had given residential address as "C/o, Kavita Rahul Mote, 250-A, Kamalkunj Apartment, Flat No.5, Sector-B, N-1, CIDCO, Aurangabad". The petitioner, herein appeared in the said proceedings on 21st May, 2016. He had instituted Petition A-390 of 2016 on 13th July, 2016. In other words, the petitioner appeared in the D.V. Proceedings filed by the respondent and thereafter had filed the proceedings for divorce on 13th July,

2016. In paragraph 7, the learned trial Judge observed that though the petitioner was aware of address of the respondent of Aurangabad, the summons were issued on the address of Chalisgaon. The petitioner intentionally avoided to give alternative address of Aurangabad to serve the summons of divorce proceedings on the respondent.

7. For the reasons recorded in paragraphs 7 to 9, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed.

[R.G. KETKAR, J.]