

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.105/2019

Amit Ramesh Gawande

..VS..

Sau.Kalyani Amit Gawande, thr. Ramesh Wasudeo Khade

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri V.B.Bhise, Counsel for the Appellant.
Shri P.S.Girdekar, Counsel for the Respondent.

CORAM : V.M.DESHPANDE, J.

DATED : JULY 11, 2019.

1. Heard learned counsel Shri V.B.Bhise for the appellant and learned counsel Shri P.S.Girdekar for the respondent.
2. The present second appeal is filed by petitioner who filed petition, under Section 9 of the Hindu Marriage Act, 1955, bearing HMP No.245/2015 in the Court of learned Joint Civil Judge Senior Division, Akola.
3. According to the petition, marriage between the appellant and the respondent took place on 24.12.2010 at Arya Samaj, Akot, which was love marriage. Since February, 2015, without there being any reason, the respondent withdrew herself from his company. Therefore, on 20.6.2015 the appellant gave a Notice for restitution of conjugal rights which was served, however when it was not complied with, the petition under Section 9 of the Act was filed.

4. The respondent filed her written statement and denied even the fact of marriage between them as alleged by the appellant.

5. Learned Judge of the Trial Court dismissed the petition on 19.12.2016 since the appellant/petitioner failed to appear before the Court below and adduce evidence.

6. Learned Judge of Lower Appellate Court also confirmed the order of dismissal of the petition, in an appeal filed by the appellant, on 24.8.2017 in Regular Civil Appeal No.4/2017.

7. Learned counsel Shri V.B.Bhise for the appellant submits that a chance should be given to the appellant to prove his case before the Courts below.

8. The respondent through her Advocate gave a reply to the Notice issued by the appellant. In reply, it was specifically denied by the respondent that there took place any marriage at Arya Samaj, Akot and/or they are husband and wife.

9. Thus, from the beginning, the appellant was knowing the case of the respondent that she is denying her status as his wife.

10. From the impugned judgments, it appears that on 21.11.2016 counsel for the appellant filed an affidavit in lieu of evidence (Exhibit 17). At the time of presentation of the said affidavit, the appellant was not present for its verification and recording of the same to admit in the evidence. Therefore, learned Judge of the Trial Court granted adjournment and the matter was fixed on

6.12.2016. However, on the said day also, the appellant chose not to remain present before the Court. Not only that, even an application was also not moved for adjournment. Consequently, learned Judge of the Trial Court passed an order that the case of the petitioner was false.

11. Since the petitioner did not remain present and did not prove his case before learned of the Trial Judge below, there was no option for learned Judge to dismiss the petition.

12. Before learned of the Lower Appellate Court no reason or explanation was offered by the appellant as to why before learned Judge of the Trial Court he could not remain present.

13. It is duty of every litigant to attend his/her case filed in the Court of law. Litigant must diligently pursue his/her case. For reasons, if litigant is unable to attend the Court, it is always open for the litigant to file an application for adjournment or/for time. In the present case, nothing was done by the appellant. However, in the memo of appeal before learned Judge of the Lower Appellate Court, the appellant tried to blame his Advocate behind his back. In my view, the said is not permissible.

14. In this view of the matter, since no substantial question of law is involved, the present second appeal is dismissed and disposed of as such. No costs.

JUDGE

!! BRW !!

...../-