

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

APPEAL AGAINST ORDER NO.53 OF 2017

Surajlal s/o Ramchandra Lende

-vs-

Mangala w/o Surajlal Lende

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

Court's or Judge's Orders.

Shri N. M. Jibhkate, Advocate for appellant.
Ms S. H. Bhatia, Advocate (appointed) for respondent

CORAM : A.S.CHANDURKAR, J.

DATE : January 14, 2019

Heard finally.

In this appeal, the order dated 27/09/2017 passed by the learned Principal District Judge remanding the matrimonial proceedings to the trial Court for fresh adjudication is under challenge.

The appellant is the original petitioner in H.M.P.No.53/2012 in which the relief of seeking a decree of divorce on the ground of cruelty was prayed for. The trial Court recorded a finding that as the marriage between the appellant and the respondent was not solemnized, such marriage could not be dissolved. Hence the trial Court dismissed the said divorce petition.

The respondent herein being aggrieved by the finding recorded by the trial Court that there was no valid marriage between the parties filed an appeal challenging that finding. The appellate Court in the said appeal found that proper opportunity was not given to the respondent to lead evidence and on that count after setting aside the judgment of the trial Court remanded the matter to the trial Court for fresh adjudication.

Shri N. M. Jibhkate, learned counsel for the appellant submitted that under Section 28(1) of the Hindu Marriage Act, 1955 (for short, the said Act) it is only the decree which could be appealed against and not any finding given in the marriage petition. According to him the dismissal of the Hindu Marriage Petition was not challenged by the appellant and hence in absence of any challenge to that decree no appeal at the instance of the respondent who had succeeded before the trial Court could have been filed. If at all an appeal would have been filed by the appellant, it was open for the respondent to challenge any adverse finding recorded by the trial Court while supporting the decree. It is thus submitted that the appellate Court exercised jurisdiction

in a matter over which it had no jurisdiction to entertain.

Ms S. H. Bhatia, learned counsel appointed to represent the respondent submitted that she be discharged from representing the respondent on the ground that the respondent was insisting that she should be assured of some positive outcome in the appeal.

This expectation of the respondent is contemptuous and same cannot be countenanced. The request of the learned counsel for discharge therefore is not accepted. The learned counsel further submitted that since the trial Court has found that there was no marriage between the parties that finding was rightly challenged before the appellate Court.

On perusing the impugned judgment in the light of provisions of Section 28 (1) of the said Act, it is clear that it is only a decree that can be challenged before the appellate Court. It is not in dispute that the trial Court dismissed the Hindu Marriage Petition against which the appellant did not file any appeal. Hence there was no occasion for the appellate Court to entertain the appeal filed by the respondent which was merely challenging a finding against her. It is thus clear that the Appellate

Court exercised jurisdiction not vested in it.

In view of aforesaid the judgment of the appellate Court in M.C.A. No.67 of 2015 dated 27/09/2017 is set aside. The Appeal Against Order is allowed in aforesaid terms with no order as to costs.

The counsel appointed to represent the respondent is entitled to fees quantified at Rs.3000/-. Needless to state that it is open for the respondent to take appropriate steps as are permissible in law if she is aggrieved by any finding recorded by the trial Court.

JUDGE