

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 SECOND APPEAL NO.654 OF 2012

WITH

SECOND APPEAL NO.655 OF 2012

RAJASHRI ARVIND JADHAV

VERSUS

ARVIND KRUSHNARAO JADHAV

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Mr. D.R. Jayabhar, Advcoate for the appellant

Mr. S.P. Salgar, Advocate h/f Mr. N.V. Gaware, Advocate for the sole
respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10th AUGUST, 2021

ORDER :

1 Both the parties in appeals are the same. They are husband and wife. The appellant in both the case is wife. Second Appeal No.655 of 2012 is arising out of order and decree passed in Hindu Marriage Petition No.133/2004 by learned 3rd Joint Civil Judge Senior Division, Ahmednagar on 18.01.2005. It was the petition filed under Section 9 of the Hindu Marriage Act, 1955 by the husband for restitution of conjugal rights. It proceeded ex-parte, as it was held that the notice issued to the respondent

through RPAD has been returned unserved with remark “not claimed”. It was taken as due service. The decree was passed in respect of resumption of cohabitation by the respondent with the petitioner. Important point to be noted is that the matter was pending for about 4-5 years before the First Appellate Court and no steps were taken by the wife to remain present before the concerned Court. She challenged the said decree in Regular Civil Appeal No.200/2008. It was heard by learned District Judge-5, Ahmednagar and dismissed on 31.07.2012. It will not be out of place to consider that on 29.09.2005 the petitioner husband filed Hindu Marriage Petition No.213/2005 before Civil Judge Senior Division, Ahmednagar for divorce, on the ground of desertion. That means, after 8 months of the decision in the petition for restitution of conjugal rights the petition for divorce was filed. It was also decided ex-parte against the present appellant-wife on 19.09.2006. It was specifically observed in the Judgment of lower Court that the notice was served on the respondent (there appears to be typographical mistake as ‘petitioner’), however, she failed to appear in the matter and matter proceeded ex-parte against her. Learned Advocate for the appellant tried to take advantage of the typographical mistake, stating that word ‘petitioner’ has been mentioned, and therefore, it appears that the learned Trial Judge has not applied his mind. I do not agree with the same. Further, it is stated that ‘she’ failed to appear and matter proceeded ex-parte against ‘her’. It

shows that learned Trial Judge was very much aware that the respondent is the wife. It was held that the wife has continuously for a period not less than two years deserted the husband, and therefore, decree for divorce was granted and the marriage between them was dissolved. That decree was challenged by the wife in Regular Civil Appeal No.201/2008. It was also heard by learned District Judge-5, Ahmednagar and was also decided on 31.07.2012. It was also dismissed. Hence, present two appeals.

2 The learned Advocate for the appellant has tried to contend that one opportunity should be given to the wife to appear before the Trial Court and contest the matter, however, he failed to convince that why the wife failed to appear inspite of due service of notice before the Trial Court in petition for divorce.

3 It was submitted on behalf of the respondent that after the decree for restitution of conjugal rights was allowed, he had filed execution petition. In that proceeding also she remained absent inspite of due service.

4 If we consider the conduct of the appellant, she voluntarily remained absent, allowed the decrees to be passed against her. Under such circumstance, when there is no ground at all shown by her for remaining absent, no question arises for remanding the matter. She has not stated that

her address was different, which was known to the husband; yet, in the petitions a wrong address was given. Therefore, when address was correct, notices were given on that address. Then if it is returned unserved with a remark “not claimed”, then that will have to be taken a good service under Section 27 of the General Clauses Act, 1897. As the wife has failed to show any reasonable ground, the decrees, those have been passed legally, need not be interfered with, only on the ground of so called sympathy. No substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure, 1908 are arising in this case. Further, it is also submitted on behalf of the appellant herself that now the respondent has performed remarriage. Under such circumstance, even in the interest of justice also; when the respondent had adopted legal procedure to get divorce and then has remarried, it need not be interfered with. Second Appeals No.654 of 2012 and 655 of 2012 stand dismissed.

(Smt. Vibha Kankanwadi, J.)