

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 FAMILY COURT APPEAL NO.3 OF 2021

WITH

CIVIL APPLICATION NO.787 OF 2021

IN FCA/3/2021

JAYAWANT BHIMRAO KAMTHE
VERSUS
JAYASHREE JAYWANT KAMTHE

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Advocate for Appellant/Applicant : Mr. Pahilwan Gautam J.

Advocate for Respondent : Mr. Joslyn Anthony Menezes.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 07.09.2021

PER COURT :-

1. The appellant-husband is aggrieved by the judgment and order dated 14.12.2020, passed by the learned Family Court vide which M.A.N.R.J.I. No.02 of 2019 filed by the respondent-wife, under Order 9 Rule 13 of the Civil Procedure Code, seeking setting aside of the ex-parte decree, has been allowed. The delay of 110 days has been condoned and the ex-parte judgment and decree dated 14.09.2018, allowing divorce

petition No.A-231 of 2018 filed by the petitioner-appellant-husband, had been set aside.

2. We have considered the strenuous submissions of the learned advocates for the appellant-husband and the respondent-wife. With their assistance, we have perused the appeal paper book.

3. Petition No.A-231 of 2018 was filed by the appellant under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act on 23.05.2018. In 3 months and 22 days, the learned Family Court delivered the judgment dated 14.09.2018 allowing the petition ex-parte and granting the decree of divorce to the husband. The entire case rests upon the bailiff report dated 25.06.2018 wherein he has remarked that when he offered the notice to the wife, she angrily said that as the husband has filed a divorce proceeding, give notices to the husband and not to her.

4. On this premise, the learned Family Court proceeded with the matter. The husband filed an affidavit in lieu of examination-in-chief and based on the following grounds, the proceedings were allowed :

- (a) The wife desired a separate residence away from her in-laws.
- (b) After the husband returned home from duties, she would not open the door.
- (c) She wanted the husband “to dance to her tune”.
- (d) She would like to visit her parental home frequently even after birth of two children.
- (e) She desired that her husband should purchase a residence and a four wheeler.
- (f) She would insult him in the presence of friends.
- (g) She would not prepare proper food for the husband.

5. Having considered the above factors, it is noteworthy that the marriage of the appellant and the respondent lasted for 20 years. They have two children, a son and a daughter. A copy of the communication from the Principal of the School, in which the younger child i.e. the daughter was taking education in the 10th Standard, dated 02.09.2021, is cited which indicates

that the husband has not deposited the academic year fees of Rs.19,500/- for the 9th Standard and Rs.6,000/- for the 10th Standard. The daughter is put to risk of suffering in her academic curriculum.

6. We have perused the application Exh.28 in M.A.N.R.J.I. No.02 of 2019 filed by the wife seeking the recalling of the ex-parte judgment and for restoring the original proceedings so as to be contested on its merits. It is fairly stated in paragraph No.4 by the wife that she refused to accept the notice due to lack of knowledge and was under an apprehension that the person who came to deliver the notice must have been the friend of the husband and they were likely to obtain her signatures fraudulently over divorce papers. It was a mistake committed by her under a misbelief. She desires to save the marriage so that the couple could live together and the children could be taken care of.

7. It does not call for any debate that no litigant benefits by neglecting his or her court proceedings. In the facts and circumstances before us, we do not find that the wife could have drawn any advantage, muchless undue advantage by

refusing to accept the notice. The learned Family Court has disposed off the proceedings in 3 months and 22 days and restoration of the original proceedings, therefore, has not caused an irreparable harm or manifest inconvenience or grave prejudice to the husband. It is always desirable in law to have a fair contest in litigation. Had it been the case that the original proceedings were lingering for a period of 5 years or 10 years or 15 years and thereafter, the restoration of the original proceedings would reverse the clock by 5 or 10 years. The moment, the wife came to know that the husband has secured an ex-parte decree, she has approached the Court. The delay of 110 days condoned by the learned Family Court does not call for any interference, in the light of the law laid down by the Hon'ble Apex Court in the matters of *Collector Land Acquisition Anantnag and another Vs. MST. Katiji and others*, AIR 1987 SC 1353 and *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others* (2013) 12 SCC 649.

8. Both the parties had led evidence before the learned Family Court in the restoration proceedings. The wife was successful in convincing the Trial Court that it was on account

of her misbelief and lesser understanding of court matters that she had not accepted the notice apprehending that her signatures may be obtained by the person posing as a bailiff. She uttered the sentence before bailiff that “she cannot accept notice and she does not desire to grant divorce to the husband”. This indicates that she desired to save her marriage for the sake of her children and her social status besides the comforts of being a married woman.

9. In view of the above, we do not find that the impugned judgment setting aside the ex-parte judgment of divorce could be said to be perverse or erroneous in the light of the law laid down by the Hon’ble Apex Court in the matter of *Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675* and *Syed Yakoob Vs. K. S. Radhakrishnan and others, AIR 1964 SC 477*.

10. As such, this appeal fails and the same is, therefore, dismissed. The pending Civil Application would not survive and stands disposed off.

11. We make it clear that the original proceedings filed by the husband would be considered by the learned Family Court on its own merits and the said Court would not be influenced

by any observations, if any, that may have been made in this order.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-