

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

FAMILY COURT APPEAL NO.02 OF 2021

Shital w/o Rahul Rathi
(Maiden name) Sheetal d/o Jamnadas Kothari
Aged about 30 years, Occ. Housewife
R/o At Post Behind Rathi Traders,
Talav Road, At Post Tq. Wani
Dist. Yavatmal ... Appellant

-vs-

Rahul s/o Kamalkishor Rathi
Aged about 31 years, Occ. Business
R.o Plot No.475, Mohan Sadan,
Shree Nagar, Nagpur 15,
Tq. and Dist. Nagpur ... Respondent

Shri Omkar R. Deshpande, Advocate for appellant.
Shri A. S. Shukla, Advocate with Shri A. G. Agrawal, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP JJ.

DATE : August 26, 2021

Oral Judgment : (Per : A. S. Chandurkar,J.)

Admit.

Heard finally with consent of learned counsel for the parties.

In this appeal filed under Section 19 of the Family Courts Act, 1984 challenge is raised to the judgment dated 08/10/2020 passed by the learned Judge of the Family Court-2, Nagpur in Petition F-670/2019. By the said judgment the marriage between the appellant and the respondent came to be dissolved by decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (for short, the said Act) .

2. It is the case of the of the appellant that on 25/11/2019 the appellant and the respondent had jointly filed petition under Section 13-B of the said Act for grant of decree of divorce by mutual consent. On 17/02/2020 such consent as given by the appellant was sought to be withdrawn by her. While considering this application the learned Judge of the Family Court on 27/02/2020 had directed the appellant to return amount of Rs.1,10,000/- along with articles and ornaments which according to the respondent were given to the appellant while filing the proceedings for divorce by mutual consent. This compliance was required to be done within period of fifteen days. In the meanwhile on account of the pandemic situation the proceedings could not be taken up by the Court. Ultimately on 31/08/2020 the Court issued notice to the appellant with a view to proceed further in the matter. Since it was noticed that the earlier order dated 27/02/2020 was not complied by the appellant the Court proceeded to pass decree for divorce by mutual consent on 08/10/2020.

3. According to the learned counsel for the appellant there was no proper notice given to the appellant after re-opening of the Court in the month of October 2020. For some period the appellant and her counsel were unwell and hence there was no proper opportunity for the appellant to represent her case before the Court. It is submitted that the appellant was and is presently ready to return the items mentioned in Document-2 dated

29/08/2019 as well as the amount of Rs.1,10,000/-. He submits that in absence of proper opportunity the Family Court was not justified in granting decree for divorce by mutual consent. He submitted that such opportunity be granted to the appellant. Moreover, it was permissible to withdraw consent given earlier but such opportunity has been denied to the appellant.

The aforesaid submissions are opposed by the learned counsel for the respondent by stating that despite grant of time of fifteen days by the order dated 27/02/2020, no compliance was made by the appellant. Having required the respondent to part with the ornaments, other articles and cash of Rs.1,10,000/- pursuant to which the joint petition for mutual divorce came to be filed, the appellant subsequently decided to withdraw her consent which was not permissible. The Family Court was justified in granting decree of divorce in the light of conduct of the appellant. Hence the appeal was liable to be dismissed.

4. The following point arises for determination :

“ Whether the appellant deserves to be given an opportunity to comply with the order dated 27/02/2020 passed below Exhibit-1 by the Family court ?”

5. We have heard the learned counsel for the parties and we have perused the records of the case. It is seen that after the joint petition was filed under Section 13-B of the said Act, the appellant sought to withdraw

her consent on 17/02/2020. To facilitate grant of divorce by mutual consent, the Family Court while considering that application directed the appellant to return the ornaments, articles and cash of Rs.1,10,000/- which the respondent had given to the appellant. The record indicates that after 27/02/2020 the proceedings were adjourned till about 18/03/2020. Shortly thereafter due to the pandemic situation only urgent matters were taken up by the Court and hence the present proceedings could not be so taken. Pursuant to an application for taking the case on board, Family Court on 31/08/2020 issued notice to the appellant. It appears that shortly thereafter on 08/10/2020 the proceedings came to be finally decided by passing the decree for divorce after noting the fact that the aforesaid items were not returned by the wife.

It is required to be mentioned that after the joint petition was filed, the appellant sought to withdraw her consent to the grant of divorce by mutual consent by moving an application below Exhibit-10 on 17/02/2020. This application has not been adjudicated in view of the fact that the appellant failed to comply with the directions issued on 27/02/2020. We find that adjudication of the application below Exhibit-10 has material bearing on the rights of both the parties and keeping in view the willingness expressed by the appellant that she is willing to return ornaments, articles and cash of Rs.1,10,000/- as per document No.2 dated 29/08/2019, we are inclined to grant one opportunity to the appellant in

that regard. For such purpose it would be necessary to restore the proceedings by setting aside the decree for divorce as passed by the Family Court on 08/10/2020. The point as framed is answered accordingly.

6. In the light of aforesaid discussion and without entering into merits of the rival contentions we pass the following order :

- (i) The order dated 08/10/2020 passed below Exhibit-1 in Petition No.F-670/2019 is set aside and the said proceedings are restored on the file of the Family Court, Nagpur.
- (ii) The statement made by the learned counsel for the appellant on instructions from the appellant that she is willing to deposit the gold ornaments, articles and cash of Rs.1,10,000/- before the Family Court is accepted. For said purpose the parties shall appear before the Family Court, Nagpur on 13/09/2021. This would enable the appellant to deposit the articles as mentioned in Document-2 dated 29/08/2019.
- (iii) There is an issue between the parties as to the exact items that were given by the respondent to the appellant and said aspect can be raised before the Family Court for its adjudication. The Family Court shall proceed further from the stage of the proceedings as they were placed on 27/02/2020 by virtue of the order passed below Exhibit-1. An efforts shall be made to adjudicate the proceedings on merits.
- (iv) We make it clear that we have not examined the merits of the rival submissions and same shall be gone into by the Family Court without being influenced by any observations made in this order.
- (v) It is informed that the learned Presiding Officer who had decided

the proceedings earlier is presently available and hence it would be in the interests of justice that the proceedings after remand are placed before the same learned Judge.

- (vi) With these directions, the Family Court Appeal is allowed in aforesaid terms. The parties shall bear their own costs.

Pending applications are disposed of accordingly.

The record of proceedings be sent to the Family Court, Nagpur forthwith.

JUDGE

JUDGE