

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

FAMILY COURT APPEAL NO.25 OF 2021

Swati W/o Shivshankar Shahu
Aged aboutt 32 years, Occ. Nil
R/o C/o Santosh Shahu,
Jain Mandir, Near Gulabbara,
Chhindwara, Chhindwara (M.P.)

... Appellant

-vs-

Shivshankar S/o Basodilal Shahu
Aged about 32 years, Occ. Business,
R/o Plot No.201, Sangharsh Nagar,
Near Sanghram Boudha Vihar,
Near Maruti Showroom, Teka Naka,
Nagpur (M.S.).

... Respondent

Shri P. P. Pendke, Advocate for appellant.
Shri M. V. Amle, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.
DATE : October 13, 2021

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

Admit.

Heard finally with consent of learned counsel for the parties.

2. The challenge raised in this appeal filed under Section 19 of the Family Courts Act, 1984 is to the decree for divorce passed by the Family Court, Nagpur on 29/02/2016. The principal ground of challenge as raised by the appellant is that the said decree is ex-parte and the appellant did not have due opportunity to participate in the proceedings. Further contention

raised is that since the proceedings were decided ex-parte the appellant did not have an opportunity to make a claim for grant of permanent alimony. The respondent supports the decree as passed by submitting that the Court proceeded further after due service was effected on the appellant.

3. The learned counsel for the appellant on instructions submits that the appellant does not desire to reside with the respondent. However if she is permitted to make a claim for grant of permanent alimony, her interest would be protected. The learned counsel for the respondent on instructions also submits that the respondent does not desire to reside with the appellant.

4. In the light of the fact that decree for divorce has been passed though ex-parte and the parties now do not want to reside together, the interests of justice would be served by maintaining that decree and thereafter permitting the appellant to make a claim under Section 25 of the Hindu Marriage Act, 1955 for seeking permanent alimony.

5. Accordingly the following order is passed :

The order passed in Petition No.A-1082/2014 stands confirmed. The appellant is at liberty to make a claim for grant of permanent alimony under Section 25 of the Hindu Marriage Act, 1955 in accordance with law. The respondent is free to contest those proceedings on all permissible

grounds.

The Family Court Appeal is disposed of in aforesaid terms. The record and proceedings be sent back to the Family Court. Parties shall bear their own costs.

JUDGE

JUDGE