

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal No. 31 of 2019

Sau. Anurdha W/o Santosh Dod

Versus

Santosh S/o Madhukar Dod

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.P. Tathod, Advocate for the appellant.

CORAM : ANIL S. KILOR, J.

DATED : 15th DECEMBER, 2021.

This appeal has arisen out of the judgment and decree dated 14th August, 2018 passed by the District Judge-4, Akola in Regular Civil Appeal No. 109 of 2017, dismissing the appeal and confirming the judgment and decree dated 31st August, 2016 passed in Hindu Marriage Petition No. 256 of 2014 by the joint Civil Judge, Senior Division, Akola allowing the petition and declaring thereby the marriage between the petitioner and the respondent solemnised on 9th May 1999, stands dissolved.

2. The brief facts of the present case are as follows :

The petitioner filed the petition under Section 13(1), (i-a) & (i-b) of Hindu Marriage Act for

grant of decree of divorce on the ground of cruelty and desertion.

3. It is the case of the petitioner that marriage was solemnised on 9th May, 1999 and thereafter because of disputes between the petitioner and respondent, the respondent went to her parent's house and started staying separately since 4th July, 2012 and not willing to come back. According to the petitioner, the respondent herself had withdrawn from the society of the petitioner. He, therefore, he claimed the decree of dissolution of marriage on the ground of desertion. Moreover, in the petition, the petitioner has narrated the incidents showing that he was subjected to cruelty at the hands of respondent.

4. The respondent was served with the notice in the said suit and she filed Vakalatnama. However, thereafter, the respondent did not file written statement/reply and accordingly, the petition was proceeded without written statement of the respondent.

5. The learned trial Court in view of the pleadings and documentary as well as oral evidence, allowed the petition in favour of the petitioner and thereby declared that the marriage between the

petitioner and respondent stands dissolved vide judgment and decree dated 31st August, 2016.

6. The respondent feeling aggrieved by the said judgment and decree passed by the trial Court preferred an appeal bearing Regular Civil Appeal No.109 of 2017, which came to be dismissed vide impugned judgment and decree dated 14th August, 2018.

7. I have heard Shri A.P. Tathod, learned counsel for the appellant / original respondent.

8. Shri Tathod, learned counsel for the appellant/original respondent submits that no sufficient opportunity was granted to the appellant to defend her case and further she was also denied an opportunity to cross-examine the plaintiff.

9. To consider the contentions of the learned counsel for the appellant/original respondent, I have gone through the record and also perused the impugned judgment and decree of both the Courts below. It is apparent from the record that the respondent was served with the notice and she filed vakalatnama. However, on failure of her to file written statement / reply on 19th

November, 2015, the suit was proceeded without written statement.

10. Thereafter, on 31st August, 2016, the petition was allowed.

11. Admittedly, from 19th November, 2015 till the judgment and decree dated 31st August, 2016, sufficient time was available with the appellant / original respondent to move an application for permission to file written statement by seeking recall of order of trial Court to proceed without written statement.

12. No justification has been shown for not moving such application or taking necessary steps in this regard. However, after the petition was allowed in favour of the petitioner, the Regular Civil Appeal was filed by the appellant/original respondent and tried to canvass that sufficient opportunity was not given to her.

13. The learned first Appellate Court has rightly observed in the impugned judgment and decree that on 30th October, 2014, the respondent put her appearance and thereafter, she did not file the written statement. It has further observed by the learned first

Appellate Court that even her application for interim maintenance was rejected on 6th August, 2015, in default and against the same also no steps were taken for restoration.

14. Thus, the Court has found that sufficient opportunity was given to the appellant to contest the petition, however, the appellant failed to avail such opportunity.

15. The learned lower Appellate Court has further observed that no justification or explanation has been offered by her even in the appeal memo before the learned First Appellate Court, for remaining absent continuously before the trial Court and failed to contest the petition.

16. In that view of the matter, in absence of sufficient explanation or justification offered by the appellant, the case of appellant cannot be accepted that no sufficient opportunity was given to her to defend her case.

17. Moreover, on a specific query put to the counsel for the appellant, whether in this matter any re-

union is possible. On instructions, he has informed to this Court that it is not possible.

18. In the circumstances, I do not find any substantial question of law is involved in this appeal. Accordingly, I pass the following order.

ORDER

Appeal is dismissed. No order as to costs.

[ANIL S. KILOR, J.]

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