

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**907 FAMILY COURT APPEAL NO.31 OF 2022
WITH CA/8719/2016 IN FCA/31/2022**

**VAISHALI PRAVINKUMAR PAIKRAO
VERSUS
PRAVINKUMAR VITHALRAO PAIKRAO**

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Advocate for Appellant : Mr. S. V. Deshmukh
Advocate for Respondent: Ms. Surekha Mahajan

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**CORAM : RAVINDRA V. GHUGE &
SANDIPKUMAR C. MORE, JJ.
DATED : 09/06/2022.**

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PER COURT:

1. This matter was extensively heard on 06/06/2022 and today.
2. The ex-parte judgment dated 24/07/2014 has been delivered by the learned Principal Judge, Family Court, Nanded in Petition No. A-40 of 2014 (Old HMP No. 202 of 2011).
3. It is undisputed that the respondent-husband before us had instituted the proceedings for divorce on the ground of cruelty by desertion, in 2011. We have perused the Roznama placed before us and we find that the petitioner-wife appeared before the trial court and engaged an advocate. From 05/05/2012 onwards till 20/04/2014, it appears that the advocate representing the appellant-wife had participated in the proceedings before the trial court, even after the

proceedings were transferred to the learned Family Court at Nanded. The respondent led evidence by preferring an affidavit in-lieu of examination in chief. Despite several opportunities and the Roznama reflecting the presence of the advocate of the appellant-wife, the husband was not cross-examined. Finally, the husband closed his evidence by preferring a purshis and thereafter, the learned court reserved the matter for judgment. Consequentially, the impugned judgment dated 24/07/2014 was delivered and the learned Family Court concluded that the marriage between the husband and the wife is dissolved on the ground of desertion which amounts to cruelty.

4. The appellant-wife contends that after she got married to the respondent-husband on 24/02/2007, a girl child was born. Both of them were in employment at different locations in different towns prior to their marriage. They used to meet at weekends at either places and the girl child was born in February, 2008. The husband was transferred to Nanded and the wife continued to remain at Washim.

5. In the light of the above, it does appear to us that the appellant-wife, who was represented by an advocate, did not conduct the case properly and though the lawyer was present on several dates before the trial court, it does appear that due to laxity, the case proceeded ex-parte. An attempt towards mediation for seeking a resolution to

the marital discord was attempted even at the level of the High Court and the mediation proceedings failed as the husband contends that since he is in his fifties and has been living away from the wife from 2008 for the past 14 years, there is no purpose in coming together.

6. Nevertheless, the appellant-wife contends that she desires to contest the matter as divorce is sought on the ground of desertion. Her girl child born in 2008 is now of an impressionable age of 14 years. She understands the relations between a father and a mother and the appellant does not desire to live with the blot of having deserted her husband in the face of an ex-parte judgment.

7. The learned advocate for the respondent-husband has vehemently opposed the restoration of the proceedings on the ground that the appellant-wife should blame herself for her miseries. When she does not desire to come together, there is no purpose of attempting to save the marriage when it appears that it has been irretrievably broken down.

8. There can be no debate that after the impugned judgment was delivered, the appellant-wife approached this court on 02/04/2016. The delay was condoned and the family court appeal was registered in 2022. It is contended that a contest on the ground of desertion would be appreciable since a verdict on the merits of the rival claims would

meet the ends of justice. In an attempt to achieve this object, the appellant-wife needs to be saddled with costs for the laxity on her part and in order to compensate the respondent-husband since the clock will now be reversed by almost 8 years.

9. Taking a holistic view of the matter and more so in a sensitive case involving a husband and a wife, we deem it appropriate to exercise our discretion in favour of the appellant-wife by remanding the matter setting aside the ex-parte judgment on the point of non-participation of the appellant-wife.

10. As such, this appeal is partly allowed. The impugned judgment dated 24/07/2014 is quashed and set aside and Petition A-40 of 2014 is remitted to the court of the learned Principal Judge, Family Court, Nanded with the following directions :

- A) The appellant-wife shall deposit an amount of Rs.50,000/- (Rs. Fifty thousand) before the Family Court, Nanded on 01/07/2022, as costs.
- B) She would also file her written statement along with documents, before the court in the said proceedings, on 01/07/2022.
- C) Considering that the written statement of the wife is being filed on record, the trial court would frame issues based on the rival pleadings, on or before 30/07/2022.
- D) The husband is permitted to lead additional oral

evidence within two weeks after framing of the issues and his cross-examination would be concluded by wife within two weeks thereafter. His evidence recorded earlier shall not be discarded.

- E) The husband would be at liberty to lead evidence of his witnesses and the same principle would apply to the wife who would also be at liberty to examine herself and lead evidence through witnesses.
 - F) We expect that recording of evidence as noted above, would be concluded on or before 30/09/2022.
 - G) The oral submissions of the litigating parties would be concluded on or before 21/10/2022.
 - H) The learned Family Court would deliver its judgment on or before 30/11/2022.
 - I) Needless to state, if the wife fails to deposit the costs as directed and/or fails to tender the written statement, this order shall stand withdrawn and the impugned judgment would then stand restored in the said proceedings which shall be disposed off.
11. The pending civil application would not survive and stands disposed off.

(SANDIPKUMAR C. MORE, J.)

(RAVINDRA V. GHUGE, J.)