

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 69 OF 2009

Rohini Raju Khamkar
Residing at C/o.Prakash Baban Dolas,
At and post Akole, District Ahmednagar ... Appellant

V/s.

Raju Ranba Khamkar
R/o 24/B/9 Bainganwadi,
Govandi, Mumbai- 400 043 ... Respondent

WITH
CIVIL APPLICATION NO. 120 OF 2012

Rohini Raju Khamkar,
residing at C/o. Prakash Baban
Dolas, At and Post Akole,
District - Ahmednagar ... Appellant

V/s.

1. Raju Ranba Khamkar
R/o 24/B/9 Bainganwadi,
Govandi, Mumbai- 400 043 ... Respondent

2. Mrs. Mukta Raju Khamkar
C/o. Raju R. Khamkar
residing at 24/B/9, Baiganwadi,
Govandi, Mumbai – 400 043 ... Proposed
Intervenor

Mr.Tejesh Dande with Mr.Bharat Godhavi, Mr.Chinmay
Deshpande, Mr.Pratik Sabrad and Ms.Seema Patil for the Appellant.

Mr.Raju R. Khamkar, Respondent in person.

CORAM : **NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : **12 October 2022.**

ORAL JUDGMENT : (Per Nitin Jamdar, J.)

Heard the learned counsel for the Appellant and the Respondent who appears in person.

2. The Appellant wife has filed this appeal challenging the order passed by the Family Court, Bandra, dated 13 November 2005, rejecting the Civil Misc. Application No.85/2008 filed by the Appellant for setting aside the *ex parte* decree of divorce dated 17 December 2007 in Petition No.A-2329/2006.

3. The parties got married on 26 May 1986 at Ahmednagar. There are three children from the wedlock. After that, the parties resided in Mumbai. According to the Respondent-Husband, the Appellant's behaviour changed after some period, and quarrels arose between the parties. The Respondent husband filed Petition No.A-2329/2006 on the ground of mental cruelty. It is stated by the Respondent that the Appellant had illicit affair with one person who was joined as a respondent in the petition. Respondent-Husband alleged that the Appellant was abusing and humiliating him; ultimately, in 2003, she left the matrimonial home. It was alleged

that the Appellant never took care of the children and used to steal money from the Respondent and give it to her paramour, the co-respondent. Summons was served on the Appellant and which was returned with the endorsement "refused" on 18 June 2007. The learned Family Court Judge noted that a case was made out for divorce and, accordingly, on 17 December 2007, the decree of divorce was granted.

4. Thereafter, the Appellant filed Civil Misc. Application No.85/2008 for setting aside the decree. It was stated that the Appellant wife, an illiterate lady, was not aware of the legal procedure, and upon legal advice, she did not remain present and this is a case where the decree of divorce should be set aside, and the Appellant should be given an opportunity. The learned Family Court Judge, by a detailed order dated 13 November 2008, after examining the evidence, has dismissed the application. These orders are the subject matter of the Appeal.

5. The learned counsel for the Appellant reiterated the contentions made by the Appellant before the Family Court. We note that the learned Family Court Judge has held that the ground that the Appellant is illiterate is not sufficient and not believable as she has filed three criminal cases against the Respondent husband and, therefore, was fully aware of the legal procedure. The Appellant had filed the petition for restitution of conjugal rights on 11 December 2006. She filed an application for maintenance in the

Court of Judicial Magistrate, First Class, Akole and another criminal case in the same Court under section 498A, 506 Part-II read with section 34 of the Indian Penal Code. Even after the summons was served on the Appellant, on several dates between June 2007 to December 2007, the learned Family Court Judge gave an opportunity to the Appellant to appear before the Court. The Appellant did not attend a single date, and in these circumstances, the Respondent's petition came to be allowed. The Family Court Judge also noted that the Respondent has remarried, and no case for fraud is made out by the Appellant against the Respondent.

6. The learned counsel for the Appellant relied on the decision of the Hon'ble Supreme Court in the case of *Balwinder Kaur v. Hardeep Singh* (1997) 11 SCC 701. Based on this judgment, it was contended that the Family Court had a duty under section 23 of the Hindu Marriage Act, 1955, to make all efforts to make the parties remain present to ascertain whether reconciliation is possible. The fact situation that arose before the Hon'ble Supreme Court was entirely different. In the present case, the Appellant - wife chose not to remain present despite summons having been served, and the Appellant thereafter cannot be heard to argue that it was the duty of the Family Court to force her to remain present.

7. It is an established position from record that the summons was served, yet the Appellant refused. The Appellant had knowledge of the legal procedure, having filed three criminal cases. On several

dates, after the summons was served since the Appellant did not remain present, and the decree of divorce came to be passed. After waiting for almost six months, the family Court had no option but to proceed further and grant the decree of divorce. We do not find any error in the view taken by the learned Family Court Judge.

8. The Respondent has remarried. According to the Respondent, who appears in person, the Appellant - wife is now living with the co-respondent in Gujarat and is only harassing the Respondent with demands for money. Considering the totality of the circumstances, we do not find that there is any case made out to set aside the impugned order. The Appeal is, therefore, dismissed.

9. Regarding arrears pursuant to the interim order, it is open to the Appellant's wife to take appropriate proceedings in that regard, and the dismissal of appeal will not come in the way of the Appellant.

10. In view of the dismissal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

(SHARMILA U. DESHMUKH, J.) (NITIN JAMDAR, J.)