

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 59 OF 2022

Sangeeta Vijaykumar

.. Appellant

Versus

Hegde Govind Vijaykumar & Anr.

.. Respondents

.....

- Ms. Jennifer Michael a/w Som Sinha, Ms. Divya Vishwanath and Halima Khan i/by Som Sinha & Associates for Appellant
- Ms. Ghazala Khan and Mr. Tejas Shah for Respondent No. 1

.....

**CORAM : K. R. SHRIRAM &
MILIND N. JADHAV, JJ.**

DATE : JULY 06, 2022

P.C.:

1. Appellant is impugning an order dated 06.08.2021 passed by the Family Court, Mumbai at Bandra rejecting the petition under Order 7, Rule 11 of the Code of Civil Procedure for want of cause of action. The order has been passed in absence of appellant. It is appellant's case the advocate reached the court late on 06.08.2021 by which time, the matter was called out. We should keep in mind that it was rainy season on 06.08.2021.

2. Ms. Michael states that appellant had also filed an application for amendment of the petition which is Exhibit 13 and there was a direction on 14.01.2022 to respondent to give their say. Respondents had not given its say.

3. Ms. Michael submitted that it is stated in the petition, on 20.11.1999, the marriage was solemnized. Since the decree of divorce of respondent from his first wife was granted only on 02.11.2000, appellant and respondent had an arranged marriage under the Special Marriage Act on 07.02.2004 to correct the defects, if any. In our view if applicant's presence was there, perhaps the Family Court would have had an opportunity to consider these submissions of appellant and pass orders. Such an opportunity was not granted.

4. In view of the above, without making any observations on the merits of the matter, we quash and set aside the order dated 06.08.2021 and remand the matter for *de novo* consideration of application under Order 7 Rule 11.

5. We would also like the Family Court to dispose the amendment application of appellant before considering respondent's application under Order 7 Rule 11.

6. Appeal disposed.

7. Respondent to file reply to the amendment application within two weeks. Within two weeks thereafter, appellant will file reply to

the application filed under Order 7, Rule 11.

8. We clarify that we have not made any observations on the merits of the matter.

9. At this stage, at the suggestion made by the court, both the counsel unanimously agreed and request the court to appoint a mediator. Both are agreeable to appoint Mr. M.P.S. Rao, Senior Advocate to mediate on all disputes between the parties.

10. This court, therefore, appoints Mr. M.P.S. Rao (Address : 56-A, 4th Floor, Ali Chambers, Tamrind Lane, Nagindas Master Road, Fort, Mumbai, Mobile : 98200 40932, email : mpsrao@hotmail.com) as Mediator to mediate on all issues and disputes between the parties.

11. The fees and administrative expenses of the Mediator to be shared equally between the parties.

12. The Mediator is requested to mediate and submit a report within four weeks to the Family Court.

[MILIND N. JADHAV, J.]

[K. R. SHRIRAM, J.]

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by RAVINDRA
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AMBERKAR
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