

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2700 OF 2022**

Shraddha Hitesh Raikar @
Shraddha Digambar Haldankar

....Petitioner

Versus

Hitesh Dattaram Raikar

....Respondent

S.A. Abhyankar a/w Anjali Helekar, Shilpa Tripathi Advocate
for the petitioner.

Mr. Rohan Surve i/b Kunal Naik Advocate for the
Respondent.

CORAM : S. G. DIGE, J.

DATE : 8th DECEMBER, 2022.

P.C. :

1. Heard learned counsel for petitioner and learned counsel for respondent.

2. Learned counsel for petitioner submits that petitioner had filed application for restoration of conjugal rights before the Family Court, Bandra. It was allowed, thereafter, during the pendency of that application, respondent filed application for divorce on the ground of cruelty under 13 (1) (ia) of Hindu Marriage Act, 1955. The Family Court heard both the applications together and

allowed the application filed by the petitioner and dismissed the application filed by the respondent. Thereafter, applicant filed application for maintenance. It was allowed, in the said interim application order was passed and salary of respondents is attached in execution application. Thereafter, respondents filed application for divorce. Thereafter, the applicant filed application under Section 11 of Civil Procedure Code before the Family Court. Without hearing on the said application and without considering the merit, the Family Court disposed of the said application by passing cryptic order which is under challenge. Hence, requested to allow the writ petition.

3. It is the contention of learned counsel for respondent, the petition filed by respondent for divorce was on different ground. The Family Court has mentioned in the impugned order that separate issue be framed under Section 11 of Civil Procedure Code which is suffice. The order passed by the Family Court is legal and valid.

4. I have heard both counsel. Perused the impugned order passed by the learned Family Court. In the said order, the learned Judge has observed that none present for respondents. Separate issue be framed under Section 11 of Civil Procedure Code, matter requires to be heard on merit and application is disposed of.

5. In my view, when petitioner had filed the application under Section 11 of Civil Procedure Code. The learned Judge should have disposed of this application after hearing both the parties and reasoned order should have been passed by the learned Judge while disposing of said application but it appears from the impugned order. No reasons are given, while passing the order.

6. Hence, I pass following order.

ORDER

- i. Writ petition is allowed.
- ii. The order passed by learned Family Judge dated 16th October 2021 is hereby quashed and set aside.
- iii. The matter is remanded back to the learned Family Judge. The Family Judge shall decide the application filed by petitioner below Exh.10 and 11 on it's own merits as early as possible by giving opportunity to both the parties.
- iv. The writ petition is disposed of.

(S. G. DIGE, J.)