

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO.35 OF 2022

Jaya Rajesh Jadhav
Aged about 45 Yr.
Occupation, Household,
R/o Swaraswati Coloney,
Near Ganesh Mandeer, Pokade House,
Second Floor, Waluj,
Aurangabad 431136 ... Appellant

-vs-

Rajesh Ramdas Jadhav
Aged about 49 Yr.
Occupation : Service
R/o Gurudatta Nagar,
Behind Nandane Mangal Karyalaya
Old City, Akola ... Respondent

Shri P. U. Kawishwar, Advocate for appellant.
Shri C.A. Joshi, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : September 16, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

Considering the fact that the Family Court has passed an ex-parte decree for divorce against the appellant, the appeal is taken up for hearing after admitting it.

Shri C. A. Joshi, learned counsel waives notice for the respondent.

2. The parties to the proceedings were married on 27/04/1996. The respondent herein initiated proceedings under Section 13(1-A) of the Hindu Marriage Act, 1955 on the grounds of cruelty and desertion. After the summons was served on the present appellant she appeared before the Family Court and participated in the proceedings. It appears that on 13/05/2022 the appellant was present through her counsel and the proceedings were adjourned to 01/06/2022 for further hearing. They were then adjourned to 04/06/2022. On that date the appellant was absent. The respondent filed an application seeking permission to produce documents which was allowed. On the same date after hearing the arguments for the respondent herein, the judgment came to be delivered by passing the decree for divorce. Thereafter on 06/06/2022 the appellant moved an application before the Family Court seeking grant of stay to the operation of the decree. An order was passed on Exhibit-51 on 07/06/2022. In this backdrop the appellant has challenged the aforesaid ex-parte decree for divorce.

The learned counsel for the appellant submitted that the appellant was present before the Family Court on various dates and has participated in the proceedings by moving various applications. It is not in dispute that she was absent before the Family Court on 01/06/2022. Her counsel also remained absent on that date. On the adjourned date the Family Court permitted the respondent herein to

produce documents and on the same date decided the proceedings finally. There was no opportunity to the appellant to contest the said proceedings which has resulted in passing of the ex-parte decree. It is prayed that due opportunity be granted to the appellant to defend the said proceedings inasmuch as the decree for divorce caused prejudice to her.

3. The appeal is opposed by the learned counsel for the respondent by submitting that there was no justifiable reason for the appellant to remain absent on 01/06/2022. Since the appellant was also absent on 04/06/2022 the learned Judge of the Family Court adjudicated the proceedings on merits. No fault could be found with the decree as passed on merits.

4. In the light of aforesaid contentions, the point that arises for consideration is whether the learned Judge of the Family Court was justified in deciding the proceedings finally on 04/06/2022 ?

We have perused the roznama of the proceedings which indicates that till 01/06/2022 the appellant was diligently participating in the proceedings before the Family Court. On 01/06/2022 her counsel remained absent and the proceedings were fixed on 04/06/2022. On that date the respondent filed an application below

Exhibit-47 seeking permission to produce documents alongwith list at Exhibit-48. On the same day the arguments of the respondent were heard and the decree came to be passed. We find that only on account of absence of the appellant on a particular date, the learned Judge was not justified in deciding the proceedings finally on 04/06/2022. An opportunity ought to have been granted to the appellant to defend the proceedings especially as the marriage between the parties was sought to be dissolved by filing proceedings for divorce. On perusal of the entire roznama we are satisfied that the learned Judge of the Family Court was not justified in proceeding to decide the matter on merits on 04/06/2022. The matrimonial proceedings ought to have been decided after granting proper opportunity to both parties. The point as framed is answered accordingly.

5. For aforesaid reasons, the following order is passed :

- (i) The judgment dated 04/06/2022 passed in Petition No.A-217/2018 is set aside.
- (ii) The proceedings are remitted to the Family Court, Akola for fresh adjudication on merits. The proceedings shall proceed further from the stage of consideration of Exhibits-47 and 48.
- (iii) After giving opportunity to the parties the proceedings be decided on their own merits and in accordance with law preferably within a period of three months from the date of appearance of the parties before the Family Court.

(iv) The parties shall appear before the Family Court on 03/10/2022.

(v) All points on merits are kept open.

The Family Court Appeal is allowed in aforesaid terms with no order as to costs.

Pending Civil Application also stands disposed of.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita