

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

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FAMILY COURT APPEAL NO. 87/ 2015

Rashmi w/o Milind Pawar
Aged about 32 years
R/o Durga Mandir Road,
Beside Suraj Apartment,
Opp: Taj House, Chaonni, Nagpur.

..Appellant

versus

Milind s/o Sadashiv Pawar
Aged about 38 years, occu: Service
R/o Adiwasi Colony, Maltekati Road
Congress Nagar, Amravati
Tah. & Dist. Amravati.

.. Respondent

...

Mr.S.S. Ghate, Advocate for Appellant
Mr.V.S.Giramkar, Advocate for Respondent

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ

DATED : 26th August, 2022.

ORAL JUDGMENT: (Per : ANIL L.PANSARE, J.)

Admit. With consent of the parties, the matter is
heard finally.

2. The appellant-wife is aggrieved by the judgment
and decree dated 17.05.2012 passed by the Family Court,

Amravati in the proceedings filed under Section 13 (1)(ia) and (ib) of the Hindu Marriage Act,1955.

3. The short question which fell for our consideration is, whether the notice effected on the appellant (non-applicant before the Family Court) through paper publication, could be said to be a good service in the peculiar facts and circumstances of the case?

4. The Family Court proceeded *ex-parte*, on the ground that the appellant did not appear inspite of service of notice through paper publication. Learned Advocate for the appellant has pointed out that in the notice dated 21.06.2011 issued by the Advocate for the appellant, the address of the appellant is mentioned as '*R/o Durga Mandir Road, Beside Suraj Apartment, Opposite Taj House, Chawani, Nagpur*'. This notice has admittedly been served upon the respondent. In that sense, it could be said that the respondent was aware of the address of the appellant. Despite such status in the application filed before the Family Court, the respondent has mentioned the address of appellant to be '*R/o Near Talipura*

Masjid, Koradi Road, Sadar, Chhaoni, Nagpur'.

5. At this stage, the learned Advocate for the respondent submits that the Family Court proceedings were filed by the respondent on 04.02.2011 and the notice referred to by appellant was issued to the respondent on 21.06.2011.

6. This argument would not help the respondent, in as much as once the respondent was served with the notice dated 21.06.2011, he ought to have amended the address of the appellant. Having not done so, we are of the view that the respondent could not to have resorted to service of notice through paper publication, since such option is available after taking diligent efforts to serve a party on the last known address. By not doing so, the appellant was deprived of his right to defend the application before the Family Court. Even otherwise, it will be in the interest of the parties to get the application decided on merit.

7. In view of the above, we deem it appropriate to set aside the impugned judgment and decree dated 17.05.2012 and relegate the matter back to the Family Court,

Amravati, to decide the same on its own merit.

8. Accordingly, the impugned judgment and decree dated 17.05.2012 is set aside. The Application being HMP No. A-30/2011 is restored on the file of the Family Court, Amravati, with a direction to decide it afresh after affording an opportunity of hearing to the parties.

9. The parties shall appear before the Family Court on 12.09.2022.

10. All contentions are kept open.

11. The Family Court Appeal stands disposed of.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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