



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.46 OF 2023

SHRIKANT VITHAL SHELKE
VERSUS
SHEETAL SHRIKANT SHELKE

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Advocate for Appellant : Mr. Wakure Sanjay A.
Advocate for Respondent : Ms. Harsha R. Lomate h/f Mr. V. D. Salunke

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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 04.12.2023

PER COURT :

- . The petitioner, who is the husband of the respondent, is aggrieved by rejection of his application, whereby he was seeking restoration of the divorce petition filed by him before the Family Court at Osmanabad.
2. We have heard both the sides and perused the impugned order.
3. As can be reflected from the impugned order, there were certain occasions preceding the date of dismissal of the petition for default, demonstrating that for some reason or the other, the appellant had sought adjournments at the stage of hearing when he was supposed to face the cross examination.
4. However on the date on which the petition was dismissed i.e. 20/07/2022 though the appellant was absent, the petition was dismissed by rejecting his application seeking adjournment on the ground that he was suffering from jaundice. The impugned order merely observes that there was no evidence to substantiate the ground, albeit, the impugned order is absolutely silent as to

whether the fact that he was suffering from jaundice and was ever controverted by the other side i.e. the respondent. It is, therefore, quite clear that his application seeking adjournment on the ground that he was suffering from jaundice was rejected basically not on the ground seeking adjournment was not enough, but simultaneously by looking into the history, wherein, the appellant had sought adjournments.

5. In our considered view, the approach of the trial court is faulty. Even if there was a history to demonstrate that the appellant was not co-operating to face the cross-examination, that would be a peripheral issue. On the date on which the petition was dismissed, he had fairly submitted an application seeking adjournment on the ground that he was suffering from jaundice which fact apparently had gone uncontroverted.
6. If that be so, considering the history, at the most, the Court could have granted the adjournment by imposing heavy costs. Needless to state that costs are considered to be a right panacea to heal every sore in the litigation. It is a matrimonial dispute. Even on the earlier occasion for non co-operation of the respondent – wife, the matter had proceeded ex-parte which order was challenged before this Court and the matter was remanded back to the Family Court for decision afresh.
7. Taking into consideration all the aforementioned facts, the appeal is allowed subject to the appellant depositing costs of Rs.25000/- in the Family Court within four weeks.
8. The respondent – wife shall be entitled to claim the costs.

[NEERAJ P. DHOTE, J.]

[MANGESH S. PATIL, J.]