

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

**SECOND APPEAL NO.374 OF 2022
WITH CA/8703/2022 IN SA/374/2022**

Sau. Sarala w/o. Kailas Hadap (Dhangar) .. Appellant
Age. 45 years, Occ. Household,
R/o. Maliwada, Chopada, Tal. Chopada, Dist. Jalgaon

Versus

Shri Kailas Khandu Hadap (Dhangar) .. Respondent
Age. 49 years, Occ. Police Sub-Inspector,
R/o. Police Station Kasoda, Tal. Erandole, Dist. Jalgaon

Mr.M.M. Bhokarika, Advocate for the appellant.
Mr.Dipesh D. Pande, Advocate for the sole respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 23.08.2023**

PC :-

01. Heard learned Advocates for the parties at length. The appellant's application is dismissed by the First Appellate Court thereby delay of 9 years and 4 months and 20 days in challenging the decree of divorce obtained by the respondent/husband is not condoned. The appellant filed the application stating that she had no knowledge of the decree passed under section 13(i)(b) of the Hindu Marriage Act by the Civil Judge, Senior Division, Amalner in HMP No.9 of 2010. It is case that the said decree was obtained by

playing fraud upon the appellant and upon the Court. No summons was ever received by the appellant. The respondent-husband by playing trick had shown that the appellant is served and obtained decree. Thus, when the decree itself is obtained by fraud, it vitiates everything and the said decree ought to have been set aside and for that it was necessary to allow the application for condonation of delay to consider the appeal on merits. The reason assigned for the delay is that the appellant had no knowledge of passing of the decree. It came to her knowledge only when she filed Criminal Misc. Application filed under section 125 of the Cr.P.C. for maintenance, the respondent produced copy of the decree in the said proceeding. The application was filed on 06.03.2020 along with appeal.

02. The respondent appeared in the matter and filed his say. He submitted that in-fact the applicant was found living adulterous life. She was also arrested pursuant to the raid conducted by police in one lodge. She was prosecuted and even she was fined and therefore the Court had granted decree though as she did not appear inspite of service of summons. As regards knowledge, it is submitted that in-fact the applicant had appeared in the custody proceedings initiated by the respondent. In that proceeding itself

the respondent had produced copy of decree and there she got knowledge in the year 2012. Thus, the reason assigned that she was not aware till 2017 is factually incorrect. It is further submitted that even as per the appellant, she got knowledge for the first time in 2017 whereas the application is filed in 2020. Thus, for the period from 2017 to 2020 there is no reason given as to why she could not approach the Court.

03. The learned Advocate for the appellant relied upon judgment reported in **AIR 2014 SC 2912 in the case of Easwari Vs. Parvathi and Ors.**, wherein it is held that the High Court is not precluded from reversing order and judgment of the Lower Appellate Court, if there is perversity in the decision. The learned Advocate for the appellant further relied upon judgment reported in **2012 SC 2586 in the case of Vishwanath Sitaram Agrawal Vs. Sau Sarla Vishwanath Agrawal**, wherein it is held that if the findings of the Trial Court and the First Appellate Court is perverse and is not supported by any evidence or the finding is reached by drawing inference, the High Court has power to reverse the said decision.

04. The learned Advocate for the appellant further relied upon

judgment reported in 2010 AIR (SCW) 7020 in the case of Municipal Committee Hoshiarpur Vs. Punjab State Electricity Board, wherein it is held that when finding of the Courts is perverse the issue of perversity itself is a question of law.

05. Next judgment relied upon by the learned Advocate for the appellant is reported in AIR 2004 SC 1591 in the case of Achintya Kumar Saha Vs. Nanee Printers and Ors., wherein it is held that if core issue is not adjudicated by the First Appellate Court, it results in substantial question of law.

06. This Court finds that there is no dispute about the proposition of the case-laws. This Court has only to see whether case is made out by the present appellant so as to call for interference at the hands of this Court by showing perversity in the order passed by the First Appellate Court. This Court finds that at the first place no case is made out of any perversity in the impugned order. The Court has rightly considered that no sufficient cause is made out by the appellant. Though it was sufficiently shown that the applicant had knowledge in 2012 itself when the certified copy of decree was

produced in the proceeding, still the appellant averred that for the first time, she received knowledge in 2017. This Court finds that when the appellant herself is not coming with clean hands, her case need not be considered. Secondly, assuming that she received knowledge in 2017, still from the application it is seen that she filed application for the first time on 06.03.2020. Thus, no reason is coming as to what prevented her from approaching the Court.

07. So far as prejudice is concerned, the learned Advocate for the appellant submits that in view of the decree of divorce on the ground of adulterous life, her proceeding for seeking maintenance is decided against her. As there is finding of adulterous life. Now it is admitted position that now the respondent-husband has got married. In this view, even if appeal is filed, no decree can be reversed. For these reasons also this Court finds that there is no propriety in interfering with the impugned order.

08. So far as maintenance proceedings are concerned, this Court need not express any opinion as the appellant is free to file proceedings against the respondent-husband.

09. For all these reasons, this Court finds that no case is made out to call for any interference with the impugned order. Therefore, the Second Appeal is dismissed with no order as to costs.

10. In view of dismissal of the Second Appeal, pending Civil Application stands disposed off.

[KISHORE C. SANT, J.]