

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

SECOND APPEAL NO. 583 OF 2022

Preeti Prashant Thorat

Age : 21 years, Occu. : Nil,
R/o. : C/o Arjun Bhagwat Aagale,
House No. 240, Jijamata Colony,
Besides Jai Bhawani Nagar, N-2,
CIDCO, Aurangabad 431 003.

.. Appellant

Versus

Prashant Dilip Thorat

Age : 31 years, Occu. : Military Service,
R/o. : Malwadgaon, Tal. Shrirampur,
Dist. Ahmednagar
Also resident of
Army No. 15435032F,
Naik Nursing Assistant,
Through the Commanding Officer,
35, Field Regiment,
Postal Index No. 925735,
c/o 99 Army Post Office.

.. Respondent

Mr. Hemant S. Surve, Advocate for the Appellant.
Mr. K. R. Doke, Advocate for Respondent.

**WITH
CIVIL APPLICATION NO. 12382 OF 2022
IN SA/583/2022**

Preeti Prashant Thorat

.. Applicant

Versus

Thorat Prashant Dilip

.. Respondent

Mr. Hemant S. Surve, Advocate for the Applicant.
Mr. K. R. Doke, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 13th OCTOBER, 2023.

P. C. :-

. Heard the parties for substantially long time.

2. The appellant - wife has come to this Court by challenging the judgment and order passed by the learned District Judge – 1, Shrirampur dismissing the appeal challenging ex-parte decree of divorce granted in favour of respondent – husband. The husband had filed HMP No. 147/2020 against the appellant on the ground of cruelty. The summons was served on the father of wife. In spite of service of summons she did not appear and therefore ex-parte decree came to be passed by judgment and order dated 24.08.2021. The wife filed appeal in the Court of learned District Judge - 1, Shrirampur.

3. It is the case of the wife that, she was residing with her uncle at Jai Bhawani Nager, Aurangabad. The husband had the knowledge of this fact, however, he deliberately gave the address of wife as of her father who resides at Shrirampur, District Ahmednagar. In the proceedings in which the husband had appeared she gave the address at Aurangabad and those proceedings were also filed at Aurangabad. Therefore, it is the case of wife that, deliberately her address was given of father and the ex-parte decree is obtained. The learned District

Judge - 1 dismissed the appeal holding that the wife was properly served through her father. Therefore, the appellant-wife is before this Court.

4. Learned advocate for the appellant submits that, when the decree is ex-parte against the wife, it is a fit case for remand as the wife should get an opportunity to participate in the proceedings. Learned advocate relies upon the judgment of the Punjab and Haryana High Court in the case of **Saroj Vs. Rajender Kumar** in F.A.O. No. 3767 of 2011 dated 19.03.2013 wherein, in the similar facts the Court had remanded the matter to the learned Trial Court. Thus, the learned advocate submits that, in the present case also the facts are almost identical and this matter requires order of remand.

5. Learned advocate for respondent – husband vehemently opposes the appeal saying that, no substantial question of law arises. He submits that, in this case the address given was of father of wife. The service through father needs to be treated as good service. It is not disputed that the address given of father was not correct. Thus, service is properly taken to have been served. Though decree is ex-parte, it is only after recording evidence of husband. The Court has considered that wife had filed several complaints and had lost proceedings before

various authorities and the Courts. She had even filed application with the higher officers of husband who serves in the Army praying that he should be removed/dismissed from service. The Court has accepted the said evidence and the decree is passed with reasons. The learned District Judge – 1 has rightly dismissed the appeal. He submits that, though the facts are subsequent to the decree there are at least two criminal proceedings lodged by wife which are quashed by this Court. She had lost in the complaint for the offence punishable under Section 377 of the Indian Penal Code. This Court in Criminal Writ Petition No. 1792/2022 had quashed the said proceedings after hearing even wife. It is specifically recorded that the allegations were absurd and improbable and were made with malafides and the same is not challenged. Even the proceedings under the Protection of Women from Domestic Violence Act lodged by the wife came to be quashed by this Court in Writ Petition No. 1372/2022 against the relatives. However, the same shows that wife is in habit of filing false complaints.

6. Learned advocate for respondent relies upon the judgment of the Hon'ble Apex Court in the case of **K. Srinivas Vs. K. Sunita** reported in **AIR ONLINE 2014 SC 147** wherein, the Hon'ble Apex Court held that filing false complaint with intentionally and knowingly calculated to embarrass and incarcerate husband and members of family constitutes

cruelty. In that case, the Hon'ble Apex Court was pleased to dissolve the marriage between the parties on the ground mentioned under Section 13 (1) (iv) of the Hindu Marriage Act.

7. Learned advocate for respondent further relies upon the judgment of the Hon'ble Apex Court in the case of **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others** reported in **2009 AIR SCW 2357** on the point of scope of Section 100 of the Code of Civil Procedure.

8. This Court has considered the judgments of the learned Trial Court and the learned Appellate Court. This Court finds that, certainly there was evidence before the learned Trial Court in the nature of deposition of husband. The judgments of this Court are subsequent. Those can be considered so as to come to conclusion that false complaints were failed against the husband. The husband has also given in affidavit in reply that total nine (09) proceedings are filed by the wife as below :

Sr. No.	Proceeding No.	Under Provisions
1	P.W.D.V.A. No. 233/2020	U/s. 12 of D.V. Act
2	Petition-A No. 211/2020	U/s. 9 of HMP
3	Petition-E No. 54/2022	U/s. 125 of Crpc.
4	Cri. M. A. No. 408/2022	U/s. 494 of IPC in respect of IPC

5	R.C.C. No. 2343/2021	U/s. 498-A, 323, 504, 506, r/w 34 of IPC and u/s. 3 & 4 of Dowry Prohibition Act
6	R.C.S. No. 10/2022	C.P.C.
7	W.P. No. 2953/2022	U/s. 90 of Army Act
8	S.A. No. 583/2022 After S.A. C.A. is filled C.A. No. 12382/2022	Challenging judgment & order Stay
9	RCA No. 09/2021	13A

9. Out of these proceedings, three (03) proceedings are criminal proceedings. It is also seen that, writ petition was filed bearing Writ Petition No. 2953/2022. Both the parties accept that in the said writ petition there is alternative prayer for removal of husband from service and the petition is filed by the wife. Thus, though the proceedings are subsequent, but still note can be taken that if the matter is remanded it will not serve any purpose. The learned District Judge - 1 while dismissing the appeal has considered that the summons was properly served. Though affidavit was filed by father of wife that he was served with summons, the Court has taken note that there is documentary evidence and the report of bailiff showing that summons was served upon father of wife. The learned District Court observed that, proper procedure was followed for service of summons to wife and thereafter decree was passed. The learned District Court further considered that

the application should have been filed under order 9 rule 13 of the Code of Civil Procedure for setting aside ex-parte order.

10. This Court finds that, nothing is pointed out to show that wife was not properly served and that the summons was not served even on father of wife and to show that the report of bailiff was not correct. Though it is argued that, the valuable right of wife is lost to contest the proceedings, still additional evidence was filed and that was considered. It is submitted that, even after passing the order in the suit to proceed ex-parte, still the defendant has allowed to cross-examine the plaintiff in the proceedings. This Court is not impressed by the submissions.

11. This Court finds that, even after no purpose will be served as it is reported that, by now the husband has also married for second time though immediately after the decree of divorce and before completion of limitation period for filing affidavit.

12. So far as judgment in the case of **Saroj Vs. Rajender Kumar** (supra), there was clear finding recorded by the High Court that deliberately incorrect address was given of wife where she was not residing at the relevant time. There was conclusion drawn that the process serving agency was in collusion and there was fraud played on

the appellant therein. In this case, nothing is shown that the report of service was given in collusion or was by playing fraud.

13. So far as judgment in the case of K. Srinivas Vs. K. Sunita (supra), this Court finds that, the said judgment is applicable to the facts of this case.

14. Considering this, this Court finds that, no substantial question is made out in the appeal and therefore, the appeal deserves to be dismissed.

15. Considering the above, the second appeal stands dismissed with no order as to costs.

16. In view of dismissal of second appeal, civil application also stands disposed off.

(KISHORE C. SANT, J.)

PS.B.