

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.742 OF 2022

Nikita Rahul Pawar

... Appellant

Versus

Rahul Kantilal Pawar

... Respondent

...

Mr.V.P. Patil, - Advocate for Appellant

Mrs.Sharda Chate – Advocate for respondent

....

CORAM : GAURI GODSE, J.

DATE : 15th February, 2023

PER COURT :

1. This second appeal is filed for challenging the judgment and decree dated 13th July, 2022 passed by learned District Judge-4, Dhule in Regular Civil Appeal No.69 of 2021. The said appeal was preferred by the present appellant-original applicant no.2 for challenging the judgment and decree dated 4th December, 2021 passed by the learned 4th Joint Civil Judge, Senior Division, Dhule, thereby dismissing Hindu Marriage Petition No.155 of 2020, which was jointly filed by the appellant as well as the respondent under section 13(B)(1) of the Hindu Marriage

Act, 1955 for dissolution of marriage by consent.

2. Though initially both the parties had given consent, subsequently the consent was withdrawn by the respondent. Hence Hindu Marriage Petition filed under section 13(B)(1) of the Hindu Marriage Act was dismissed by the learned Trial Judge. The First Appellate Court also dismissed the appeal. Hence the present second appeal is filed.

3. By order dated 11th January, 2023, notice was issued to the respondent by passing the following order :-

“1. Considering the nature of the dispute, the Second Appeal needs to be disposed of finally at admission stage. The question of law that would arise in the Second Appeal is with respect to result of the Hindu Marriage Petition No. 155 of 2020 filed under Section 13(B)(1) of Hindu Marriage Act, 1955, after the consent was withdrawn by the respondent.

2. Issue notice to the respondent, returnable on 25th January, 2023. Humdast allowed.

3. Notice to indicate that the Appeal will be decided on the aforesaid substantial question of law at admission stage.

4. Appellant to serve the respondent by private notice and

file service affidavit before the next date.”

4. The notice of Second Appeal was served upon the respondent and he has appeared through Advocate. Respondent has placed on record an affidavit thereby stating that he is consenting for dissolution of marriage as per the original joint Petition that was filed. The affidavit dated 24th January, 2023 duly sworn by the respondent is taken on record and marked “X” for identification with today’s date.
5. Learned counsels for both the parties state that both the parties have remarried and hence both hereby give consent for dissolution of marriage as per the joint petition that was filed.
6. Respondent is present in the Court. The respondent admits the contents of the affidavit placed on record thereby giving consent. Learned counsel appearing for the appellant states that the appellant has already consented for dissolution of marriage at the time when joint petition was filed in the trial Court. He submits that after second marriage, she has delivered a child and is unable to remain present personally in the Court. Hence, her personal presence be dispensed with.
7. Both the counsels appearing for the parties state that there are no

pending claims by both the parties against each other. The learned Advocate for respondent identifies the respondent, who is personally present in the Court.

8. In such circumstances, when both the parties are consenting for dissolution of marriage as per the joint petition that was already filed by them, necessary decree for the purposes of dissolution of marriage can be passed in the present second appeal.

9. Hence the following order is passed.

(a) The judgment and decree dated 13th July, 2022 passed by learned District Judge-4, Dhule in Regular Civil Appeal No.69 of 2021 and the judgment and order dated 4th December, 2021 passed by learned 4th Joint Civil Judge, Senior Division, Dhule in Hindu Marriage Petition No. 155 of 2020, are quashed and set aside.

(b) Hindu Marriage Petition No.155 of 2020 jointly filed by the parties under section 13(B)(1) of the Hindu Marriage Act, 1955 is allowed. The marriage solemnized between the parties on 12th May, 2017 is dissolved by mutual consent.

(c) Decree to be drawn up accordingly.

(d) Office is directed to draw decree within a period of eight

weeks from today.

(e) Personal presence of the appellant is dispensed with for the reasons stated above.

10. Second Appeal is disposed of in above terms.

[GAURI GODSE, J.]