



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

FAMILY COURT APPEAL (FCA) NO. 13/2023

Kapil S/o Chandrakant Bhoyar,
Aged 42 yrs., Occ. Service,
R/o. Sparta 1404, A-Wing,
Hiranandani Estate, Thane (West),
Dist. Thane.

APPELLANT
(Ori. Respondent)

VERSUS

Priya w/o. Kapil Bhoyar,
Aged 40 yrs., Occ. Household,
C/o. Shri Vijayrao Bhaise,
R/o. Rachana Shanti Apartment,
near Biyani Square, Camp,
Amravati, Dist. Amravati.

RESPONDENTS
(Ori. Petitioner)

Mr. S. B. Gandhe, Advocate for appellant.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

DATE : 17.10.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This appeal raises a challenge to the order dated 13.01.2023 passed by the Family Court, Amravati in Petition No. A/210/2018, by which said petition was came to be dismissed in-default. Notice of this appeal was issued to the respondent (wife), however despite service, she choose to remain absent.

4. Initially, respondent (wife) has filed petition for decree of divorce on the ground of cruelty and desertion. In response to the petition, appellant (husband) has filed written statement as well as counter claim seeking similar relief of decree of divorce.

5. It reveals from the impugned order that there were talks of settlement before the marriage councilor, but it was not worked out. On the basis of rival pleading The Family Court has framed issues and kept the matter for recording of the evidence. Since the petitioner (wife) did not appear on various dates, it resulted into dismissing the petition in-default vide impugned order dated 13.01.2023.

6. It is appellant's contention that the Trial Court has not considered the counter claim at all. In case, the petitioner (wife) was not interested, the Trial Court ought to have dismissed divorce petition, and to have proceeded with the counter claim. Learned

counsel appearing for the appellant would submit that counter claim was duly stamped as well as there was no prior order of dismissal of counter claim.

7. It reveals from the issues framed by the Trial Court that the counter claim was not considered at all. The copy of Roznama does not disclose that the Trial Court has taken cognizance of counter claim or directed the petitioner to file written statement to the counter claim. In view of Order VIII Rule 6D of The Code of Civil Procedure, if the suit (petition) is discontinued or dismissed, the counter claim would be proceeded. Rather, the Trial Court has not considered that the written statement also bears a counter claim.

8. In the circumstances, the impugned order to the extent of disposing entire petition is not sustainable in the eyes of law. So far as dismissal of divorce petition of wife is concerned, no fault can be culled out in this appeal. However, the Trial Court while dismissing the petition, ought to have clarified that the counter claim shall go on. In the circumstances, by allowing appeal, we modify the impugned order by clarifying that though wife's petition is dismissed in-default, however, counter claim of husband shall proceed further in accordance with law.

9. Appeal stands disposed of in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane