



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

48 FAMILY COURT APPEAL NO. 60 OF 2023
WITH
CIVIL APPLICATION NO. 3389 OF 2023
IN FCA/60/2023

SACHIN SHANKAR BANKAR

VERSUS

ASHWINI SACHIN BANKAR

...

Advocate for Appellant : Mr. Tungar Hrishikesh V.

Advocate for Respondents : Mr. N.T. Tribhuvan

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 18.06.2024

PER COURT :

Heard both the sides.

2. The appellant is the husband of the respondent and is aggrieved by the judgment and order passed by the learned judge of the Family Court thereby directing dissolution of marriage, upholding the ground of cruelty as contemplated under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (the Act).

3. The learned advocate for the appellant would submit that the Family Court has erred in directing the matter to proceed *ex parte* during the pandemic, thereby depriving him of the right to contest the petition on all fours. The appellant had already filed a petition for restitution under Section 9 of the Act, which was pending before another judge of the Family Court. It was an error on the part of the office to list both these matters before separate courts. The respondent, who must have been aware about pendency of such restitution petition ought to have taken appropriate steps

so that both matters could have been before the same judge. She intentionally avoided to do so and allowed the divorce petition to go on without appellant's knowledge and succeeded in getting the order. The impugned judgment and order being *ex parte*, causes serious prejudice to the appellant's interest. He is ready to participate in the proceeding, given the opportunity.

4. The learned advocate would submit that only to demonstrate *bona fides*, he has already cleared all the dues in respect of the alimony directed to be paid. When his petition for restitution was already pending, it was improper to allow the decision in the divorce proceeding behind appellants back to sustain.

5. Per contra, the learned advocate for the respondent-wife would oppose the appeal. He would submit that the appellant has not been raising any dispute about the observation in the impugned judgment and order about attempt having been made to effect service of the summons in the divorce proceeding and he having refused to accept it. This is sufficient to attribute him with the knowledge of the pending divorce proceeding.

6. He cannot pass on the blame to the respondent. He himself could have taken initiative by undertaking scrutiny/examination of the court record. He deliberately avoided to participate in the divorce proceeding and only as an after thought initiated the restitution proceeding and cannot be allowed to take advantage of the fact. The impugned judgment and order, dissolving the marriage is sustainable on merits. There was enough evidence before the learned judge to substantiate the allegations regarding cruelty. Once the marriage has been dissolved and the parties are at young age, since there is no issue, they can start their independent life. Merely filing of the restitution petition cannot be considered as a sufficient ground to reverse the impugned judgment. It would merely protract the litigation.

7. We have carefully considered the rival submissions and perused the

papers, including the impugned judgment and order. So far as the order directing the divorce proceeding to proceed *ex parte* is concerned, no dispute is being raised in the appeal memo regarding there being either no attempt to effect the service or to demonstrate that the appellant had not refused to accept it. In other words, no dispute is being raised by the appellant that the service was improper. Once having seen that one can easily proceed on the premise that the appellant did have the knowledge about filing of the divorce proceeding.

8. True it is that appropriate steps could have been taken by the office of the Family Court to tag both these matters (divorce proceeding and the restitution proceeding) or to have taken steps for placing both the matters before the same judge. Simultaneously, even the respondent-wife, who was having knowledge about pendency of both the matters, having caused appearance even in the restitution matter, also could have taken such steps. However, this would be like extending the benefit to the appellant of his own wrong in not participating in the divorce proceeding, in spite of having been served with a summons. He was bold enough to refuse to accept it. Meaning thereby that he was seeking to create some hurdle/obstacles in the divorce proceeding and filing of the restitution petition can certainly be regarded as another step in the same direction with an ulterior motive.

9. Suffice for the purpose to observe that it is not that the divorce proceeding was the only matter that was going on between the two sides. There was a criminal case as also a matter under the Protection of Women from Domestic Violence Act, which were being litigated between the two sides. If such was the state of affairs, taking a stand that the restitution proceeding ought to have been clubbed with the divorce proceeding and seeking to derive the benefit of failure to do so, to put up a challenge to the impugned judgment and order, in our considered view, is not digestible.

10. We see no illegality in the divorce proceeding being directed to

proceed *ex parte* by recording specifically that the appellant had refused to accept the summons. Failure to tag both the matters, in our considered view, would not provide sufficient ground to overturn the judgment and order impugned in the appeal.

11. Independently, perusal of the impugned judgment and order, and particularly the reasoning assigned by the Family Court clearly suggests that all the facts and circumstances have been considered in the proper perspective before reaching to the conclusion that indeed the appellant had subjected the respondent to cruelty, which is a ground to grant a divorce under Section 13(1)(ia) of the Act.

12. There is no merit in the appeal. It is dismissed.

13. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-