



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

**FAMILY COURT APPEAL NO. 13 OF 2024
WITH
CIVIL APPLICATION NO. 2563 OF 2024**

Archana Gajanan Bhosale @
Archana Ramesh Chavan .. Appellant

Versus

Gajanan Gangadhar Bhosle .. Respondent

Shri Mahesh P. Kale, Advocate h/f Shri B. A. Shinde, Advocate
for the Appellant.

Shri A. B. Gule Patil, Advocate for the Respondent – absent.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.
DATE : 21ST NOVEMBER, 2024.**

FINAL ORDER :

. Heard learned counsel for the appellant.

2. The respondent was served. He appeared through his counsel. However, thereafter he did not appear. Therefore, final hearing notice was also issued. Same was also served.

3. Matter was called out in the morning session. Learned counsel for the respondent did not appear. Hence matter was kept in the afternoon session. Learned advocate for the appellant submits that, he has intimated the learned counsel for the respondent that matter would be heard after recess. After recess

now matter is again called out at 3.48 p.m. However, none appeared for the respondent. So an adverse inference is drawn that he did not dispute the grounds for setting aside *ex-parte* judgment and decree for divorce.

4. We have gone through the impugned judgment and we have also considered the record. Admittedly, the summons was served upon the appellant. She has an explanation that after receipt of summons, she along with relatives went to the house of the respondent i. e. husband. They had a meeting with the relatives and it was agreeable that respondent would take her back to cohabit and would withdraw the petition. Believing the words of the respondent, appellant did not prefer to appear before the Family Court. The respondent took the disadvantage of her non appearance and obtained the *ex-parte* decree impugned before this Court.

5. Had the respondent denied this fact, the remedy would be different. However, he did not deny the grounds for her absence from the Court. Hence, now, by drawing an adverse inference this Court believe grounds. In the facts and circumstances, we feel it appropriate to allow the family court appeal and quash and set aside the impugned judgment and decree. Hence we pass following order.

ORDER

- (i) The family court appeal is allowed.
- (ii) Impugned judgment and decree of learned Judge, Family Court, Jalna passed in Petition A-84/2023 dated 09.01.2024 is quashed and set aside and matter is remitted back to the Judge, Family Court, Jalna for fresh disposal by granting opportunity to the appellant to file written statement and lead the evidence.
- (iii) An opportunity shall also be granted to the respondent – husband to lead additional evidence, if any and cross examine the witnesses.
- (iv) The Judge Family Court, Jalna shall issue notice to present respondent – husband, who is petitioner in the original proceedings for his appearance and then proceed with the matter.
- (v) Record and Proceeding of the Family Court be returned back.
- (vi) There shall be no order as to costs.
- (vii) All pending civil applications stand disposed of.

[SHAILESH P. BRAHME J.]**[S. G. MEHARE, J.]**