



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

FAMILY COURT APPEAL NO. 80 OF 2022

WITH

**CIVIL APPLICATION NO. 15848 OF 2022
IN FCA/80/2022**

JYOTI SANJAY MAHIRE

VERSUS

SANJAY LAXMAN MAHIRE

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Advocate for Appellant : Mr. Harshal Prakash Randhir

Advocate for Respondent : Mr. Neeraj Chudiwal h/f Mr. Jadhav Satej S

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

DATE : 01 OCTOBER 2024

PER COURT :

. Heard both the sides finally.

2. This is a Family Court Appeal under Section 19 of the Family Courts Act by the wife, challenging the judgment and decree passed by the Family Court, granting divorce at the instance of respondent/husband on the ground of cruelty and desertion under Section 13(1)(i-a) and 13(1)(i-b) respectively of the Hindu Marriage Act.

3. Learned advocate for the appellant submits that the decree has been passed ex parte. Though the appellant had filed written statement and the issues were framed, she was unable to attend the

Court and which has resulted in passing of the impugned judgment and decree.

4. Learned advocate would point out that in fact on 19.07.2022, the respondent/husband was absent and the matter was directed to be listed on the next date i.e. 04.08.2022 for dismissal. Since she was absent on 04.08.2022, the matter was adjourned to 05.09.2022, but the learned Judge was on leave and finally the impugned judgment and order has been passed on 23.09.2022. He would submit that the sequence of events would suggest that the matter was actively heard and concluded within two months. There was sufficient cause which prevented her from attending the Court. Allowing the decree to sustain, would cause a serious prejudice to her. Having put in the written statement, she had indicated her intention to contest the petition seriously. All of a sudden, the matter was concluded and decided to her prejudice behind her back. He would, therefore, pray that the judgment and decree under challenge be quashed and set aside and the appellant may be extended an opportunity to go before the Family Court again and get it decided on merits. He assures that the appellant would cooperate and would punctually attend the proceeding.

5. Learned advocate for the respondent opposes the appeal. He submits that the appellant cannot be heard since she had not turned up after filing of the written statement. It was not expected of the Family Court to have issued her a fresh notice again. Having left

with no alternative, it had proceeded to decide the proceeding, albeit ex parte and the appeal may be dismissed.

6. We have considered the rival submissions and perused the record. Since the husband is claiming divorce on the ground of cruelty and desertion, going by the allegations he has attributed to her, it is a serious issue and she is entitled to defend these allegations.

7. True it is that the appellant herself is to be blamed for not having participated in the hearing of the divorce petition which has resulted in passing of the judgment and decree under challenge. However, the circumstances brought to our notice as mentioned herein above would indicate that it is not that the appellant was totally remiss in participating in the proceeding before the Family Court. She had filed the written statement which is indicative of the fact that she was intending to contest the divorce proceeding. It would be too harsh, in the peculiar facts and circumstances, to make her to suffer the impugned judgment and decree of divorce. It would be in the interest of justice that she is given one chance to remedy the default and contest the divorce proceeding before the Family Court. Allowing her to suffer the decree passed ex parte would cause a serious prejudice as against which the respondent/husband would still get an opportunity to substantiate his allegations, rather than allowing him to derive the benefit of lapse on the part of the appellant.

8. In the circumstances, we allow the appeal partly. The impugned judgment and order is quashed and set aside.

9. The matter is remanded back to the Family Court for decision in accordance with law by extending opportunity to both the sides to lead evidence. The parties shall appear before the Family Court on 11.10.2024 and the Family Court shall thereafter decide the petition on its own merits as expeditiously as possible. The appellant shall cooperate the Family Court in early decision of the matter and shall not remain absent on the due dates without reason.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeeb..