



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 FAMILY COURT APPEAL NO. 7 OF 2024

RAKHI PRAVIN WANDRE
VERSUS
PRAVIN VITTHAL WANDRE

...
Advocate for appellant : Mr. Vinod Prakash Patil
Advocate for the respondent – State : Mr. Shaikh Naseer
...

**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

DATE : 09 AUGUST 2024

ORAL ORDER (MANGESH S. PATIL, J.):

Admit.

2. Heard both the sides finally.
3. Petitioner – appellant is the wife of respondent no. 2 and is challenging the decree of dissolution of marriage passed on the ground of cruelty contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955.
4. Learned advocate for the appellant would submit that decree was passed *ex parte*. She was unable to contest the petition. Reasons have been expressly disclosed in the memo of appeal. It was a pandemic time. There was no urgency. Opportunity ought to have been extended to her to contest the petition. Since marriage was sought to be dissolved on the ground of cruelty, she would suffer

irreparable loss and gross injustice, if she is not given a fair opportunity to contest the petition.

5. Learned advocate would further submit that even the finding of the learned Judge as regards cruelty is in a slipshod manner. He has not even discussed the individual circumstances pitted against the appellant. He has recorded the observation regarding proof of cruelty as good as in default. The impugned judgment and order be quashed and set aside and the matter be remanded for decision afresh.

6. Learned advocate for the respondent – husband would oppose the appeal. He would submit that it would not lie in the mouth of the appellant to come out with any excuse. She had caused appearance but had failed to turn up subsequently to contest the petition. Since the averments in the petition and the statements in the examination in chief of the respondent had gone unchallenged, no fault can be found with the conclusion drawn by the learned Judge regarding proof of cruelty.

7. We have considered the rival submissions.

8. There is no dispute about the fact that after having caused appearance once, the appellant had not turned up to contest the

petition, however, the explanation given by her in the appeal memo has gone un-controverted.

9. Appellant was not to gain anything by remaining absent and not contesting the petition. Merely because for the reasons mentioned in the appeal memo, she was unable to attend the Court during pandemic, learned Judge could have considered the unprecedented situation and could have issued her another notice / summons before proceeding *ex parte*.

10. Considering the fact that the impugned judgment and order dissolves the marriage between the couple, having drastic consequences on the appellant's rights, in our considered view, it would be appropriate that the petition is remanded back to the learned Judge for decision afresh, by extending the appellant an opportunity to contest the petition. In order to bind her, stipulation can be provided so that she would not take any liberty hereafter.

11. The appeal is allowed partly.

12. The impugned judgment and order is quashed and set aside.

13. The matter is remanded back to the Family Court, Jalgaon for decision afresh.

14. Parties shall appear before the Family Court, Jalgaon on 26 August 2024, on which date the appellant shall file her written statement. The learned Judge shall thereafter decide the proceedings in accordance with law but expeditiously.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/