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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.13466 OF 2023

Santosh S. Malkar ...Petitioner

V/s.

Mrs.Sarika S. Malkar ...Respondent

Mr.Sunil Gosavi for the Petitioner.

None for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 1ST MARCH, 2024.

P.C. :-

1. The Writ Petition challenges the impugned order dated 16 April 2019 passed by the Family Court, Bandra, Mumbai.

2. An *ex-parte* judgment and decree dated 20 February 2015 was passed against the Wife. The said *ex-parte* judgment and decree was challenged by the Wife by filing Civil Miscellaneous Application No.18 of 2018. The Application was

filed under Order IX Rule 13 of the Code of Civil Procedure for setting aside the *ex-parte* judgment and decree. After hearing the parties, the Family Court, Mumbai set-aside the judgment and decree dated 20 February 2015 and the Original Petition was restored back to file. Mr.Gosavi appeared for the Petitioner husband. It is a matter of record that the Petitioner and the Respondent were staying under the same roof, when the summons of the proceedings was tried to serve on the Wife. It is also come on record that the summons was served by way of “pestering”. It was the case of the Wife that the summons was never served on her, therefore she was unable to appear in the Court proceedings. The Family Court, Mumbai has come to a conclusion that the summons was not duly served on the Wife. Hence, she was unable to attend the Court proceedings. Accordingly, the Family Court, Mumbai has set aside the *ex-parte* judgment and decree.

3. I find no infirmity in setting aside of *ex-parte* judgment and decree dated 16 April 2019 passed by the Family Court, Bandra, Mumbai. There is no perversity in the impugned

order. Hence the Writ Petition is dismissed. There shall be no order as to costs.

(RAJESH S. PATIL, J.)