



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

FAMILY COURT APPEAL NO. 9 OF 2022

SWATI RAHUL BARVE
VERSUS
RAHUL BAPURAO BARVE

...

Mr. Amol K. Gawali, Vp U/obj, Advocate for Appellant.
Mr. Shrinivas A. Ambad, Advocate for Respondent.

...

**WITH
CIVIL APPLICATION NO. 2255 OF 2022
IN FCA/9/2022**

SWATI RAHUL BARVE
VERSUS
RAHUL BAPURAO BARVE

...

Mr. Amol K. Gawali, Vp U/obj, Advocate for Applicant
Mr. Shrinivas A. Ambad, Advocate for Respondent.

...

**CORAM : NITIN B. SURYAWANSHI,
MANJUSHA DESHPANDE, JJ**

DATE : 24th APRIL, 2025

P.C.:-

1. This appeal is filed by the wife under Section 19 of the Family Courts Act, 1984, challenging the judgment and decree dated 7th January 2022 passed by the learned Family Court, Jalna in Petition No.A-148/2021. On 15th June 2021, Respondent-husband filed the said petition under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, seeking dissolution of marriage on the ground of cruelty and

desertion.

2. Record indicates that after filing of the petition, notice was sent to the Respondent through bailiff. Bailiff submitted a report (Exhibit-5/1) stating that father of Respondent met him, but he was told that since last three years, Original Respondent-wife has not been residing with him. He did not even disclose her whereabouts. Notice was then sent to the wife through RPAD. The track reports, Exhibits-14 and 17 show that Respondent refused to accept the said notice. As a matter of caution, the notice was sent to the wife at her working place at Shiv Chhatrapati College, N-3, CIDCO, Aurangabad through its Principal. However, wife did not appear in the Court. Apart from notices, money order was sent to the wife for her first appearance. The track report, Exhibit-12/5 shows that wife left the address without instructions. The Family Court, Jalna proceeded on the premise that wife refused to accept the notice and, therefore, notice is deemed to have been served upon her. The Family Court, Jalna, therefore, proceeded ex-parte against Appellant and passed the impugned judgment and decree thereby allowing the petition filed by the husband and dissolving the marriage solemnized between the Appellant and the Respondent.

3. Learned Advocate appearing for the Appellant submits that

the impugned judgment and decree is passed during the Covid-19 period, when there were specific instructions and guidelines issued to the Courts not to pass adverse orders in absence of parties. Since the impugned judgment and decree is passed ex-parte, the same may be set aside.

4. Learned Advocate for the Respondent on the other hand supported the impugned judgment and decree stating that inspite of service of notice, the Appellant has refused to accept the same and, therefore, the Family Court, Jalna was justified in holding that notice is deemed to have been served on the Appellant and has rightly proceeded ex-parte against it.

5. It is the case of the Appellant that the RPAD notice which is alleged to have been refused by her was sent on the address of her father and at that point of time, she was not residing with her father. It is, therefore, not clear as to who exactly has refused the said notice. We are inclined to accept the said contention in view of the bailiff report which is referred to in the foregoing paragraph.

6. Be that as it may, admittedly, ex-parte divorce decree is passed against the Appellant without giving her opportunity of hearing. Fair and reasonable opportunity of being heard and contest the matter

on merit is denied to the Appellant, therefore, the appeal deserves to be allowed.

7. In the result, appeal is allowed. The impugned judgment and decree passed by the Family Court, Jalna on 7th January 2022 in Petition No.A-148/2021 is hereby quashed and set aside and the matter is remanded back to the Family Court, Jalna.

8. Parties to appear before the Family Court on 9th June 2025 and shall cooperate in expeditious disposal of the petition.

9. Family Court, Jalna shall re-endeavour to dispose of the petition within six months from the first date of appearance of the parties.

10. In view of disposal of family court appeal, civil application does not survive and is also disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN B. SURYAWANSHI, J.)