

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.73 OF 2023
WITH
INTERIM APPLICATION NO.15620 OF 2024
WITH
INTERIM APPLICATION NO.2780 OF 2026
WITH
INTERIM APPLICATION NO.15991 OF 2023
IN
FAMILY COURT APPEAL NO.73 OF 2023

Sheetal Deepak Kapde

....Appellant

V/S

Deepak Daulat Kapde

....Respondent

Ms.Anu Kaladharan for the Appellant.

Mr.Suresh Chandrashekhar a/w Li Shu Fen for the Respondent-Husband.

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ

DATE : 5th MAY 2026

JUDGMENT (PER BHARATI DANGRE, J) :

1 The Family Court Appeal is filed by the Appellant Wife, as she is aggrieved by the Judgment and Decree, passed by the Family Court, Thane, in Petition No. A-318/2017, filed at the

instance of the Petitioner-Husband under Section 13 (1)(i-a)(i-b) of the Hindu Marriage Act, 1955.

By the Judgment dated 02/06/2023, the Family Court, dissolved the marriage solemnized between the Parties on 22/12/2011 by a Decree of Divorce and directed the Decree to be drawn.

2 The Appellant, Wife is aggrieved by the said decision, as it is her contention that she could not avail the opportunity to cross-examine the Petitioner who had tendered his evidence Affidavit and the learned Judge hurriedly disposed of the Petition on merits, by accepting the pleadings in the Petition to be uncontroverted and this has caused grave injustice to her.

It is her specific contention that since at the relevant time when the proceedings were ongoing before the Family Court and though she had filed the written statement, she was not in a position to conclude the cross-examination of the Petitioner, because she suffered a paralytic stroke and hence she could not tender any evidence on her behalf.

3 When we perused the impugned Judgment passed by the Family Court, dissolving the marriage between the Appellant and the Respondent, we find that notice was issued to the Respondent-wife, in the Petition filed by the Husband seeking dissolution of the marriage, on the ground of cruelty and in the backdrop of the accusation that there was no physical relationship between the Parties since December, 2014 and on 02/10/2014, the wife left the matrimonial home on the pretext of visiting friend and she is

staying at parental home.

The Petition was responded by filing the written statement on behalf of the wife (Exh.13), where she denied the accusations levelled and described the same to be frivolous, misconceived and not maintainable. She placed her version, by stating that the Petitioner never cared for her despite the fact that she was facing medical complications and all the expenses were required to be borne by her father and she was, therefore, emotionally stressed and depressed due to the behaviour of the Petitioner's family.

4 For determining the contest, the Family Court framed the issues and noted that the case was pending since 2017 and was six years old and despite filing written statement, since the Respondent, wife failed to cross-examine the Petitioner/Husband, his examination-in-chief by way of Affidavit was taken into account and since the wife failed to adduce evidence in support of her defence, the contention in the Affidavit was accepted as a gospel truth.

The order reveal that the Respondent, wife though commenced the cross-examination of the Petitioner, the cross-examination could not be completed and she failed to adduce any further evidence in support of her defence and, therefore, the Family Court accepted the version of the Petitioner, justifying the conduct of the Respondent for dissolving the marriage by decree of divorce.

5 The learned counsel for the Respondent would submit that the cross-examination was completed partially and in the

meantime an Application was moved by the Petitioner for reconciliation and before the cross-examination could be completed, because of her health she could not attend the proceedings, resulting into the decree of dissolution of marriage passed by the Family Court on 02/06/2023.

6 Though we made an attempt to reconcile the issue by permitting certain lumpsum amount to be availed by the wife by way of permanent alimony, we find that the Parties could not arrive at a consensus about the amount and, therefore, the Application filed by the wife seeking maintenance could not be decided.

However, since we noted that the Appellant has raised a challenge to the Judgment and decree dated 02/06/2023 on the ground that she has not availed an opportunity to participate in the proceedings on account of ill health and she supported the same by medical evidence to that effect, we find it appropriate to remand the proceedings to the Family Court, Thane, with a direction that since the Petitioner has already tendered evidence affidavit, the Respondent-wife shall be permitted to cross-examine the Petitioner and she is also at liberty to file any additional evidence, if she desire to do so.

Needles to state that the learned Judge shall take into consideration such evidence which is brought on record subsequent to its remand and determine the issues framed by him afresh in light of the said evidence which would be brought on record.

7 We also permit the Petitioner to file any additional documents, if he so desire, pursuant to he undergoing the cross-examination or any other evidence being cited by the Respondent-wife.

Since the marriage was already dissolved in the year 2023 and the Appeal is pending before us since then, we request the Family Court, Thane, to expeditiously pronounce upon the Petition No. A-318/2017 within a period of six months from today.

We, therefore, quash and set aside the impugned Order/Judgment dated 02/06/2023, and with the Petition being remanded, the Petition No.A-318/2017 to the Family Court, Thane to commence the proceedings from the stage of cross-examination of the Petitioner, Husband by the Respondent, Wife, with a request to dispose of the proceedings as expeditiously as possible and in no case later than a period of six months from today.

The Appellant, wife, during its pendency is entitled to file an Application for grant of interim maintenance/permanent alimony and we expect the Family Court to decide the same in an expeditious manner.

Appeal is disposed of in above terms. Pending Interim Applications also stand disposed of.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]