

Equivalent citations: II (2007) DMC 243, 2007 (4) MhLj 774

Bench: J Patel, R Dalvi

Medha Gaurav Talekar vs Gaurav Kaluram Talekar on 4/4/2007

## JUDGMENT

Roshan Dalvi, J.

1. This Appeal challenges the ex parte judgment and order passed on 12-7-2001 by the Family Court No. 2, Pune, granting the decree of divorce to the respondent (husband) under the provisions of Section 13(1)(ia) of the Hindu Marriage Act.

2. The parties were married on 13-5-1999 according to Hindu vedic rites. It was alleged by the respondent in the Petition filed in the Family Court that the appellant (wife) left the matrimonial home and went to reside with her maternal uncle from 22-5-1999. The parties never lived together since then. After the Petition came to be filed for divorce, writ of summons was served upon the respondent (wife) by Registered Post. It has been received by her on 3-10-2000. She did not appear in Court at any time and did not file her Written Statement. The averments made in the Petition remained uncontroverted. The petitioner has been granted a decree of divorce upon such uncontroverted averments.

3. It is the case of the appellant (wife) that, in fact, after filing of the divorce Petition, the parties co-habited together and she has also given birth to a child during the pendency of the Petition. She was informed by the respondent (husband) that he would not pursue the Petition and hence, she never attended the Court. In those circumstances, the decree, if any, obtained by the respondent (husband) would be taken to be obtained by fraud and that would leave to her the only remedy of filing a Suit for setting aside that decree, which was fraudulently obtained.

4. She has further contended that she received the notice of the Petition on the date when the Petition was fixed for hearing and has consequently alleged that the husband obtained a decree after misleading her and suppressing true facts.

5. We have gone through the Roznama maintained by the Family Court. The Roznama shows that the Petition having been presented on 28-8-2000. The notice was issued upon the respondent (wife) for service of the Petition to be effected upon her on 9-9-2000. The Petition reached hearing on 6-10-2000 when it was adjourned for awaiting service. The Petition thereafter reached hearing on 20-11-2000, when the notice duly served upon the appellant (wife) was received showing the service by R.P.A.D. made upon her on 30-10-2000. On 2-1-2001, the Petition was adjourned for Counsellor's report. Thereafter the Petition was adjourned for filing a Written Statement on 8-2-2001. Since the appellant (wife) never appeared in Court and did not file her Written Statement, the petitioner made an application for an ex parte order on 20-3-2001. The Petition was adjourned to 16-6-2001 for ex parte hearing. Deposition of Witness No. 1 was recorded on that date. Notice to the respondent was issued. On 22-6-2001, an acknowledgment of the receipt of the Notice was received. Evidence of the petitioner was closed. The matter was adjourned to 22-6-2001 for ex-parte judgment when the judgment was pronounced in the open Court.

6. We find that the Trial Court followed due legal procedure and passed the decree correctly.

7. We may mention that there were certain proceedings under Section 498-A of the Indian Penal Code initiated by the wife which were prosecuted by her and which resulted an acquittal of the respondent (husband). The case of the wife that the parties co-habited together and wanted to continue the marriage, cannot be accepted. The judgment and order impugned in this case cannot be challenged. The Appeal is

dismissed. No order as to costs.