



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Government	Percentage
Current government	85%
Previous government	15%

V/s.

_____)

Corrected vide order dated 17.10.2025.

Ms.Priyanka Desai with Ms.Tvisha Desai & Ms.Janhavi Pise i/b
The Fort Circle Advocates & Solicitors for the Appellant.

Ms.Pushpa Verma with Mr.Moiez Shaikh for the Respondent.

CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.
DATE : 1ST OCTOBER, 2025.

JUDGMENT (Per Sandesh Patil, J.) :-

1. Heard the learned counsels appearing for the respective parties.
2. Rule, by consent, rule returnable forthwith.
3. The present Family Court Appeal is directed against the Judgment, Decree and Order dated 5/11/2024 passed by the learned Principal Judge, Family Court, [REDACTED] in proceedings bearing number P.A. No. 132/2022, whereby the petition of the petitioner/respondent herein was allowed and the marriage between the parties, which was solemnised on 18/9/2017, was dissolved by a decree of divorce. The present petition is filed by the appellant-wife, who is the respondent in Family Court.

4. The respondent-husband had filed the petition for divorce under Section 27(1)(d) of the Special Marriage Act, 1954. The contention of the respondent-husband was that the marriage between the parties was solemnised on 18/9/2017 in the office of the Registrar of Marriages, [REDACTED], [REDACTED] in accordance with the provisions of the Special Marriage Act. The respondent-husband contended that the appellant-wife treated him with cruelty and therefore he sought dissolution of the marriage. The respondent-husband had given details of the manner in which, according to him, the appellant-wife had inflicted cruelty upon him.

5. The appellant-wife appeared before the Court, however, failed to file her written statement within time, and hence there was an order passed on 10/3/2023, below Exhibit 1 in the petition, to proceed, without written statement. The appellant-wife thereafter remained absent. She failed to lead her evidence, hence by an order dated 22/8/2024 passed below Exhibit 1, her evidence was closed. Thereafter, by an order dated

4/10/2024 passed below Exhibit 1, her right to argument was also forfeited.

6. The learned Judge, Family Court, framed an issue as to whether the petitioner had proved that after solemnization of marriage, the respondent treated him with cruelty. The learned Judge, Family Court, answered the issue in the affirmative and dissolved the marriage by passing judgment and order on 5/11/2024. Being aggrieved and dissatisfied with the Judgment, Decree and Order dated 05/11/2024, the applicant-wife has preferred the present Family Court appeal.

7. The matter was heard by us in Court. Thereafter, we had called the parties to the chambers, to ascertain whether any amicable settlement was possible. Since both the parties could not reach an amicable settlement, we proceeded to hear the parties on merits.

8. The learned counsel appearing for the appellant-wife argued that the impugned judgment and order is bad in law, contrary to the principles of equity, justice, and good conscience

and deserves to be quashed and set aside. She submitted that the learned Judge, Family Court, has not given any reasons while answering issue number 1, viz., “*Does the petitioner prove that after solemnization of marriage respondent treated him with cruelty.*” The learned counsel for the appellant-wife also argued that although the appellant-wife had not filed written statement, and further, although the appellant-wife had not led her evidence, it was incumbent upon the learned Trial Court to assess the evidence of the respondent-husband, who was the applicant before the Trial Court, on its own merits and that the learned Trial Court could not have decreed the marriage petition filed by the husband only on the ground that the appellant-wife did not appear in the matter.

9. The learned counsel for the respondent-husband supported the findings of the learned Trial Court. She submitted that the appellant-wife, inspite of being served, chose not to appear in the matter. She submitted that the appellant-wife had not even filed her written statement. The learned counsel appearing for the respondent-husband further stated that the

respondent-husband was not even cross-examined and that his evidence remained unchallenged. Learned counsel appearing for the respondent-husband further stated that the appellant-wife deliberately wanted to prolong the hearing of the matter and hence, she never remained present before the Trial Court. She stated that since the appellant-wife did not remain present, the Trial Court passed the impugned judgment and order. She submitted that the impugned judgment and order is perfectly legal and valid and that there it requires no interference. Learned counsel appearing for the respondent relied upon the following judgements -

- a) *Samar Ghosh v. Jaya Ghosh* [2007 Supreme (SC) 4172].
- b) *Srinivas Rao v. D. A. Deepa* [2013 Supreme (SC) 187].
- c) *Jayachandra v. Aneel Kaur* [2004 Supreme (SC) 1509].
- d) *Dhulabhai v. State of M.P.* [1968 Supreme (SC) 102].
- e) *Smt. Jyoti Verma v. Prashant Kumar Verma* [First Appeal No. 1210 of 2023].
- f) *Krishnaveni Rai V. Pankaj Rai and Anr* [AIR 2020 SC 1156].

In the end, she prayed for dismissal of the aforesaid appeal.

10. We have heard the learned counsels appearing for the parties. We have perused the documents and records. We have gone through the impugned judgment and order very minutely. The Trial Court, while discussing the case of the respondent-husband, has quoted in detail the contentions raised by him in his plaint. After framing the issues, the Trial Court proceeded to answer issue number 1, in the affirmative, in as much as the Trial Court held that the appellant-wife has treated the respondent-husband with cruelty. While discussing Issue number 1, the Trial Court surprisingly has not given any reasons as to how it has reached the said conclusion. The entire issue number 1 is disposed of hurriedly in a casual manner. The only reason why the Trial Court found that the appellant-wife has treated the respondent-husband with cruelty is, that the testimony of the husband had gone unchallenged. The Trial Court goes on to hold that the unchallenged testimony of the petitioner-husband proves the

contentions made by him in the petition that the appellant wife has treated him with cruelty.

11. The Trial Court, without discussing the case of the respondent-husband and without giving any reasons as to why the case of the respondent-husband appears to be true and correct, decreed the petition on the premise that the appellant-wife remained absent. The Trial Court has totally been oblivious of the legal position that merely because the proceeding has been ordered to be decided *ex parte*, does not mean that the proceeding has to be decreed automatically. The Trial Court lost sight of the fact, that even though the party has not filed written statement, the contentions of the plaintiff/petitioner cannot be considered as gospel truth and that it has to be analysed independently on merits by the Trial Court. The Apex Court in ***Balraj Taneja & Anr. v. Sunil Madam & Anr.*** reported in (1998) 8 SCC 396 has held that even though no written statement was filed, yet the Trial court cannot automatically allow the proceeding and that the trial court should consider the case of the petitioner on its own merits.

12. The learned counsel for the applicant aptly relied upon the judgment of the Apex Court in the matter of ***Ramesh Chand vs. Anil Panjwani***, reported in (2003) 7 SCC 350, where the Apex Court held as under-

“In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

13. The learned counsel appearing for the respondent-husband in order to support her case relied upon the judgment of the Apex Court in ***Samar Ghosh vs. Jaya Ghosh***, reported in 2007 Supreme (SC) 417. The facts of that judgment are not at all applicable to the facts in hand and as such completely distinguishable. The Apex Court had in the said case exercised its power under Article 142 and held that there was an irretrievable breakdown of marriage and accordingly dissolved the marriage.

14. The next judgment relied upon by the learned counsel for the respondent was in the matter of ***K. Srinivasa Rao vs. D.A. Deepa***, reported in 2013 Supreme (SC) 187. In this case, the Honourable Apex Court was called upon to adjudicate as to what is the meaning of cruelty, especially mental cruelty. The facts and circumstances of the present case and the facts in the judgment of *K. Srinivasa Rao* are totally different.

15. We may note that the trial court has disposed of the case in hand in a casual and mechanical manner. The Trial court decreed the proceeding only on the premise, that the appellant-wife did not appear before the court. It was incumbent upon the Trial court to record its findings based upon the evidence led by the respondent - husband. The Trial court should have analysed the evidence led by the respondent husband, and after considering the same, should have recorded its findings, on the issue of cruelty. Instead of doing so, the Trial court answered the entire issue only on the ground that the appellant-wife has not presented herself during the hearing of the proceeding. The Trial court was influenced by the fact, that the appellant-wife had not filed any

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written statement before the court, nor led any evidence. The Trial court ignored the well-settled position of law, that merely because a party did not lead evidence or merely because the party/respondent did not file a written statement, the proceeding are not to be decreed automatically. There has to be a finding and an application of mind by the trial Court as to whether the appellant, despite not filing her written statement nor leading any evidence, the appellant had made out a case, for grant of decree, as prayed for. All these considerations are totally absent in the present case. The Trial court has, unmindful of the legal position, dissolved the marriage of the parties by passing an almost cryptic and unreasoned order. There are no reasons of whatever nature assigned while decreeing the said proceeding.

16. In the premises aforesaid, we are of the considered opinion that the judgment, decree and order deserves to be quashed and set aside and the matter requires to be remitted back to the Trial court, for fresh consideration from at the stage of filing of the written statement by the appellant wife. Accordingly, the proceeding, is restored back to its original file.

17. Accordingly, we permit the appellant-wife to file her written statement before the Trial court, within a period of one month from the date of uploading of this order, before the Trial court. The Trial court, based on the pleadings of the parties, will proceed to frame issues and thereafter, permit the parties to lead their respective evidence.

18. During the hearing of the matter, we were informed by the parties that during the pendency of the aforesaid appeal, the respondent-husband has remarried. Once we have held that the impugned judgment and order runs contrary to the various judgments of the Apex Court as quoted in the foregoing paras, the fact, that the respondent-husband has remarried would not deter us from quashing and setting aside the judgment and order passed by the trial court, when found to be perverse.

19. Accordingly, we quash and set aside the judgment, decree and order dated 05/11/2024 passed by the learned Family Court, Thane in P.A. No. 132/2022, by passing the following Order :-

ORDER:

i) The judgment, decree and order dated 05/11/2024 passed by the learned Judge, Family Court, Thane in proceeding bearing number P.A. No. 132/2022 is hereby quashed and set aside and the proceeding bearing number P.A. No. 132/2022 is restored back to its original file.

ii) The appellant-wife, who is respondent in the proceedings before the Family Court, is allowed to file her written statement within a period of 30 days from the date of uploading of this order. The learned Judge, Family Court, Thane shall thereafter proceed to frame issues and take evidence of both the parties. Both parties will have the opportunity of cross-examining their respective witnesses.

iii) Since the parties are litigating for a long time, we direct the learned Judge, to decide the case as expeditiously as possible, and in any event, within a

period of nine months from the date of receipt of this order.

iv) Rule is made absolute in the aforesaid terms.

v) There shall be no order as to the cost.

20. All parties to act on the authenticated copy of this order.

(SANDESH D. PATIL, J.)

(REVATI MOHITE DERE, J.)