

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FAMILY COURT APPEAL No.04 OF 2022

Chanda w/o. Prakashsingh Rathod,
Aged about 37 years, Occupation : Nil,
R/o. C/o. Ritesh Thakur, Baghel Niwas,
ND-42, J1/24 Hudco Bus Stop,
Near Saimangal Karyalaya,
New Nanded, Present Address,
Tah. & Distt. Nanded-431 603.

: APPELLANT

...VERSUS...

Prakashsingh @ Prakash s/o. Ramadharsingh
Rathod,
Aged about 40 years,
Occupation : Service,
R/o. Nimbandhe Plots,
Borkar Wadi, Jatharpeth, Akola,
Tah. & Distt. Akola.

: RESPONDENT

Ms. Shilpa Tapadia, Advocate for Appellant.

Shri Ravikumar Tiwari with Shri C.A. Joshi, Advocate for Respondent.

CORAM : A.S.Chandurkar & Urmila Joshi-Phalke, JJ.

Arguments heard on : 15th September, 2022.

Judgment delivered on : 19th September, 2022.

ORAL JUDGMENT : (Per : Urmila Joshi-Phalke, J.)

1. The appellant has challenged the judgment and decree of
divorce passed by the Family Court, Akola on 22.10.2021 in the

present appeal.

2. Brief facts of this appeal are as under :

Appellant-Chanda w/o. Prakashsingh Rathod and respondent-Prakashsingh @ Prakash s/o. Ramadharsingh Rathod were husband and wife. Their marriage was solemnized on 6.5.2006 as per Hindu rites and religion. One son and one daughter are begotten from the said wedlock. When appellant was cohabiting with the respondent a matrimonial dispute arose between them, therefore appellant left the matrimonial house and started residing along with her mother at Nanded. As appellant has left the matrimonial house, respondent-husband had filed petition in the Family Court for divorce alleging that since the marriage the behaviour of the appellant-wife was not good and proper. She was treating him and his family members with cruelty by raising quarrels on trifle matters. She also threatened him of committing suicide and would involve the appellant and his family members in false criminal case. However, he had continued with the matrimonial relationship to save his marriage. In the meanwhile, two children are begotten. There was no change in the behaviour of the wife and she left the matrimonial house on 1.6.2015. Though he had attempted to bring her back to resume the cohabitation but wife had ignored the same and not joined the

company. Thus, he contended that the appellant-wife withdrawn herself from his company therefore he filed Hindu Marriage Petition No.93/2016 for restitution. After filing of the said petition appellant-wife had not resumed the cohabitation therefore he filed petition under Section 13(1) (i-a)(i-b) of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Hindu Marriage Act”) for grant of divorce. In the meantime, when appellant-wife was residing along with her parents had filed application for maintenance for herself and her two children in the Family Court at Nanded bearing No.E-45/2017. Said maintenance application was decided on 7.12.2018 by directing the respondent-husband to pay maintenance at the rate of Rs.3,000/- each per month to the children and the claim of the appellant-wife for maintenance was rejected.

3. The respondent-husband had filed divorce petition bearing No.A-113/2018 in the Family Court, Akola on 5.7.2018. The respondent-wife appeared and filed written statement on 11.1.2019. She denied all the allegations levelled against her by respondent-husband. She contended that she was treated with cruelty by the husband and his relatives and she constrained to leave the matrimonial house and took a shelter at her parents house. The respondent-husband had not made any provision for her maintenance

as well as maintenance of the children, therefore she filed the proceedings under Section 125(1) for grant of maintenance as well as under Section 498-A. The proceedings under Section 125(1) was disposed by granting the maintenance to the children, whereas proceedings under Section 498-A is still pending at Nanded. Along with said written statement she filed an application for maintenance under Section 24 of the Hindu Marriage Act. The respondent-husband filed reply to the application filed by her for maintenance. After framing the issues respondent-husband adduced his evidence by filing affidavit of examination-in-chief on 10.2.2021. As appellant-wife was absent on 10.2.2021, 14.8.2021 and 1.9.2021, the petition proceeded without the cross-examination and the Presiding Officer of the Family Court disposed of said petition by granting decree of divorce.

4. Being aggrieved and dissatisfied with the order passed by the Family Court, present appeal is preferred by the appellant-wife on the ground that she had appeared in the said Hindu Marriage Petition before the Family Court and filed application under Section 24 of the Act for maintenance *pendente lite* expenses of the proceedings till disposal of the main petition. She prayed for payment of maintenance at the rate of Rs.15,000/- per month and costs of the proceedings, but the learned trial Court without deciding her application for

maintenance *pendente lite* and expenses disposed of main petition. She further contended that opportunity of adducing evidence was not granted to her. She had right to defend the case. The petition was pending for deciding her interim application but the learned trial Court without deciding the said application hurriedly decided the main application and granted divorce which is illegal and liable to be set aside.

5. Heard Ms. Shilpa Tapadia, learned counsel for the appellant. She submitted that without considering her application for maintenance *pendente lite* and expenses of proceedings, the Hindu Marriage Petition was disposed of without giving an opportunity to the appellant. The learned trial Court ought to have considered that the appellant is a resident of Nanded and was required to attend the case at Akola. She has to maintain two children and therefore her application for grant of maintenance *pendente lite* and the costs of the proceedings was to be decided. She further submitted that without deciding the said application and without giving proper opportunity to the appellant to defend the case petition was disposed of. The judgment and decree passed by the learned trial Court is illegal and therefore liable to be set aside.

6. On the other hand, learned counsel for the respondent

Shri Ravikumar Tiwari submitted that from the record it reveals that the appellant herself withdrawn her from the company of the respondent-husband without any sufficient reason and sufficient cause. Though various attempts were made by the respondent she had not resumed cohabitation. She deserted the respondent by not joining the company. The respondent also filed Hindu Marriage Petition No.93/2016 for restitution. After filing of the said petition also appellant had not joined the company of the respondent. Therefore, he filed petition for divorce. A due notice was served upon the appellant, she appeared and filed written statement. The Hindu Marriage Petition was fixed for hearing therefore respondent adduced his evidence by way of affidavit in examination-in-chief. The appellant failed to cross examine the respondent and therefore Court proceeded with the matter and disposed of the petition by granting decree of divorce. Though sufficient opportunity was granted to the respondent, she failed to appear and cross-examine the witness and defend herself. No illegality is committed by the learned trial Court, therefore, no interference is called for.

7. During the pendency of this appeal appellant had filed Civil Application No.58/2022 for grant of maintenance *pendente lite* and costs of legal proceedings.

8. Heard both the sides at length. Perused the record and following point arise for consideration :

Point :

Whether the Family Court is justified in granting decree of divorce in absence of evidence of respondent-wife ?

REASONING

The relationship between the appellant and the respondent is admitted. It is also admitted that from the said wedlock two children i.e one son and one daughter are begotten. The usual allegations are made by the appellant and the respondent against each other in the petitions filed by them respectively at Akola in the Family Court as well as in Nanded in the Family Court. It is alleged by the respondent that he was treated with cruelty by the appellant-wife by raising quarrels on the count of trifle matters, whereas it is alleged by the appellant wife that she was treated with cruelty by the respondent-husband and constrained to leave matrimonial house. Admittedly, appellant had filed the petition in the Family Court at Nanded bearing No.45/2017 for grant of maintenance under Section 125 of the Criminal Procedure Code. The said petition was decided by the Family Court, Nanded after recording the evidence of both the sides on merit. By disposing of the said petition prayer of

maintenance to the children was allowed and maintenance at the rate of Rs.3,000/- was granted to the children from the date of filing of the petition i.e. 1.4.2017. However, the claim of the appellant for grant of maintenance was rejected by the Family Court, Nanded. It is also apparent that the respondent husband filed Hindu Marriage Petition No.93/2016 for restitution and subsequently Petition bearing No.113/2018 under Section 13(1) (i-a)(i-b) of the Hindu Marriage Act for divorce on the ground of cruelty and desertion. The said petition for divorce was filed by the respondent-husband on 5.7.2018. The appellant-wife appeared and filed her written statement on 11.1.2019. On the same day she filed an application under Section 24 for maintenance *pendente lite* on the same day. The respondent-husband filed reply on the said interim application by denying the contention of the appellant. The Presiding Officer of the Family Court, Akola framed the issues on 18.9.2019. It is apparent that without deciding the interim application the petition was decided by granting the decree of divorce. The reason mentioned by the Court while allowing the petition that after sufficient opportunity appellant-wife remained absent and, therefore, matter is proceeded and accordingly decided. The roznama of the proceedings shows that the petition was filed on 5.7.2018. Thereafter, on 26.11.2018 notice was

served and date was fixed for appearance of the respondent. On subsequent dates both the parties remained absent. On 11.1.2019 appellant-wife appeared in the said proceedings and filed her written statement as well as application for grant of interim maintenance. Thereafter, case was adjourned for counseling. The roznama further shows that on several occasions both the parties were absent. The roznama dated 19.10.2019, 17.12.2019 and 21.2.2020 shows that the case was fixed for recording the evidence, but the respondent-husband was absent. On subsequent dates also the absence of respondent-husband was recorded. The respondent has adduced the evidence on 10.2.2021, thereafter the matter was adjourned on 3.3.2021 for further examination-in-chief of the respondent. On 1.9.2021 the absence of the appellant was recorded and thereafter on 22.10.2021 the judgment was delivered. After 11.1.2019 the entire roznama shows that interim application was pending.

9. The appellant-wife had filed an application for interim maintenance *pendente lite* and expenses of proceedings under Section 24 of the Hindu Marriage Act. Section 24 is re-produced as under :

“24. Maintenance pendente lite and expenses of proceedings.-

Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the

necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable :

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

Section 24 is enacted to provide relief by way of maintenance and litigation expenses to a spouse unable to maintain itself during the pendency of the proceedings; it is benevolent provision. Sections 24 and 25 of the Hindu Marriage Act are enacted with the object of removing the handicap of a wife or husband with no independent income sufficient for living or meeting litigation expenses; such a relief can be granted to the husband as well as who may also be deprived of the same on proof of the same. The Hindu Marriage Act, 1955 is a complete Code which provides for the rights, liabilities and obligations arising from a marriage between two Hindus. Sections 24 and 25 make provision for maintenance to a party who has no independent income sufficient for his or her support, and necessary expenses. This is a gender neutral provision where either the wife or

the husband may claim maintenance. The pre-requisite is that the person, who is claiming maintenance does not have independent income which is sufficient for her or his support during the pendency of the lis. Section 24 of the Hindu Marriage Act provides for maintenance *pendente lite*, where the Court may direct the respondent to pay expenses of the proceeding and to pay such reasonable monthly amount, which is considered to be reasonable having regard to the income of both the parties. The proviso to Section 24 provides a time line of 60 days for disposal of the said application.

10. In the present case, without disposing of the interim application the petition was disposed of by granting divorce in favour of the husband. The roznama reflects that it is not only the appellant-wife who remained absent during the proceedings and therefore the Court proceeded with the matter, but it is reflected from the roznama that on several occasions both the parties were absent, on some occasions even the respondent-husband remained absent. Though the appellant had filed an interim application for maintenance *pendente lite*, it was not decided and the main petition for divorce was decided without assigning any reason. The petition for divorce was decided by the Family Court without deciding the interim application for

maintenance *pendente lite* that is also without following the time line that interim application is to be decided within 60 days. The opportunity of defending herself was also not given to the appellant. Admittedly, the provision under Section 24 is a benevolent provision enacted with the object to provide relief by way of maintenance and litigation expenses to the spouse. In the above circumstances, it is necessary to give proper opportunity to the appellant to defend the grounds of divorce by adducing the evidence. Therefore, this is a fit case to remand back the matter to the Family Court for deciding the proceedings afresh by giving opportunity to both the sides to adduce the evidence. The directions are also required to be issued to the trial Court to decide the interim application preferred by the appellant for maintenance *pendente lite* in accordance with the provision of Hindu Marriage Act. The appellant has filed Civil Application No.58/2022 for grant of interim maintenance and is to be disposed of by directing the Family Court to decide the application before it for grant of maintenance. In the result, the appeal deserves to be allowed. The point as framed is answered accordingly. In view of that, we proceed to pass following order :

ORDER

- (i) The appeal is allowed.

- (ii) The decree of divorce is set aside.
- (iii) The Hindu Marriage Petition bearing No.113/2018 is remanded back to the Family Court, Akola to decide afresh by affording an opportunity to both the sides to lead evidence.
- (iv) The Trial Court is directed to decide the application pending for grant of maintenance *pendente lite* which is pending.
- (v) The parties are directed to remain present before the Family Court, Akola on 1st October, 2022.
- (vi) The proceeding before the Family Court, Akola bearing Hindu Marriage Petition No.113/2018 is expedited.
- (vii) Record and Proceedings be sent back to the Family Court, Akola.
- (viii) Civil Application No.58/2022 is disposed of.

(Urmila Joshi-Phalke, J.)

(A.S.Chandurkar, J.)