

(2023) 07 GUJ CK 0056

In the Gujarat High Court

Case No : R/First Appeal No. 3993 Of 2019, Civil Application (For Stay) No. 2 Of 2018

Tarlochan Sehmi W/O Rajiv Zaveri

APPELLANT

Vs

Rajiv Ramniklal Zaveri

RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 8 Rule 10, Order 9 Rule 6
Hindu Marriage Act, 1955 — Section 11, 19
Limitation Act, 1963 — Section 58

Citation : (2023) 07 GUJ CK 0056

Hon'ble Judges : Ashutosh Shastri, J; Divyesh A. Joshi, J

Bench : Division Bench

Advocate : Nirad D Buch, Dhruv K Dave

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. This Appeal under Section 19 of the Hindu Marriage Act, 1955 (for short, the 'Act 1955') is at the instance of the appellant-wife (original defendant), questioning the legality and validity of the order passed by the Family Court, Vadodara dated 19.08.2017 in the Family Suit No.458 of 2012 instituted by the respondent-husband for obtaining decree of divorce, whereby the Family Court allowed the suit instituted by the husband and declared the marriage between the appellant-wife and the respondent-husband as null and void.

2. The facts giving rise to this Appeal may be summarized as under :

2.1 The marriage between the appellant (original defendant-wife) and the respondent (original plaintiff-husband) was solemnized on 05.04.2004 at Vadodara as per the Hindu rites and rituals. The said marriage was registered with Office of the Registrar of Marriage.

2.2 Prior to solemnization of the said marriage, the parties were in live-in

relationship as the respondent-husband was a married man and he did not get divorce from his former wife till 2004.

2.3 The appellant herein is the citizen of U.K. However, as her forefathers are the citizen of India, she has been staying in India since last more than ten years. In the year 2015, due to some medical exigency, she went to U.K. for the purpose of taking treatment.

2.4 After the marriage, the respondent-husband also got spouse Visa for two years. Over a period of time, matrimonial disputes cropped up between the parties which ultimately led to initiation of multiple litigations.

2.5 In such circumstances, referred to above, the respondent-husband instituted a suit being Family Suit No.458 of 2012 before the Family Court at Vadodara for obtaining decree of divorce.

2.6 After institution of the above suit, notice came to be issued to the appellant-wife, however, the appellant-wife refused to accept the same on the ground that one regular civil suit has already been filed before the 13th Addl. Senior Civil Judge and did not bother to appear before the court below in the said proceedings and, therefore, the court below proceeded with the suit and passed an ex-parte judgment and order.

2.7 The Family Court framed the following issues for determination vide Exh.25;

"(1) Whether the petitioner proves that the respondent has solemnized her marriage with the present petitioner by making a fraud as she suppressed the fact about her first marriage, which is in existence?

(2) Whether the petitioner proves that the marriage solemnized on 05.04.2004 with the present respondent is illegal requires to be declared as null & void?

(3) Whether the petitioner is entitled to get the relief as prayed for?

(4) What order?"

2.8 The aforesaid issues came to be answered as under;

"(1) In the affirmative

(2) In the affirmative

(3) In the affirmative

(4) As per final order"

2.9 The learned Trial Judge, after considering the materials on record, came to the conclusion that the plaintiff-husband was successful in proving that his wife had played a fraud with him by suppressing the fact that the defendant-wife was already married and the said marriage was in existence at the time of registration of marriage with the plaintiff-husband and, therefore, the said marriage void, ab initio and nullity. Accordingly, the trial judge passed a decree

for dissolution of marriage in favour of the husband.

2.10 Being dissatisfied, the wife has come up with this appeal.

3. Mr. Nirad Buch, learned advocate appearing on behalf of the appellant-wife has vehemently submitted that the Family Court committed a serious error in allowing the suit filed by the respondent-husband praying for a decree of divorce on the ground of fraud being played by the appellant-wife upon the husband by suppressing her marital status.

4. Learned advocate Mr. Buch has further submitted that the court below failed to appreciate the evidence of the parties in its true spirit and proper perspective resulting in failure of justice. Mr. Buch submitted that a bare perusal of the order itself shows and suggests that the Family Court ex-parte proceeded with the matter and passed the impugned judgment and order which is nothing but an abuse of process of law and is required to be quashed and set aside.

5. Learned advocate Mr. Buch has submitted that if Hon'ble Court would make cursory glance upon the proceedings of the Rojkam produced by the appellant along with the memo of appeal, then the entire picture would be crystalized. Learned advocate Mr. Buch has read the proceedings of the trial court and submitted that the Rojkam itself shows and suggests that on umpteen number of occasions, the appellant-wife and her advocate remained present before the Hon'ble Court but on those days, reasons best known to the court concerned, the matter was not proceeded with. Learned advocate Mr. Buch has also submitted that as soon as notice of the court was served upon the appellant, immediately she appeared and tendered one application vide Exh.11 specifically stating therein that the suit itself is not tenable because the suit of an identical nature is already pending before the concerned court for adjudication and despite the said fact, without narrating the reference of the said suit, the present suit has been filed by raising almost same grounds. Therefore, the impugned judgment and order passed by the court below is not tenable in the eye of law and is required to be quashed and set aside.

6. Learned advocate Mr. Buch has further submitted that the facts of the present appeal is unique in nature as the appellant-wife and the respondent-husband have instituted multiple proceedings against each other. Learned advocate Mr. Buch has submitted that the appellant-wife was in prison in one contempt matter and due to the said reason, she could not be able to attend the court proceedings and to bring the said fact to the notice of the court, learned advocate who represented the appellant-wife had made an application to the court specifically stating that as the suit is at the stage of recording of evidence of the plaintiff-husband, and the defendant-wife is in judicial custody in one contempt matter and in the absence of defendant-wife, he cannot be able to conduct the proceedings and, therefore, appropriate order may be passed to bring the defendant-wife from the jail for the purpose of watching and/or observing the court proceedings. Therefore, it is within the knowledge of the concerned

presiding officer that due to some unavoidable circumstances, the appellant-wife could not be able to attend the court proceedings. Despite the said fact, the learned Family Court proceeded with the matter and passed an ex-parte order and shown undue haste in the matter. It is submitted that not only that, the appellant-wife also tendered one application bringing it to the notice of the concerned trial court that one another suit of an identical nature filed by the plaintiff-husband is pending before the competent court who has jurisdiction to try, however, instead of considering the said application sympathetically, the court below proceeded to pass an ex-parte order in the absence of appellant-wife.

7. Learned advocate Mr. Buch has also submitted that the learned trial judge, without taking into consideration the contents of the said application in its true sense and perspective, straight way rejected the said application. Learned advocate Mr. Buch has submitted that if Hon'ble Court would peruse the contents of the said order, then it is found out that nowhere in the operative part of the order, learned Judge has assigned any findings or reasons regarding the pendency of identical nature of suit before the competent court. It is the duty of the concerned judicial officer to verify the genuineness of the application of the applicant by bringing the pleadings of those suit before deciding the said application. However, instead of doing so, the learned Judge has decided the application without giving an opportunity of hearing to the appellant-wife and passed an order without touching the core issue involved in the application. It is true that the said application is decided along with other two applications, wherein right of filing written statement of the appellant-wife was reopened. Learned advocate Mr. Buch has rightly submitted that it is settled proposition of law that if any application is tendered by the party before the Hon'ble Court, the Hon'ble Court has to decide the said application independently by assigning proper reasons and justification. Admittedly, in the case on hand, the learned Judge has not considered the said aspect at the time of deciding the application. At the time of submission of the application, appellant-wife has annexed certain documents along with the application. There is no discussion in the order about the said documents. Had the learned trial Judge considered the said documents at the time of deciding the application appropriately, in that event, the fate of the application might have been probably different. Learned advocate Mr. Buch has submitted that it is true that the said order is not challenged by the appellant-wife and has attained finality, but the entire sequence of events of the incident itself has crystallized the position that at the time of considering the said application, the learned Judge has passed specific order to submit written statement within a period of ten days. Despite the fact that specific direction was issued by the Hon'ble Court, the appellant-wife could not be able to file the written statement due to some unavoidable circumstances and even she could not be able to attend the court proceedings. The said fact was already brought to the notice of the Hon'ble Court by the learned advocate for the wife, even though trial was proceeded ex-parte. Learned advocate Mr. Buch has submitted that it is not a case wherein once notice was served to the appellant-wife and, thereafter,

she did not appear before the concerned court and attend the proceedings and, therefore, in the absence of the defendant, trial was proceeded and order was passed. The appellant-wife had appeared and attended the proceedings of the court on number of occasions in past and the said fact is reflected from the Rojkam of the trial court. Therefore, this is not a simpliciter case wherein the trial court was proceeded with the trial continuously in absence of the appellant-wife. Learned advocate Mr. Buch has submitted that the record itself shows that the concerned court has shown undue haste in disposing of the suit, and by doing so, the learned Judge has not given sufficient opportunity to the appellant-wife to raise defense to controvert and confront the pleadings and evidence produced by the plaintiff as well as valuable right of leading evidence to disprove the evidences produced by the respondent-husband. Therefore, he humbly urges that the first appeal is required to be allowed by quashing and setting aside the impugned judgment and order passed by the learned Judge, Family Court, Vadodara and matter may be remanded back to the concerned court with a specific direction to complete the entire proceedings as expeditiously as possible and parties shall remain present and cooperate in the proceedings.

8. Learned advocate Mr. Buch has submitted that the suit was filed under Section 11 of the Hindu Marriage Act for declaration of marriage as null and void and, therefore, since the suit is for seeking declaration, the question of limitation would come into play. Undisputedly, at the time of institution of the suit, the actual knowledge of date of cause of action is required to be mentioned by the parties and from the date of knowledge, the period of limitation would start to be commenced. Learned advocate Mr. Buch has put reliance upon Section 58 of the Limitation Act and submitted that as per the statutory provisions of the Limitation Act, if the suit of declaration is preferred after a lapse of three years, then it would squarely fall under the said provision and would not be required to be entertained because the same is barred by the statutory provision of law of limitation. Admittedly, the respondent-husband has filed suit in the year 2006 before the learned Family Court against the wife for dissolution of marriage specifically raising grounds that the appellant-wife did not disclose the fact about her previous marriage and at the time of registration of marriage, wife's first marriage was in existence. Therefore, it appears that the said fact was within the knowledge of the respondent-husband at the time of institution of the suit and, therefore, the period of limitation would be started to count from the said date of knowledge. If the application of the appellant-wife is to be seen and considered properly by the learned Family Judge in true sense and in proper perspective, in that event, the suit filed by the respondent-husband itself is not tenable in the eye of law and required to be dismissed at the threshold on this ground alone. Learned advocate Mr. Buch has further submitted that it is the settled proposition of law and time and again in catena of decisions it is held by the Hon'ble Apex Court that issue pertaining to law of limitation, if not raised by the defense, even though it is the duty upon incumbent officer to verify it by framing the issue at the time of considering the merits of the case. The appellant-wife has drawn the

attention of the towards the said fact by submitting an application, but for the reason best known to the concerned Presiding Officer, it was not considered.

9. Learned advocate Mr. Buch has further submitted that despite the fact that on number of occasions, appellant-wife along with her advocate remained present and attended the proceedings and her presence was also noted in the proceedings, even though trial was proceeded with and ex-parte order was passed as if the appellant-wife did not attend the proceedings at all and by doing so the Hon'ble Court has closed the valuable right to raise defense by filing written statement, to make cross-examinations of the witnesses and to bring the true and correct facts by leading evidence. Learned advocate Mr. Buch has further submitted that the respondent-husband has tendered his deposition in the form of affidavit to prove the contents of the pleadings. It is submitted that to substantiate the allegations levelled in the pleadings, except oral evidence, not a single piece of documentary evidence is placed on record in support of it. The said evidence is the sole base to pass an ex-parte order. Learned advocate Mr. Buch has further submitted that the respondent-husband withdrew the Regular Civil Suit No.439 of 2006 filed in the court of learned 16th Addl. Senior Civil Judge, Vadodara on 26.10.2017. A copy of the said order as well as the plaint are handed over by the learned advocate which is taken on record. He submitted that if the Hon'ble Court would go through the contents of the said plaint, in that event, it can be definitely said that the grounds raised in the present suit as well as in the earlier suit, are almost identical in nature and on the strength of the said material, it can be easily derived that the respondent-husband was in knowledge of the cause of action since the year 2006. Therefore, there is a delay in preferring the suit and on this ground also, suit cannot be entertained. Therefore, at this juncture, without considering the merits and de-merits of the case, solely on the strength of above stated factual aspects, the judgment and order passed by the Family Court may be quashed and set aside and the matter may be remitted to the concerned trial court for the purpose of conducting fresh de-novo trial.

10. Per contra, learned advocate Mr. Dhruv K. Dave appearing for the respondent-husband submitted that no error, not to speak of any error of law, could be said to have been committed by the learned trial judge in allowing the suit for dissolution of marriage filed by his client.

11. Learned advocate Mr. Dave has submitted that it is an admitted position of fact that the respondent-husband has filed the suit in the year 2012 and the said suit was disposed of in the year 2017. So record itself shows and suggests that the learned Judge took five years long period of time in deciding the said suit. This is not a case wherein after filing of the suit, immediately within no time in absence of the appellant-wife trial was proceeded with. In fact, on number of occasions, the appellant-wife remained present personally and along with her advocate also and the said fact is also found out from the Rojkam. Despite service of notice, the appellant-wife did not appear and choose not to file written

statement and, therefore, her right to submit written statement was closed. The appellant-wife has tendered an application to reopen her right which was considered by the learned Judge and the said right was reopened with a specific direction to submit written statement within a period of ten days. Despite the said fact, the appellant-wife failed to submit the written statement and, therefore, once again right to submit the written submission was closed and the court below has framed the issues on the strength of the pleadings of the plaint submitted by the respondent-husband. Not only that, thereafter, evidence was laid by the respondent-husband by way of submitting deposition in the form of an affidavit. The appellant-wife and/or her advocate did not make cross-examination of the said witness and, therefore, right to make cross-examination of the said witness was also closed. The said fact is within the knowledge of one and all who are directly or indirectly connected with the proceedings of the said matter that if after the institution of the suit, party did not remain present, in that event, it would definitely be proceeded in the absence of that party and the learned Judge has rightly and correctly passed the order after providing full opportunity to the appellant-wife. It is the duty of the wife that she had to remain present on each and every occasion when the matter was fixed for hearing and/or have to engage a lawyer to remain present and attend the court proceedings and if they will remain absent in the proceedings continuously, in that event, trial (proceedings) would be continued in their absence as per procedure. They were continuously remained absent and did not appear and attend the proceedings and, therefore, in their absence, rightly conducted the proceedings. The record itself shows and suggests that earlier right to submit written statement was closed and an application in that regard was tendered which was allowed with a specific direction to file the written statement within a period of ten days, however, despite the same, the appellant-wife failed to submit the written statement. The wife has also not controverted the evidence produced by the respondent-husband, and in the absence of the same, it was considered by the court below and decided the suit. Learned advocate Mr. Dave has further submitted that it is also matter of record that after passing of the impugned judgment and order, appeal was not preferred within the prescribed period of time. It is not that the respondent-husband immediately got married with another woman and now the respondent husband has got married with another woman and if the matter is remanded back to the concerned trial court, in that event, he would have to face tremendous hardship in future.

12. Learned advocate Mr. Dave has further submitted that the appellant-wife has tendered one application vide Exh.11 which was considered and decided by the court on 25th May, 2017. The application tendered by the appellant-wife came to be rejected by the trial court. So far as rest of the contentions with regard to passing of an ex-parte order are concerned, specific direction in the form of mandate was issued that within span of ten days, the appellant-wife has to file written submissions. However, despite the said fact, no action was taken on the part of the appellant-wife and, therefore, the court below was constrained to

close the right of the appellant-wife. Not only that if the appellant is anyhow aggrieved with the said decision of rejection of Exh.11 application, in that event, she should have to challenge the said order by way of preferring appropriate application before the competent court. In fact, the said order has not been challenged before any higher forum and, therefore, has attained finality. Mr. Dave also submitted that in the absence of any material available on record, It is also submitted that the respondent-husband has laid evidence before the trial court which was uncontroverted and not challenged by the defendant-wife. Thus, the court below has put reliance upon the deposition of the plaintiff and passed judgment and award which is just, fair and reasonable and does not require any interference at the end of this Court at this juncture.

13. Learned advocate Mr. Dave has further submitted that the impugned judgment and award came to be passed on 19.08.2017 and the present appeal has been preferred after a period of more than 200 days, and during the interregnum period, the respondent-husband has re-married on 21.11.2017, i.e., after the expiry of period of appeal and, therefore, the present appeal is required to be dismissed at threshold.

14. Having heard learned advocates appearing on behalf of both the sides and having perused the relevant papers attached with present First Appeal, we may state few circumstances which are visible, so as to examine the submission made by both the sides.

15. Apparently, Family Suit No.458 of 2012 is decided by Court below vide judgment and order dated 19.8.2017, which is an ex-parte order. The order indicates that after petition being filed, Court issued notice vide Exh.9 upon opponent and it is mentioned in paragraph-4 that respondent appeared in another proceedings and after getting notice of this present suit, has mentioned that, "I am not accepting this notice because a Regular Civil Suit has already been filed at the 13th Additional Senior Civil Judge", which endorsement appears to have been construed by learned Trial Judge as if respondent has not cared to appear before the Court and then decided to proceed ex-parte.

16. It also appears from page 17 document that item No.7 indicates that on 7.9.2012, notice was issued on the opponent and then it appears on page 18 that except advocate of plaintiff, nobody is present and as such, placed the matter for order ex-parte. Then it appears that on 24.9.2012, stage was closed of presentation of documentary evidence. Again on that day, in item No.10, which is referring that Exh.7 notice cover came back and therefore, for documentary evidence, matter is placed. On the very same page, it appears that on 27.11.2012, after rojkam being written, opponent remained present in the Court with an application for hearing and it appears that list of documents is given and said request at Exh.11 is fixed for hearing. On the next page, i.e. on page 19, it is recorded on 19.10.2012 that defendant personally remained present, except him nobody was present and as such in the interest of justice, for hearing of Exh.11, matter was posted thereafter. On 5.11.2012, defendant

appeared with advocate and Vakalatnama was presented and an application was given for opening of stage of reply and simultaneously, application for adjournment was also allowed and then it is observed in the rojkam that Exh.11 and Exh.15 are posted for hearing. Subsequently, it appears from page 20 that respondent's advocate remained present, and except him, nobody was present, as such an application was given for hearing the application for opening of stage of submitting reply and said application Exh.17 was also ordered to be placed for hearing along with Exhs.11 and 15. So, matter was adjourned for hearing of Exhs.11, 15 and 17 when nobody remained present as it appears. Again, the matter was adjourned for hearing of Exhs.11, 15 and 17 and next date was given of 24.6.2013. On subsequent date, as is reflecting from page-21 that some application was given by an advocate to relieve him from representing the opponent and that pursis was given at Exh.18 and then adjournment application was moved which was granted and next date was fixed as 29.7.2013. On 29.7.2013, it appears that opponent did remain present but learned Presiding Officer was on leave and as such next date was given for hearing of Exhs.11, 15 and 17 and on next date, i.e. on 17.9.2013, learned advocates representing both the sides are stated to be present, but insisted hearing to be done in presence of opponent and as such, again matter was adjourned to 15.10.2013 for hearing of Exhs.11, 15 and 17. It appears from the rojkam at page 22 that on 15.10.2013, it was informed by learned advocate of opponent that his client is in jail and he wants to conduct the proceedings in her presence and again Exhs.11, 15 and 17 were adjourned for next hearing on 9.12.2013. On 9.12.2013, learned Presiding Officer was on leave and as such next date was given of 28.1.2014. On that day, neither side appeared as it reflects from rojkam and as such for hearing Exhs.11, 15 and 17, next date was granted as 25.3.2014. Again on that next day, nobody was present from either side and therefore, it was adjourned to 10.6.2014. Thus, on 10.6.2014, there was summer vacation and therefore again matter was adjourned to 12.8.2014. There also, on that day, nobody remained present of either side and therefore, next date was given of 12.11.2014 for hearing of Exhs.11, 15 and

17. From entire chronology of rojkam, it appears that on several occasions, both the sides remained absent and on several occasions, defendants or advocate representing her was also present and then matter was got adjourned from time to time for hearing of Exhs.11, 15 and 17. Subsequently, as is reflecting from page 25 that on 9.1.2015, one another Vakalatnama was produced on behalf of opponent and next date was given to 16.2.2015. Like that, on one pretext or the other, matter was adjourned on multiple reasons, as indicated above, but it cannot be said to be only on account of opponent's absence as is reflecting from rojkam. By that time, on account of applications which had been given, said applications were kept for hearing. It appears that on 29.6.2015, applications at Exhs.11, 15, 17, 23 and 25 were also kept for hearing. After some time, i.e. certain dates, on 6.7.2017 reflecting on page 36 that an application was given for adjournment and at that time, it is recorded that nobody was present for

opponent and it is noted that it is postponed for evidence of applicant/ plaintiff. On next date, i.e. on 12.7.2017, deposition on oath was tendered by plaintiff and at that time, advocate representing the opponent was also present and date then was given of 24.7.2017. In between, right of opponent was closed and then on 8.8.2017, it is recorded that opponent is absent and opponent is not producing any evidence, right to lead evidence is closed and matter is posted on 19.8.2017 for hearing the arguments of applicant. On page 38, it appears that on 19.8.2017, Court heard the applicant and then on 3.2.2018, one application was given by plaintiff for some correction of name and same was allowed and judgment and decree got amended and it is with this background, present appellant has assailed the ex-parte judgment and order passed by the Court below.

17. Simultaneously, a fact deserves to be noted that after disposal of this suit proceeding, i.e. Family Suit No.458 of 2012, earlier suit which was filed being Regular Civil Suit No.439 of 2006 was withdrawn since a decree of dissolution of marriage came to be passed, hence the Court disposed of the earlier suit of 2006 on 26.10.2017. Perusal of this suit, a copy whereof is produced on record by learned advocates, is indicating that one of the reliefs was also for declaration of marriage dated 5.4.2004 as non est and illegal, which can be seen from paragraph 12 of the plaint of the earlier suit. Conjoint effect of the record indicates that subsequent suit of 2012 is got disposed in the manner which is indicated in the rojkam, as stated herein-before, copy whereof is already produced from page 17 to 38 of the appeal compilation.

18. Additionally, it was also noticed from the record that for sometime, on account of certain circumstances, she was in custody and as such might not have an intention to avoid the proceedings. From chronology of events as indicated above which is reflecting from rojkam, it is not possible to safely conclude that though served, she has avoided the proceedings deliberately and intentionally and as such keeping in view the recognized principle of granting a fair opportunity to a litigant, we are of the opinion that sufficient opportunity to meet with the case ought to have been given in the aforesaid peculiar background of facts. It is not possible to ignore the fact that in the year 2006, substantially for very same controversy, substantive suit was already submitted against the appellant herein and controversy therein was also relating to factum of marriage and present suit which has been filed in the year 2012 also relates to very same controversy. For the reasons best known to the opponent, said suit appears to have been dragged on right from 2006 and thereafter filed a fresh suit in which ex-parte decree came to be passed and after said decree in subsequent suit, earlier suit of 2006 came to be withdrawn. So, all these circumstances deserve consideration at least for the purpose of granting appropriate opportunity to the appellant herein. No-doubt, it is always for the Court to deal with and dispose of the proceedings ex-parte if a litigant is not vigilant or trying to avoid proceedings but then a circumstance to infer such avoidance must be cogent enough, which in the present background of facts is appearing not so gross on the basis of

which straightway decree be passed. Order-VIII Rule 10 read with Order-IX Rule 6 of Code of Civil Procedure propounds the procedure if there is no resistance or denial of assertion of the plaint. But, then it is also a proposition of law that merely because defendant is absent, Court shall not admit evidence, admissibility whereof is excluded by law or permit its decision being influenced by irrelevant or inadmissible evidence. In fact, plaintiff has to prove its stand independent of weakness of defendant. So, simply because defendant's right is closed down or proceedings have not been attended while passing decree, at least stand of plaintiff deserves to be examined at length.

Conjoint effect of earlier proceedings of 2006 and assertion contained therein in the context of subsequent suit of 2012, it appears that while passing ex-parte order, learned Judge ought to have examined the material led by plaintiff in the suit on hand and ought to have considered whether has established the fact or not. There appears to be no concrete conclusion reflecting in the order. Learned Trial Judge has proceeded to accept the stand of the plaintiff as can be seen from paragraphs- 9 and 10, but then independent analysis is not so cogently reflecting by proper reasons and as such reasons which are assigned by Court below are not sufficient enough to sustain the ex-parte decree of declaring the marriage as void.

19. Time and again, the Hon'ble Apex Court has emphasized that every conclusion must be well supported by adequate reasons and if issue is arising that case has not been properly dealt with, same would be a relevant circumstance for remanding the matter back for fresh consideration. Relevant observations contained in the decision delivered by Hon'ble the Apex Court in the case of State Represented by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Tamil Nadu v. J. Doraiswamy and others reported in (2019) 5 SCC 149, we deem it fit to quote hereunder:-

"13. In our view, such approach of the High Court while deciding the discharge applications of the respondents (accused) is not legally correct and, therefore, it cannot be upheld.

14. In our view, consideration of the record for discharge purpose is one thing and the consideration of the record while deciding the appeal by the Appellate Court is another thing."

20. Yet, in another decision in the case of State of Orissa and others v. Chandra Nandi reported in (2019) 4 SCC 357, Hon'ble the Apex Court has observed in paragraph 10 as under:

"10. This Court has consistently laid down that every judicial or/and quasi-judicial order passed by the

Court/Tribunal/Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/revisionary Court while examining the

correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion. (See ? State of Maharashtra vs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, Jawahar Lal Singh vs. Naresh Singh & Ors., (1987) 2 SCC 222, State of U.P. vs. Battan & Ors., (2001) 10 SCC 607, Raj Kishore Jha vs. State of Bihar & Ors., (2003) 11 SCC 519 and State of Orissa vs. Dhaniram Luhar, (2004) 5 SCC 568)."

21. Yet another judgment delivered by Madras High Court since relevant is taken note of by the Court and relevant paragraph-6 is reproduced hereunder:-

"6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived."

22. Here in the case on hand, the learned Trial Judge in the impugned judgment has not discussed anything on facts and circumstances of the case and straightway passed an ex-parte order on the basis of non-appearance of the appellant-wife on certain occasions and non-filing of her written statement before the Court below.

23. In view of the aforesaid discussion, we are of the opinion that the present appeal deserves to be allowed and the appellant-wife is required to be heard and permitted to lead evidence in her defense.

24. In the result, we allow the appeal by quashing and setting aside the impugned order dated 19.8.2017 passed by learned Family Court, Vadodara and consequently remanding the matter back to the Court concerned to decide afresh after giving appropriate opportunity to the parties to the proceedings.

25. Since we deem it proper to remand the matter back to the Trial Court, observations contained in the present order may not be treated as final and learned Trial Court shall take its own decision afresh on merits and in accordance with law on the basis of material and without being influenced by any of the observations made in the present order as same are restricted to limited

controversy placed before us.

26. Since dispute between the parties is pretty old one, it is directed that fresh decision shall be taken by learned Trial Court within a period of SIX MONTHS from the date of receipt of copy of this order.

27. Present Appeal stands ALLOWED with aforesaid observations and directions.

28. In view of the order passed in the main appeal, the connected civil application does not survive and is disposed of accordingly.