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C.A.No. 4296 OF 1998  
ITEM No.102 PH

COURT NO.10

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

C.A.No. 4296/98

Anuradha A.Kelkar

Appellant

VERSUS

Avdhoot G.Kelkar

Respondent

Date : 14.2.2001. This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P.MOHAPATRA  
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s)

Mr. A.S.Bhasme,adv.  
Mr. Manoj Kumar Mishra,adv.

For Respondent (s)

Ms. Nisha Bagchi,adv.for  
Ms. Indu Malhotra,adv.

UPON hearing counsel Court made the following  
ORDER

.....L.....I.....T.....T.....T.....T.....T.J  
.SP2

The appeal is allowed.  
No costs.

.SP1

(Suman Wadhwa)  
PA to Addl.Regr.

(S.Malkani)  
Court Master

Signed order is placed on the file.

.PA  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.4296 OF 1998

Anuradha A. Kelkar

& Appellant

Vs.

Avdhoot G.Kelkar

& Respondent

ORDER

The parties in the appeal are related to each other. The

appellant is wife of the respondent. The respondent filed an application under Section 13(1)(ia) and (ib) of the Hindu Marriage Act seeking divorce on the ground of cruelty and desertion. The appellant entered contest and refuted the allegations made in the petition. From the case of the parties as discussed in the judgment of the trial court it appears that both the spouses traded charges of adultery against each other. The trial court on assessment of the evidence on record dismissed the petition for divorce. The respondent herein, filed the appeal under Section 19 of the Family Court s Act 1984, Family Court Appeal No.49 of 1997, challenging the judgment of the trial court. A Division Bench of the Bombay High Court allowed the appeal, set aside the judgment of the Family Court and passed a decree of dissolution of the marriage between the parties vide judgment dated 19th December, 1997. The said judgment is under challenge in this appeal by special leave.

On a bare reading of the judgment/order passed by the High Court we find that the appeal has not been disposed of on proper consideration and in accordance with law. The judgment/order under challenge is a cryptic one relevant portion of which is extracted below:

The impugned order cannot now be sustained in view of the situation now prevailing.

Undoubtedly, as revealed from the arguments of the learned counsel for the parties, the marriage between them took place on 11.4.1976, but they are separate since 8.11.1978. Petition for divorce was filed on 18.10.1988. It is reported that the wife has initiated criminal proceedings against the husband. Now as told to us the husband is 58 years old, whereas the Respondent/wife is 52 years old. There is no remote possibility of reunion. Under the set of circumstances, the appellant is entitled to decree of divorce.

Appeal allowed. Impugned judgment is hereby set aside. We direct the decree be issued dissolving the marriage between the parties by divorce.

In the order there is no discussion of the case of the parties and the evidence led by them. No reason has been stated by the Court for setting aside the judgment of the trial court. All that appears to have weighed with the High Court was that the parties had been living separately since November, 1978; that the husband is 58 years old and the wife 52 years old and that the wife had initiated criminal proceedings against the husband. Without going into the relevance of these circumstances for adjudication of the controversy raised in the case, we would observe that these are not grounds for setting aside the judgment of the trial court. It was the bounden duty of the High Court as the appellate court to consider the correctness or otherwise of the finding recorded and the decision rendered by the trial court. It is to be kept in mind that the High Court was considering a first appeal filed under section 19 of the Family Court s Act. The High Court should have considered the evidence on record on which the trial court based its findings and should have recorded its findings before setting aside the judgment of the trial court.

For the reasons stated above, the appeal is allowed, the judgment / order of the High Court dated 19.12.1997 in Appeal No. 49/97 is set aside and the case is remanded to the High Court for disposal in accordance with law after giving

opportunity of hearing to the parties. The High Court is requested to dispose of the appeal as expeditiously as possible. No costs.

& & & & & & & & J.  
(D.P.MOHAPATRA)

& & & & & & & & J.  
(BRIJESH KUMAR)

NEW DELHI  
February 15, 2001