

Court did not consider the defence raised by the Petitioner-husband. The Petitioner-husband has filed a compilation of the documents disclosing that the Respondent-wife herself has left the matrimonial house without any justifiable cause and reason. The learned Judge, Family Court has not taken into account the provisions and/or the requirement under Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956 though, this Court by its order dated 2nd February, 2015 in Writ Petition No. 9931 of 2014 has directed to consider the provisions under Section 18(2) and 18(g) of the Hindu Adoptions and Maintenance Act, 1956 properly and as earlier the order was passed if the application is made under Section 24 of the Hindu Marriage Act. She further submits that the learned Judge of the Family Court has not taken into account her documents showing that the wife has herself abandoned the home without any good cause and therefore the order of the Family Court is illegal and is to be set aside.

4. The learned counsel for the Respondent-wife supported the order passed by the Family Court. She submits that there are arrears of Rs. 1,80,000/- and the execution proceeding is taken out. She further submits that the Respondent-wife has filed the documents

justifying her reason for leaving the matrimonial house.

5. Perused the order passed by the Family Court. It appears that the learned Judge of the Family Court has relied on para Nos. 17, 18 and 29 of the Petition on the point of cruelty and held that the Respondent-wife was forcibly sent to her parents house. However, the learned Judge has not considered the submissions of the Petitioner-husband on the point of Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956. This Court in the earlier order has directed the Family Court to decide the application on the merits. However, the learned Judge has stated that without going into the merits, she has passed the order.

6. In view of the above, the impugned order could not have been remanded to the Family Court to reconsider the issue on merit at the interim stage as directed by this Court earlier. However, I am informed that the main Petition i.e. the Petition for divorce filed by the Petitioner-husband and the Petition for the maintenance filed by the Respondent-wife are taken up by the Family Court and the husband is stepped into the box and his cross examination is partly

over. I am informed that the husband has given a list of seven witnesses including himself and wife wants to examine four witnesses. Therefore, as the evidence is proceeding, I do not want to burden the learned Judge of the Family Court by remanding the matter. I am informed that the Petitioner-husband has already deposited Rs. 50,000/- in the Family Court. However, I set aside the order by way of interim arrangement and I direct the Petitioner-husband to deposit Rs. 60,000/- on or before 14th August, 2015 in the Family Court No. 4, Mumbai. The learned Judge of the Family Court is hereby directed to decide and dispose of the matter till 31st October, 2015.

7. It is to be noted that the learned Judge, Family Court may consider to record the evidence on commission and if such commission is appointed, then 80% of the charges of the Commissioner shall be borne by the Petitioner-husband and 20% by the Respondent-wife.

8. In view of the above, the Petition stands disposed of.

(MRS.MRIDULA BHATKAR, J.)