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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
FAMILY COURT APPEAL NO.60 OF 2016 WITH
CIVIL APPLICATION NO.295 OF 2016

Goroba Buwaji Gaisamudre ...Appellant
vs.
Sindhu Goroba Gaisamudre ...Respondent

Mr.Omkar Nagwekar i/b Mr.Pramod R. Arjunwadkar for
the Appellant
Mr.Ashok Tajane for the respondent

CORAM : A.S.OKA, &
M.S.KARNIK, JJ.
DATE : NOVEMBER 21, 2016

P.C.:

1 The learned counsel for the appellant on instructions who is stated to be present in the Court seeks permission to withdraw this appeal. He states that he is seeking unconditional withdrawal.

2 The learned counsel for the respondent-wife invited our attention to the paragraph 35 of the impugned Judgment. It records that the claim for maintenance made by the wife under sections 24 and 25 of the Hindu Marriage Act, 1955 has been dismissed by the impugned Judgment. He submits that he had preferred an appeal being Family Court Appeal No. 10 of 2016 for challenging that part of the Judgment and Order. He submits that by granting liberty to the respondent-wife to take out application for interim maintenance in the present appeal, the said appeal was disposed of. He, therefore, seeks

revival of the Family Court Appeal No.10 of 2016.

3 We have considered the submissions made by the respondent. Paragraph 35 of the impugned Judgment reads thus:

"35 The claim of the respondent under section 24, 25 for maintenance cannot be considered because marriage between the parties is not disrupted and her claim for maintenance under section 18 of the Hindu Adoption and Maintenance Act is also already decided on merit in petition No.C-9/2000, which which was filed by her before the Family Court, Mumbai by order dated 16.12.2004. In view of judgment of Hon'ble High Court, Bench at Aurangabad, in Criminal Revision Application No.36/1991 the provision of maintenance is already made. The respondent could have filed enhancement application. The Hon'ble Supreme Court in case of Smt.Chand Dhawan vs. Jawaharlal Dhawan reported in 1993 AIR SCW 2548 held that "no alimony or maintenance under section 25 of the Hindu Marriage Act is to be granted without marital status being affected or disrupted by matrimonial Court". In the result, I record my findings against Issue No.4 in negative."

4 The learned Judge of the Family Court dismissed the claim of the respondent-wife under section 25 of

the Hindu Marriage Act, 1955 for grant of permanent alimony relying upon the decision of the Apex Court in the case of Smt. Chand Dhawan vs. Jawaharlal Dhawan¹. In view of the said decision of the Apex Court, after dismissal of the petition for divorce filed by the appellant-husband, permanent alimony under section 25 could not have been granted. As regards the rejection of the claim under section 24 of the Hindu Marriage Act, 1955, Family Court Appeal No. 10 of 2016 was preferred by the respondent-wife which has been dismissed as not maintainable. A copy of the said order dated 4th October 2016 is placed on record. Paragraphs 2 and 3 of the said order clearly hold that the appeal was not maintainable as the application under section 24 was for grant of interim maintenance till the disposal of the petition filed by the appellant. In view of the said order holding that the Family Court Appeal No. 10 of 2016 was not maintainable, the prayer for revival of the said appeal is hereby rejected.

5 The claim for permanent alimony was rejected on the ground that after dismissal of the petition for divorce, the said claim cannot be considered under section 25. Therefore, it is obvious that notwithstanding the disposal of both the Family Court Appeals, the respondent can always maintain substantive proceedings for grant of maintenance in accordance with law.

1 1993 AIR SCW 2548

6 Subject to what is observed above, Family Court Appeal No.60 of 2016 is disposed of as withdrawn. Civil application No.295 of 2016 seeking interim relief of maintenance does not survive and the same is disposed of with liberty as stated in paragraph 5 above.

(M.S.KARNIK,J.)

(A.S.OKA,J.)