

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.77 OF 2008 with
CROSS OBJECTION ST.NO.23492 OF 2008

Mr. Abhijit P. Kulkarni for the Appellant in FCA and
for the respondent in XOB
Ms Seema Sarnaik for the respondent in the FCA and
for the appellant in XOB.

P.C.:

3 The learned counsel for the husband tenders
across the bar a letter dated 17th December 2015
addressed to him by the appellant. On the basis of

the said letter, the learned counsel for the husband seeks permission to withdraw the Family Court Appeal with liberty to file a separate petition for divorce. The said request deserves to be granted.

4 Accordingly, the appeal is dismissed as withdrawn with liberty as prayed. We make it clear that all contentions of the parties on the merits of the fresh petition which may be filed by the husband are kept open.

5 As far as the Cross Objection is concerned, the challenge is to that part of the impugned decree by which permanent alimony has been denied to the wife. The husband has now withdrawn the appeal. As the petition for declaration of nullity filed by the husband has been dismissed and the said order is confirmed, the principles laid down by the Apex Court in the case of Smt. Chand Dhawan vs Jawaharlal Dhawan¹ will squarely apply and the permanent alimony cannot be granted to the wife. However, she is entitled to file appropriate proceedings in accordance with law for seeking maintenance.

6 By order dated 5th July 2006 passed in the Civil application No.283 of 2009, this Court directed the husband to pay interim maintenance at the rate of Rs.15,000/- per month.

7 To enable the wife to file appropriate proceedings for seeking maintenance, the said

1 (1993) 3 SCC 406

interim relief deserves to be continued for a reasonable time.

8 Accordingly, Cross Objection is dismissed with no order as to costs. Dismissal of the Cross Objection will not prevent the wife from filing a fresh proceedings in accordance with law for grant of maintenance. To enable the wife to do so, interim order dated 5th July 2006 passed in the Civil Application 283 of 2009 shall continue to operate for a period of six months from today. We make it clear that the Court before which the appropriate proceedings will be filed will decide the proceedings on its own merits without being influenced by the order dated 5th July 2006 and the continuation thereof. All contentions of the parties in that behalf are kept open.

9 Needless to add that if the order of interim relief is passed in the fresh proceedings filed by the wife within the aforesaid period of six months, the order dated 5th July 2006 shall cease to apply.

10 On the application being made by the parties to the appeal, the Registry will supply certified copies of the finding received from the Family Court as well as evidence recorded by the Family Court. After certified copies are supplied, Record and Proceedings be sent back.