

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Family Court Appeal (ST) NO. 29154 OF 2014

MR. VINAYAK SITARAM BHOSALE

...Appellant

Versus

MRS. VIJAYA VINAYAK BHOSALE

...Respondent

*Mr. Diwakar Amarnath Dwivedi, for the Appellant.**Mr. R. R. Salvi, for the Respondent.*

**CORAM: A.S. OKA &
G. S. KULKARNI, JJ****DATED: 9th March, 2016**

1. Heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondent. In a matrimonial petition filed for divorce and other reliefs by the Respondent-Wife, a decree was passed on 24th April, 1995. It appears that the decree was passed on the basis of the consent terms filed by the parties. It is not in dispute that the decree was the subject matter of challenge in the appeal preferred before this Court. On 1st August, 1995, the decree was stayed by this Court. The order of stay was vacated on 26th August, 1999 when the Family Court Appeal was dismissed. An execution application was filed on 15th July, 2011.

2. In the execution application, objection was raised by the Appellant-husband to the maintainability on the ground of bar of limitation. By the impugned order dated 4th February,2014, the learned Judge of the Family Court held that Execution application filed by the Respondent was within limitation as provided in Article 136 of Schedule II of the Limitation Act,1963 (for short 'the said Act').

3. Learned Counsel appearing for the Appellant has not disputed the fact that the decree of the Family Court dated 24th April,1995 was stayed by this Court on 1st August,1995 and the order of stay was operative till 25th August,1999. He has also not disputed that the Execution Application was filed on 15th July,2011. It is not in dispute that Article 136 of Schedule II of the Limitation Act will govern the limitation. The submission canvassed by the learned Counsel for the Appellant and even the grounds of appeal are essentially on merits of the Execution Application and the interpretation of the decree.

4. All that the Family Court has decided by the impugned order is that the Execution Application was filed within limitation based on the averments made therein. The Family Court has not decided the issue of the executability of the decree. As far as the finding on the limitation is concerned, no fault can be found with the impugned order. All the contentions regarding merits of the Execution Application can be

urged by the Appellant before the Family Court. The Appellant can always urge the issue of maintainability of the Execution Application and the issue of executability of the decree in the pending Execution Application.

5. Hence, we dispose of the Appeal by passing the following order:-

ORDER

- (a) The Appeal is dismissed.
- (b) However, all contentions of the parties on merits of the Execution Application except the issue of limitation are expressly kept open.
- (c) There will be no order as to costs.

(G.S. KULKARNI, J)

(A.S. OKA, J)