

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6174 OF 2016

Mr. Bhushan Dattatraya Kedar	..Petitioner
Versus	
Mrs. Dipti Bhushan Kedar	..Respondent

Mr. S. S. Wagh i/by Ms. Babita Pandey for the Petitioner.
Mr. Ranson Dias for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 5th JANUARY, 2017

PC.

1 The above Writ Petition takes exception to the order dated 21.01.2016 passed by the Learned Principal District Judge, Nashik. By the said order, Misc. Civil Application No.222 of 2015 filed by the Respondent herein invoking Section 152 of the Civil Procedure Code came to be allowed and resultantly, the order dated 26.11.2014 came to be set aside and consequently, Regular Civil Appeal No.243 of 2010 and Hindu Marriage Petition No.218 of 2009 came to be restored to file. The Applicant i.e. the Respondent herein was also directed to refund the cost if received from the Petitioner herein i.e. Respondent No.2 to the said proceedings. The said order is principally challenged on the ground that such an order could not have been passed under Section 152 of the Civil Procedure Code and that the said order has been passed without hearing

the Petitioner.

2 As indicated above, the impugned order dated 21.01.2016 by which Misc. Civil Application No.222 of 2015 came to be allowed has the result of setting aside the order dated 26.11.2014 passed in Regular Civil Appeal No.243 of 2010, whereby both the Regular Civil Appeal No.243 of 2010 and Hindu Marriage Petition No.218 of 2009 which were allowed to be withdrawn have now been restored to filed. After arguments were heard for sometime, the Learned Counsel appearing of behalf of the Respondent Mr. Ranson Dias on instructions of the Respondent who is personally present in Court states that Respondent has no objection, if the impugned order is set aside and the matter is relegated back to the Appellate Court i.e. the Court of the Learned District Judge, Nashik for a de-novo consideration of the said application being Misc. Civil Application No.222 of 2015. In view of the said statement made by the Learned Counsel Mr. Ranson Dias, it is not necessary to consider the impugned order on merits. The impugned order would accordingly stand set aside and the following directions are issued :-

- I) The said Misc. Civil Application No.222 of 2015 would be heard by the concerned Learned District Judge, Nashik by

giving proper opportunity to the parties.

II) Needless to state that the contentions of the parties on merits are kept open for being urged before the Learned District Judge. The concerned Learned District Judge would hear the said application on its own merits and in accordance with law.

III) If any incidental application is filed by either of the parties, the same would also be considered by the concerned Learned District Judge on its own merits and in accordance with law.

IV) Parties to appear before the Learned District Judge concerned on 20.01.2017 at 11.00 a.m. The concerned Learned District Judge may thereafter fix the schedule as per his convenience however dispose of the said application expeditiously.

2 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]