

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

WRIT PETITION NO.6822 OF 2016

**Mr. Harsh Gopal Khandelwal
Versus**

..Petitioner

**Mrs. Aarti Harsh Khandelwal
@ Aarti Agrawal**

..Respondent

**Mr. Ram Singh i/by G. C. Mehta & Associates for the Petitioner.
Mr. Vishal Thaker for the Respondent.**

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

PC.

1 The above Writ Petition takes exception to the order dated 15.01.2016 passed by the Learned Judge of the Family Court No.5, Mumbai. By the said order, the Petition for divorce being Petition No.A-1167 of 2014 has been dismissed for non-compliance of the order dated 30.05.2014 passed in PA No.2547 of 2011. In so far as the said PA No.2547 of 2011 is concerned, the said Petition was filed for restitution of conjugal rights by the Petitioner in the Family Court. The Petitioner had applied for withdrawal of the said Petition. The said application was granted subject to the condition precedent that the Petitioner deposits an amount of Rs.50,000/- in the Family Court as cost payable to the Respondent herein i.e. the wife. It seems that the Petitioner did not pay

the said amount for a considerable period of time and ultimately deposited the said amount on 16.07.2016 vide Pay Order No.588908 drawn on Bank of India for the amount of Rs.50,000/-. The Learned Counsel appearing for the Respondent Mr. Vishal Thaker does not dispute the said position as also the fact that the said amount was paid over to the Respondent pursuant to the order passed by a Learned Single Judge of this Court dated 11.07.2016 passed in Writ Petition No.7370 of 2016, which is pending admission in this Court. Hence in so far as the order dated 30.05.2014 is concerned, the amount has been deposited by the Petitioner on 16.07.2016. The impugned order in the instant Petition has been passed on the ground that the said order dated 30.05.2014 has not been complied with by the Petitioner. By deposit of the said amount albeit belatedly, the factual situation has now undergone change. It seems that the Petitioner in view of the said change in the factual situation had filed an application for restoration of the divorce Petition. However it seems that the said application has been rejected with liberty to the Petitioner to file an appropriate application. Needless to state that if any such application is filed, pursuant to the liberty granted by the Family Court the same would be considered by the Family Court on its own merits and in accordance with law. However, it is not necessary in view of the aforesaid factual position to keep the instant Petition pending. In the light

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of the aforesaid, the above Petition to stand disposed of. Needless to state that the contentions of the parties are kept open for being urged before the Family Court.

[R.M.SAVANT, J]