

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

FAMILY COURT APPEAL NO. 102 OF 2015

Puja Wallia

... Appellant.

V/s.

Mayur Wallia

... Respondent.

Ms. Pooja Jalan, Advocate for the Appellant.

Mr. Vikram Deshmukh a/w. Shreni Shetty i/by ANB Legal for
the Respondent.

**CORAM : V. M. KANADE AND
P.R. BORA, JJ.**

DATE : 15th FEBRUARY, 2017

P.C. :

1 Heard the learned counsel appearing on behalf of
the Appellant and the learned counsel appearing on behalf of
the Respondent.

2 Perused the Appeal. The Appellant is the original
petitioner, who had filed M.J.Petition in the Family Court at
Bandra, Mumbai, seeking various reliefs. One of the reliefs
which was claimed therein was in terms of prayer clause (h)
which reads as under :

“(h) that pending the hearing and final disposal of this petition, the Respondent be restrained by an order and injunction of this Hon'ble Court from entering into the office premises being 4th floor, Onlooker building, Sir P. M.Road,Mumbai 400 001.”

3 The Appellant has also filed a separate application before the family court being interim application no.281 of 2010 in the M.J.Petition No. A-932 of 2010, seeking the same relief in terms of prayer clause (i) of the application. The relief was not granted and the said application was dismissed alongwith the observation that the cost of the application would be cost in cause. Against this order, the present appeal has been filed, which is pending in this court since 2015.

4 In the meantime, the appellant's main petition came up for hearing before the Family Court and by a reasoned order, on merits, it was dismissed on 31st May, 2016. It is submitted by the learned counsel for the respondent that in respect of the reliefs claimed by the appellant in the interim application, no issue was ever remained obviously, since it was also an interim relief claimed in the main petition. It is an admitted position that no appeal has been filed against the final order passed in the main Petition No. A-932 of 2010 till today.

5 Learned counsel appearing on behalf of the Respondents further submits that since the main petition of the appellant is disposed of, the present appeal, challenging the interim order has become infructuous. The learned counsel appearing on behalf of the Appellant has, however, vehemently opposed this contention of the Respondent. It is submitted by the learned counsel for the Appellant that the Family Court had dismissed the interim application on the ground that it had no jurisdiction. It is sought to be contended that this has resulted in failure of justice and, therefore, ultimately the Family Court had not gone into this issue since this the main petition was dismissed. This submission is denied by the learned counsel for the Respondent. In our view there is much substance in the submission made by the learned counsel for the Respondent. The main petition having been dismissed by the Family Court, the interim order passed in the said application has merged in the final order passed in the main petition and the remedy of the appellant is to challenge the said order. As on today, no appeal has been filed against the said order. It is not possible, therefore, to accept the submission of the appellant that this appeal still survives, despite dismissal of the main petition before the family court.

6 The present Appeal is, therefore, dismissed, reserving the right of the Appellant to challenge the order passed in the main petition.

7 All contentions of the appellant in this appeal are kept open, if she challenges the order passed in the main petition. The Appeal is thus disposed of.

(P.R. BORA, J)

(V.M.KANADE, J)

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