

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

FAMILY COURT APPEAL NO. 126 OF 2017

Arun Ram Rattan Atwal	...	Appellant
V/s.		
Swati Shivaji Varkar	...	Respondent

- Mr.Arun Ram Rattan Atwal, Appellant in-person.
- None for the Respondent.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 22nd AUGUST, 2017.

PER COURT :

- 1] Heard the Appellant, who argued in-person.
- 2] This appeal has been filed against the judgment and order dated 18th March, 2017 passed by the Family Court Mumbai at Bandra in Petition No.A-1341 of 2014 filed by the Respondent-wife.
- 3] By the said judgment and order, the petition filed by the Respondent-wife came to be allowed. The Respondent had filed the petition under Section 11 of the Hindu Marriage Act, 1955 (for short “the Act”) for nullity of the marriage which took place between her

and the Appellant on 29/10/2007. It was her case that the marriage was a null and void marriage as on the date of the marriage i.e. 29/10/2007, the Appellant was married to another lady and the said marriage was in subsistence.

4] It is admitted by the Appellant that as far as first marriage is concerned, the divorce took place on 12/07/2011. This shows that on 29/10/2007, when the marriage of the Appellant with the Respondent took place, his earlier spouse was living at the time of the said marriage and the said marriage was in subsistence. In such case, Section 5(i) of the Act is not complied with. Hence, the marriage would be clearly covered under Section 11 of the Act which deals with marriages which are null and void. On 29/10/2007 earlier marriage of the Appellant was in subsistence, hence the marriage of the Appellant with the Respondent has to be held to be null and void as has been rightly held by the Family Court.

5] In view of the above, we are not inclined to interfere so far as the order of nullity of marriage passed in the petition filed by the wife for nullity of marriage. The Appellant-husband fairly states that as far as the maintenance granted to child at the rate of Rs.10,000/-

per month is concerned, he is not challenging the same. As far as the prayer of the Appellant-husband seeking custody of the child is concerned, liberty is granted to the Appellant-husband to file a separate appeal.

6] Looking to the admitted facts, we find no reason to interfere in the impugned order whereby the marriage of the Appellant with the Respondent is declared a nullity as also the order granting maintenance to the child. The Appeal is dismissed.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (SMT. V.K. TAHILRAMANI, J.)