

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.152/2017
IN
FAMILY COURT APPEAL NO.29/2018

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. Atharva Dandekar i/b. Ketki Gadkari for the Applicant
Mr. Raj. J. Khude for the Respondent

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.**

DATE : FEBRUARY 7, 2018

P.C.:

1. Heard. This Application is made by wife for stay of the operation and implementation of the judgment and decree dated 30.03.2017 passed by the Family Court at Bandra, Mumbai in M.J.Petition No.A-2583/2012 by which the Respondent husband's petition for divorce u/s.13(i)(ia) and (ib) was allowed.

2. The learned counsel for the Applicant submits that the Applicant has preferred the Family Court Appeal on 06.05.2017. Thereafter she served the Respondent by private notice on

17.05.2017. To that effect the Applicant has filed Affidavit of service dated 07.08.2017. He submits that this court by order dated 11.07.2017 issued notice to the Respondent which was made returnable on 08.08.2017 and also granted *status quo* order in the meanwhile as regards the marital status of the parties. He submits that before service of the *status quo* order on the Respondent, the Respondent got married on 14.07.2017. Hence in view of section 15 of the Hindu Marriage Act, 1955 the second marriage of the Respondent is *void ab initio*. Therefore, the operation and implementation of the impugned judgment and decree passed by the Family Court may be stayed during pendency of the First Appeal.

3. On the other hand the learned counsel for the Respondent has vehemently opposed the Civil Application. The Respondent has filed Affidavit-in-Reply dated 02.08.2017. The learned counsel for the Respondent submits that as per his calculation, the appeal period was over on 30.06.2017 and the Respondent remarried on 14.07.2017 and to that effect he has placed on record a marriage certificate at Exhibit-A. He submits that in view of the subsequent development, nothing survives in the Civil Application. Hence, the Civil Application is liable to be dismissed with costs.

4. Heard both sides at length. Admittedly, the Family Court Appeal preferred by the wife is within time. In the appeal this court has issued notice to the Respondent by order dated 11.07.2017 and in the meanwhile granted *status quo* order as regard the marital status of the parties. The affidavit of service filed on record shows that the Defendant was duly served on 17.05.2017 along with a copy of the First Appeal. Before service of *status quo* order, the Respondent got married on 14.07.2017. Therefore, at present, there is no question of granting any stay in the present Civil Application. The point about section 15 of the Hindu Marriage Act, 1955 i.e. whether the second marriage is void or not, is to be decided at the time of final hearing of the First Appeal.

5. With these observations, the operation and implementation of the impugned judgment and decree passed by the Family Court is stayed till hearing and final disposal of the First Appeal with the above mentioned observations.

6. Hence, the Civil Application stands disposed of as infructuous as stated hereinabove.

(SARANG V. KOTWAL,J.)

(K.K.TATED,J.)