

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

**CIVIL APPLICATION NO.180 OF 2018
IN
FAMILY COURT APPEAL NO.197 OF 2015**

Joy Anthony Payaapply .. Applicant

IN THE MATTER BETWEEN

Eureka D/o Alfred Baptista .. Appellant

V/s.

Joy Anthony Payaapply .. Respondent

Mr.Partha S. Sarkar for the applicant

Mr.G.S.Hegade i/b Ms.Pinky Bhansali for the appellant in Family
Court Appeal No.197 of 2015

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : DECEMBER 10, 2018

P.C. :

1 Heard.

2 By this Civil Application, Applicant husband is seeking
following reliefs from this court:

*“A. So as to vacate the stay of the impugned Family
Court's order dt/- 1st July, 2015 AND consequently*

maintenance to the Ori. Appellant be discontinued.

B. In dismissing FCA – 197/2015.

C. To the Ori. Appellant, to pay an interim compensation of INR TWENTY FIVE LACS to the instant applicant.

D. In holding Adv. PM Bhansali guilty of professional misconduct in misleading this Hon'ble Court.

E. In holding the Ori. Appellant and / or Adv. PM Bhansali as abusers to the process of court and thus liable to be initiated of appropriate prosecution proceedings under Contempt of Court's Act and such other applicable act(s).

F. To declare that in case the instant applicant intends to re-marry, it would be within his legal right to do so, during the pendency of the captioned Family Court Appeal.

G. To permit intervention by the petitioner(s) of WP-15222/18 (L) Exh-'B' in the captioned proceeding(s).

H. Grant such further relief(s) / direction(s) as may be deemed appropriate given the facts and circumstances of the case.”

3 Bare reading of the prayer clause (a), (b), (d) and (e) shows that same is already argued by the advocate for the Applicant at the time of hearing Civil Application No.290 of 2017 filed by them, which was decided by this court today itself. Therefore, prayer clause (a), (b), (d) and (e) stands rejected in view of the order passed by this court today in Civil Application

No.290 of 2017.

4 Prayer clause (c) is to direct the appellant wife to pay an interim compensation of Rs.25 lacs to the Applicant husband. The present Family Court Appeal is preferred by the wife challenging the judgment and decree dated 01.07.2015 by which the Trial Court allowed the Applicant's petition and held marriage between Applicant and appellant as nullity with effect from the date of decree. In such type of proceeding, at present, there is no question of passing any order for compensation in favour of Applicant. Hence, prayer clause (c) stands rejected.

5 Prayer clause (f) is for declaration that in case the Applicant intend to re-marry, it would be within his legal right to do so during the pendency of the present Family Court Appeal. It is to be noted that operation and implementation of the impugned judgment and decree dated 01.07.2015 passed by Family Court Mumbai at Bandra in Petition No.A-696 of 2012 is already stayed by this court by order dated 14.10.2015 (Coram: V.M.Kanade & Dr.Shalini Phansalkar-Joshi, JJ.) Once the order is stayed means there is no divorce and or nullity of the marriage between the Applicant and Appellant. Therefore, there is no question of granting any declaration in terms of prayer clause (f). Hence, same is rejected.

6 Prayer clause (g) is to permit the intervention by the petitioner in Writ Petition (L) No.15222 of 2018 in the present proceedings. It is to be noted that in the present Family Court

Appeal, the dispute is between husband and wife. Therefore, there is no question of intervention of third party, and that also, at the request of applicant husband. Prayer clause (g) is also rejected. Not only that, this court by its order in Civil Application No.337 of 2018 already rejected the Applicant's Application to that effect.

7 In view of above mentioned facts, we do not find any substance in the entire Civil Application. Hence, following order:

A. Civil Application stands rejected with cost of Rs.5,000/-.

B Cost to be paid to the appellant wife within four weeks from today, failing which Appellant wife is entitled to recover the same by following due process of law.

(N. J. JAMADAR, J)

(K.K. TATED, J.)