

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.209 OF 2017

IN

FAMILY COURT APPEAL NO. 65 OF 2018

Mrs Kavita N. Jadhav

..Appellant

Vs.

Mr. Nitin Vijay Jadhav

..Respondent

Mr.Nilesh Wable I/b Dilip B. Shinde, for the Appellant.

Ms. Rimpal Trivedi, for the Respondent.

CORAM:-K. K. TATED & B. P. COLABAWALLA,JJ.

DATE :- JULY 13, 2018.

P. C.:

This application has been filed seeking a stay of the impugned judgment and decree dated 24th January, 2017 passed by the Judge of the Family Court, Thane in Petition No. A-231 of 2012. The Family Court, by the impugned judgment and decree dissolved the marriage between the Appellant wife and the Respondent husband under the provisions of Section 13 (1) (ib) of the Hindu Marriage Act, 1955 namely, on the ground of desertion.

2 Initially, this Appeal was not filed within time and an

application for condonation of delay was also taken out by the Appellant wife. This application came to be allowed. Thereafter, this Family Court Appeal was admitted on 9th April, 2018. Today, the Appellant seeks a stay of the impugned judgment and decree.

3 We have carefully gone through the impugned judgment and decree and prima facie we do not find that the Appellant wife is entitled to a stay as a matter of right. Before any stay can be granted, a prima facie case has to be made out that they have a good case on merits.

4 Considering the observations of the Family Court in paragraphs 18 and 19, we do not find that any case for stay of the impugned judgment and decree has been made out, much less a strong prima facie case. In paragraphs 18 and 19, several admissions on behalf of the Appellant wife have been recorded. The Family Court has, after carefully going through the evidence of the parties has recorded that the Appellant wife in her cross examination admitted that she initially cohabited with the Respondent husband for five to six months and thereafter there was a separation of 10 years. Even thereafter they cohabited for 20 days and thereafter there was a separation of seven years. Furthermore, even though the Appellant wife herein had initially

in earlier proceedings got a decree of restitution of conjugal rights and she had filed proceedings for execution of that decree by filing R. D. No. 30 of 2011, the same was dismissed on 12th September, 2012 for want of steps being taken by the Appellant wife. The learned Judge of the Family Court, at least prima facie, appears to be justified in coming to the conclusion that this conduct of the Appellant wife clearly shows that she has no interest in getting her decree of restitution of conjugal rights executed. What would follow from this is, that it is quite clear that the Appellant wife though before us mentioned that she wants to go back and stay with the husband, but her actions speak otherwise. The Appellant wife has not made out any case for grant of stay of the execution, operation and implementation of the impugned judgment and decree dated 24th January, 2017.

5 In these circumstances, the Civil Application stands dismissed. However, there shall be no order as to costs.

6 At this stage, the learned counsel appearing on behalf of the Appellant wife sought to rely upon Section 15 of the Hindu Marriage Act, 1955 contending that there is an automatic stay of the impugned judgment and decree. Firstly, without going into this issue at all, we fail

to understand then why the present Civil Application has been filed by the Appellant wife. If that is what the advocate for the Appellant wife thinks that the law is, then, the question of filing this Civil Application is wholly misconceived and ought to be dismissed on this ground alone. We must at once clarify that we have not opined one way or the other whether Section 15 of the Hindu Marriage Act grants an automatic stay or otherwise, as contended by the advocate for the Appellant wife.

7 At this stage, the learned counsel appearing on behalf of the Appellant wife states that there was an ad-interim order that was granted by this Court on 13th September, 2017 and that may be continued for a period of four weeks from today. The learned counsel for the Respondent vehemently opposed this request.

8 In view of what we have discussed earlier and considering that the learned counsel for the Appellant wife himself submitted that there is an automatic stay under Section 15 of the Hindu Marriage Act, 1955, we do not think that there is any need for us to continue the ad-interim order any further. This request is therefore rejected.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J.)