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

CIVIL APPLICATION NO. 280 OF 2017
IN
FAMILY COURT APPEAL NO. 86 OF 2016

Mr Dinesh Gopal Jathan ...Applicant/Appellant
vs
Mrs Ranjitha Dinesh Jathan ...Respondent.

.....
Mrs Devki R Sahu for the Applicant.
Mr J.D.Singh I/b Osman Chishty for the Respondent.

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**CORAM : K.K.TATED, &
B.P.COLABAWALLA, JJ.
AUGUST 09, 2018.**

P.C. :

Heard learned counsel for parties.

2 By this Civil Application, the applicant is seeking to recall the order dated 19th July, 2017 passed by this Court by which the Family Court Appeal No. 86 of 2016 stands dismissed for non-compliance.

3 In the present proceedings the applicant – husband is challenging the Judgment and Decree dated 9th March, 2016 passed by the Family Court Mumbai at Bandra in Divorce Petition No. A 742 of 2011 by which the respondent – wife's petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 was allowed. Family Court also directed the applicant to pay sum of Rs.7000/- per month as a permanent alimony to the Respondent from the date of the Judgment.

4 This Court by an order dated 14th June, 2017

recorded that, on that date a sum of Rs.4,10,000/- was due and payable by the applicant to the respondent towards the arrears of the permanent maintenance. This Court by that order directed the applicant to deposit a sum of Rs.1,00,000/- in the Registry of this Court on or before 19th July, 2017. The applicant failed and neglected to comply the said order, hence Family Court Appeal stands dismissed for non-compliance of that order.

5 Thereafter, the applicant has preferred the present Civil Application on 18th August, 2017 for restoration of Family Court Appeal and directing the Registry of this Court to accept the sum of Rs.1 Lac from the appellant as per the order dated 19th July, 2017. The applicant also claimed other reliefs which reads thus:

- “(a) This Hon'ble Court be pleased to recall the order passed on dated 19.07.2017 passed by this Hon'ble Court and restore the appeal to its file;
- (b) This Hon'ble Court be pleased to direct the office to accept the amount of Rs.1,00,000/- from the applicant as per order dated 19th July, 2017 passed by this Hon'ble Court;
- (c) This Hon'ble Court be pleased to permit the applicant to deposit of Rs.1,00,000/- as per order dated 14th June, 2017 passed by this Hon'ble Court;
- (d) Pending the hearing and final disposal of this civil application, this Hon'ble Court be please to permit the applicant to deposit the amount of Rs.1,00,000/- as per direction passed by this Hon'ble Court on dated 14th June, 2017;
- (e) For ad-interim relief in terms of prayer clause (d) above.”

6 During the course of argument, on 8th August, 2018 the applicant agreed to deposit the sum of Rs.5 Lacs in the Registry of this Court within two months from today. Hence, this Court directed the applicant to file an affidavit-cum-undertaking to that effect and the matter was posted today for orders.

7 Mrs Sahu, learned counsel for the applicant, after taking instructions from her client, who is present in the Court, makes a statement that the applicant is not ready and willing to deposit the said sum of Rs.5 Lacs towards the arrears of maintenance charges. She submits that this is not possible for the applicant to deposit the said amount in this Court.

8 Advocate for the applicant submits that, in the interest of justice, this Honourable Court be pleased to restore the present Family Court Appeal without insisting the applicant to clear the arrears of maintenance charges. Learned counsel submits that the applicant has every chance of success in the present case. Learned Counsel submits that if this Civil Application is not allowed, great injury will be caused to the applicant.

9 On the basis of these submissions, learned counsel for the applicant submits that this Honourable Court be pleased to allow the present Civil Application and restore the Family Court Appeal on file for deciding on its own merits.

10 Mr Singh, learned counsel for the respondent vehemently opposed the present Civil Application. He submits that the respondent – wife is housewife. She did not have any

source of income. It is very difficult for her to bear her day to day expenses. Learned Counsel for Respondent submits that in the interest of justice this Honourable Court be pleased to direct the applicant to deposit the entire arrears of maintenance charges and allow the respondent - wife to withdraw the same. He submits that if the applicant is not ready and willing to comply the earlier order passed by this Court, then there is no question of entertaining the present Civil Application.

11 We have heard the learned counsel for parties.

12 It is to be noted that there is no dispute that there is arrears of maintenance charges to the extent of Rs.5 Lacs approximately. Though this Court granted chance to the applicant to deposit the said amount in the monthly installments within two months, he failed and neglected to agree for the same. It is to be noted that the Family Court, in the month of March 2016 directed the applicant to pay the sum of Rs.7000/- per month by way of maintenance charges from the date of the Judgment, that also not cleared by the applicant. Today, Rs.5 Lacs are due and payable towards the maintenance arrears by the applicant. As the applicant is not ready and willing to clear the arrears of maintenance charges, we do not find any reason to entertain the present Civil Application.

13 The Civil Application stands rejected with costs of Rs.5000/-.

(B.P.COLABAWALLA, J.)

(K.K.TATED, J.)