

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.38 OF 2016

Trupti Himanshu Kumar

...Petitioner

vs.

Himanshu Kumar

...Respondent

Mr. Hafeez Patanwala i/b. Mr. Abhay Nevagi & Associates, for the
Petitioner.

Mrs. Seema Sarnaik a/w. Mr. A.S. Tamhane, Mrs. Sangita Salvi,
for the Respondent.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 13, 2018

P.C.:

. Mr. Hafeez, learned counsel for the Petitioner states
that he has already returned the papers and reports no further
instructions.

2. Mrs. Sarnaik, learned counsel for the Respondent
points out by the impugned order dated 4th November, 2017 the
contention raised by the Petitioner as regards the merits or
demerits of the Respondent's counter claim have not been finally
decided. She submits that the impugned order is absolutely right
because the counter claim could not have been dismissed without
parties leading evidence and such evidence considered by the
Family Court.

3. From the perusal of the impugned order, it appears that it was the case of the Petitioner that the counter claim filed by the Respondent ought to have been dismissed because the Respondent during the pendency of the proceeding allegedly married second time. The Respondent has not admitted the factum of any second marriage. In the aforesaid circumstances, the Family Court was quite right in holding that the counter claim cannot be dismissed at this stage and such issue will have to be considered after the parties lead their respective evidence in the matter. This means that the contentions raised by the Petitioner have not been rejected as such. Only consideration of such contentions has been postponed till the parties lead evidence on all the issues. There is really no jurisdictional error in the impugned order so as to warrant interference.

4. Therefore by clarifying that the contentions of the Petitioner have been kept open, this Petition is dismissed.

5. There shall be no order as to costs.

6. The interim order if any is therefore vacated.

(M. S. SONAK, J.)