

** This order is corrected as per Speaking to the Minutes dated 11/06/2019.

- Mr.Samarth Raju Moray, Advocate for Appellant/Applicant.
- Mr.Arun Ramratan Atwal, Respondent in person.

**CORAM : INDRAJIT MAHANTY &
SMT. S. S. JADHAV, JJ.
DATE : 09th JANUARY, 2019.**

P.C. :

1. Heard learned Counsel Mr.Samarth Moray for the Appellant and Mr.Arun Ramratan Atwal, Respondent in person.
2. This Appeal came to be filed by the Appellant seeking to challenge the Judgment passed by Principal Judge, Family Court, Mumbai, dated, 18/03/2017 in Application No.A-1341/2014 and D-32/2015/CJ.
3. In view of the Judgment dated 18/03/2017, the circumstances under which all these matters were clubbed together were decided in the aforesaid Judgment in paragraph No.1, are noted hereinabove;

“This is a common judgment in two petitions. Petition No.A-1341/2014 is filed by Swati Atwal under Section 11 of the Hindu Marriage Act, 1955 on 22.5.2014. Before filing this petition she had moved to the Court of Metropolitan Magistrate at Kurla, Mumbai with an application under the provisions of PWDV Act, bearing No.193/Misc/2012 on 21.11.2012. Vide order of the Hon'ble High Court dated 8.7.2014 in Criminal Application No.294/2014, this petition was transferred to the Family Court, Mumbai to be tried along with petition A-1341/2014.”

4. The learned Counsel for the Appellant inter alia submits that the present Appeal has been essentially filed relating to issue Nos.5,6, and 7 have been answered by the Family Judge, without adverting to the evidence and pleadings of both parties in the Domestic Violence proceedings initiated by the Appellant.
5. We have perused the Judgment and heard learned Counsel for the Appellant and Respondent in person. We are of the view that the said assertion appears to have merit.

6. It appears from the records that the Decree was challenged by the Respondent/Husband in Family Court Appeal No.126/17. The same came to be rejected by an order dated 22/08/2017 and consequently the learned Division Bench of this Court dismissed the Respondent's Appeal, but granted liberty to Respondent/Husband to file a separate Appeal insofar as custody of child is concerned.
7. Respondent Mr.Arun Atwal submits that various interim Applications had been filed in the Domestic Violence case which were never dealt with by the learned Family Judge.
8. The submission of Mr.Samarth Moray, learned Counsel for the Appellant, was that the conclusions arrived at by the Family court insofar as Issue Nos.5, 6 and 7 having proceeded without adverting to the evidence and pleadings in Domestic Violence Petition, to this limited extent the Court ought to remand the matter for reconsideration of the same without in any manner being influenced by any finding viz-a-viz issue of nullity of marriage and custody of child is concerned.

9. After hearing learned Counsel for the Appellant and Respondent in person, and after perusing the impugned judgment, as well as, the order passed by this Court in Appeal filed by the Respondent/Husband, we are of the considered view that the matter needs to be reagitated and reconsidered by the Family Court Judge. We consequently remand the matter back for reconsideration of issue Nos.5, 6, and 7 in the light of pleadings and/or evidence led by the parties viz-a-viz Domestic Violence Petition which the Family Court was required to do on the basis of earlier directions passed by this Court, in Criminal Application No.294/14 dated 08/07/2014.

10. We make it clear that this order of remand is only for the specific purpose for consideration of the pleadings under the provisions of the Domestic violence proceedings since it appears that at the outset that, the Family Court Judge has omitted from giving any findings regarding such issues arising therefrom.

11. In view of the aforesaid facts, we remand back the matter to the Family Court.

12. The Respondent appearing in person undertakes not to create any third party interest and/or transfer any immovable property till the issues noted hereinabove are determined by the Family Court Judge in the matter.
13. Thus aforesaid undertaking shall also remain in force for a further period of 90 days from the date of which the learned Family Judge decides the matter finally.
14. Accordingly, both the Appeals and all Applications therein stand disposed of. So also, both Cross Objections stand disposed of.
15. All the Applications pending before the Family Court may be decided by the learned Family Judge strictly in accordance with the law. Office is directed to send R & P to the trial Court forthwith.

(SMT. S. S. JADHAV, J.)

(INDRAJIT MAHANTY, J.)