

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.59 OF 2019

Fatima (Shahvaaz) Abbas Ali Rasekhinejad ...Appellant

vs.

Abbas Ali Akbar Rasekhinejed ...Respondent

Mr. Prasad Shenoy I/b. Nausheen Yusuf, for the Appellant

Ms. Seema Sarnaik a/w. Ms. Sangeeta Salvi, for the Respondent.

**CORAM : AKIL KURESHI &
N.B. SURYAWANSHI, JJ.**

DATE : AUGUST 23, 2019

P.C.:

. This Appeal is filed by the wife of the Respondent. The Respondent had filed Family Court Petition No. 17 of 2013 for permanent custody of minor child *Sakina*. The Family Court allowed the Petition by an order dated 21st April, 2016. This was *ex-parte* decree because wife was unable to file the reply. She had approached this Court. The High Court by an order dated 12th April, 2018 allowed a chance to wife to file her response within two months from the date of the order for which the order of the Family Court was set aside. It was further clarified that on failure of the wife to file written statement, the order dated 21st April, 2016 shall stand confirmed and the execution proceedings would stand restored. Since, the wife could not file the written statement within

time, the Family Court passed the impugned order dated 21st January, 2019 recording that the wife had failed to comply the direction of the High Court.

2. Subsequently, the husband expired on 22nd April, 2019. In that view of the matter, the entire complexion of the case has changed. The original order of the Family Court dated 21st April, 2016 was for giving the custody of minor Sakina to the husband who has expired. Under the circumstances, this Appeal has become infructuous.

3. It is clarified that if any attempt is made by any of the relatives of the husband to continue the execution proceeding before the Family Court, it would be open for the Appellant-wife to resist the same on all grounds and contentions including that on account of death of husband, the decree has become un-executable.

4. Appeal disposed of accordingly.

(N.B. SURYAWANSHI, J.)

(AKIL KURESHI, J.)