

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.10292 OF 2022
IN
WRIT PETITION NO.5458 OF 2019**

Manojkumar Radheshyam GuptaApplicant

Versus

Smt. Rekha Harilal Gupta and Ors.Respondents

Ms. S.T. Valunj, Advocate for the applicant.

Miss. Pooja Phagnekar a/w Mr. Nitesh Mohite, for
Respondent No.1.

Mr. Sachin H. Kankal, AGP for the Respondent-State.

CORAM : S. G. DIGE, J.

DATE : 8th DECEMBER, 2022.

P.C. :

1. Heard learned counsel for applicant and learned counsel for respondent no.1.
2. Learned counsel for applicant submits that Marriage Petition No. 1161 of 2017 filed by the applicant/petitioner under Section 11 of the Hindu Marriage Act, 1955 before the 2nd Joint Civil Judge Senior Division, Kalyan has been disposed of on 23rd December 2021 thereby granting

the petitioner husband a decree of dissolution of marriage and Court has declared that the marriage solemnized between the applicant-petitioner and respondent no.1 is null and void. During pendency of the application, the maintenance was granted to the respondent no.1 and applicant had deposited Rs. 90,000/- before this Court as a maintenance arrears. The said amount is not withdrawn by the respondent no.1.

3. Learned counsel further submits that the Trial Court has declared the marriage between applicant and respondent no.1 is null and void. So, amount deposited by applicant herein be refunded to the applicant.

4. It is the contention of learned counsel for respondent no.1 that maintenance was granted to the respondent no.1 on the basis that she was wife of the applicant. At the time of filing the application for maintenance, respondent no.1 was the wife of applicant, the Trial Court has passed decision latter on. So, respondent no.1 is entitle for maintenance. Hence, requested to reject the application.

5. I have heard both learned counsel. Admittedly, the Trial Court has granted the maintenance to the respondent no.1. The said order was challenged by the applicant before this Court.

6. In the appeal, the applicant has deposited Rs. 90,000/- as arrears of maintenance before this Court. The said amount is not withdrawn by the respondent no.1. It was the claim of the applicant that respondent no.1 is not his legally wedded wife, she has performed the marriage with applicant, when her first marriage was in existence. On that basis, applicant had filed marriage petition before the Trial Court and it is allowed. Now, the question remains whether respondent no.1 is entitled for the amount deposited before this Court as a maintenance amount.

7. In my view, the respondent no.1 was claiming maintenance from the applicant on the basis that she is wife, but the Trial Court has held that the marriage between applicant and respondent no.1 is null and void. So, respondent no.1 is not wife of applicant. The order of Trial Court is not challenged by the respondent no.1. In view of

above, I pass following order.

ORDER

- i. Application is allowed.
- ii. Applicant is permitted to withdraw the amount deposited by him before this Court along with accrued interest thereon.
- iii. Application is disposed of.

(S. G. DIGE, J.)