

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

**INTERIM APPLICATION NO. 2411 OF 2022
IN
FAMILY COURT APPEAL NO. 186 OF 2017**

Sarika Sureka ..Applicant

v/s.

Mahendra Sureka ..Respondent

**WITH
CIVIL APPLICATION NO. 243 OF 2019
IN
FAMILY COURT APPEAL NO. 186 OF 2017**

Mahendra Rajkumar Sureka ..Applicant

v/s.

Sarika w/o. Mahendra Sureka ..Respondent

**WITH
INTERIM APPLICATION NO. 2398 OF 2021
IN
FAMILY COURT APPEAL NO. 186 OF 2017**

Sarika Sureka ..Applicant

v/s.

Mahendra Sureka ..Respondent

Mr. Prashant Pandey a/w. Ashok Dhanuka, Dinesh Jadhvani i/b. W3
Legal LLP for the Applicant.

for the Respondent No.

Mr. Hitesh Vyas a/w. Mr. Chandrashekhar Yadav i/b. Prakash Mahadik
for the Respondent.

**CORAM : ANUJA PRABHUDESSAI , &
SARANG V. KOTWAL, JJ.
DATED : 23rd MARCH, 2023.
(IN CHAMBER at 2.30 p.m.)**

Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
2023.03.28
18:38:02
+0530

PRASANNA P
SALGAONKAR

P.C. (per Sarang V. Kotwal, J.)

1. The order dated 12th December, 2017, passed in Civil Application No. 283 of 2017 in Family Court Appeal No. 186 of 2017 records that:

“It would not be necessary to consider granting the prayers made in the Civil Application, as the learned Counsel for the Respondent makes a statement on instructions from the respondent, who is present in the Court today, that the respondent would not remarry during the pendency of the appeal.

Hence, by accepting the statement made on behalf of the respondent, that would be binding on the respondent, we dispose of the civil application”.

2. Now the present application is filed for modification, alteration, amendment or setting aside this order. In short, Applicant is seeking recall of the said order. Learned Counsel for the Respondent-Husband maintains the statement recorded in the order dated 12th December, 2017. The Respondent is present in the Chamber. The said statement is reiterated by the learned Counsel for the Applicant-on his instructions. He has also filed an affidavit-in-reply in the present application and the similar facts are mentioned in paragraph 5 of the said affidavit in reply, which reads thus:

“5. I say that I maintain my statement made earlier before the Division Bench of this Hon’ble Court on 12.12.2017 further I once again made a statement on

oath that I will not remarry during the pendency of the present appeal.”

3. Learned Counsel for the Applicant wife has produced a compilation before us which contains some whatsapp messages and some photographs. This compilation by itself does not indicate that the husband i.e. Respondent has remarried.

4. Learned Counsel for the Applicant has relied on the judgment of the Honourable Supreme Court in the case of D. Velusamy vs. D. Patchaiammal passed in Criminal Appeal No. 2028, 2029 of 2010. Learned Counsel relied on paragraph 33 of the said judgment which reads thus:

“33. In our opinion a ‘relationship in the nature of marriage’ is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(see ‘Common Law Marriage’ in Wikipedia on Google.

In our opinion a ‘relationship in the nature of marriage’ under the 2005 Act must also fulfill the above requirement, and in addition the parties must have lived together in a ‘shared household’ as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a domestic relationship’.

5. The question before us does not pertain to the relationship in the nature of marriage as discussed in the said paragraph. We are only concerned with the statement made by the husband before the Division Bench of this Court. Therefore, we do not see any reason to recall or modify the order dated 12th December, 2017. The Application is rejected.

(SARANG V. KOTWAL, J.)

(ANUJA PRABHUDESSAI, J.)