



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**FAMILY COURT APPEAL STAMP NO.26508 OF 2023  
WITH  
CIVIL APPLICATION NO. 12006 OF 2023  
IN FCAST/26508/2023**

**VAISHALI AKSHAY KENGAR  
VERSUS  
AKSHAY BABAN KENGAR**

...

Advocate for Appellant : Mr. Kanade Angad Lala  
Advocate for Respondents : Mr. Tungar Hrishikesh V

...

**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**DATE : 15 JULY 2024**

**PER COURT :**

. Heard both the sides.

2. These circumstances presented before us are peculiar. The respondent/husband preferred a divorce proceeding on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act. By the judgment and order dated 16.12.2021, the petition was allowed and the learned Judge of the Family Court dissolved the marriage with effect from 16.12.2021. The applicant/wife failed to challenge the judgment and order within time stipulated by law. She has filed this appeal together with an application for condonation of delay of 499 days in preferring the Family Court Appeal.

3. The respondent/husband appeared pursuant to the notice of

the delay condonation application and submitted his affidavit-in-reply. In its paragraph no.5, he has expressly mentioned that he has solemnized second marriage on 24.04.2022 with one Rohini and the marriage has been duly registered with the Registrar of Marriage as per the certificate Exhibit-R. It has also been mentioned that out of this subsequent wedlock, the second wife delivered a child.

4. The fact of the respondent/husband having solemnized marriage after expiry of the period of limitation provided for challenging the decree of divorce, has not been controverted by the applicant/wife rather it is her stand that he solemnized such marriage after passing of the decree for divorce. In view of such state of affairs, in the light of Section 15 of the Hindu Marriage Act, he having solemnized second marriage beyond the period of limitation, the appeal seeking to challenge the divorce decree would become infructuous due to the supervening event.

5. The learned advocate for the applicant/wife would submit that by virtue of Section 25 of the Hindu Marriage Act, it was imperative for the trial Court to have decided the permanent alimony for failure of which, at least to that extent, the matter can be remanded, if not in respect of challenge to the decree to the extent granting divorce.

6. The learned advocate for the respondent/husband would submit that the applicant had not submitted any application, nor was there any oral request calling upon the learned Judge of the Family Court to decide permanent alimony. He would submit that there

won't be any necessity also since the applicant/wife has already instituted a proceeding under the Protection of Women from Domestic Violence Act way back in the year 2019 and she is entitled to prosecute it and get the maintenance awarded in that proceeding.

7. The learned advocate for the applicant/wife admits the fact on instructions, that indeed the proceeding under D.V. Act initiated by her has been pending before the jurisdictional Court at Georai. He would submit that however, the respondent/husband by filing reply in that application, expressly denied applicant's/wife's claim of maintenance. He would also submit that even the applicant's application for maintenance preferred under Section 125 of the Code of Criminal Procedure, was dismissed in default.

8. It is trite that as far as maintenance is concerned, a hindu wife would be entitled to have the maintenance under different statutes. However the bottom line is that her requirement and the income of the husband remaining statistic, irrespective of the number of proceedings, the maintenance will have to be quantified as an organic whole. If the applicant's application under Section 12 of the D.V. Act has been pending, she would certainly be entitled to prosecute it, demonstrate her entitlement and seek maintenance.

9. When admittedly, no application was filed before the Family Court or when there was not even an oral request, calling upon the learned Judge to fix the permanent alimony, may be in the alternative. Therefore, instead of remanding the matter, the applicant

can very well be left to claim maintenance in the D.V. Act proceeding.

10. The Family Court Appeal is dismissed.

11. The Civil Application is disposed of.

[ SHAILESH P. BRAHME, J.]

[ MANGESH S. PATIL, J.]

*Najeeb..*