

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4179 OF 2015

Sambhaji Sahebrao Thorat
Age - 37 years, Occ - Service,
R/o Survey No. 59 / 1
Khanwela Road,
Maswad Silwasa,
Gujrat

PETITIONER

VERSUS

Vaishali Sambhaji Thorat
Age 33 years, Occ - Household
R/o Sukhsagar Colony, Waninagar,
Pipe Line Road, Ahmednagar
Taluka and District - Ahmednagar

RESPONDENT

.....
Mr. V. D. Sapkal, Advocate for the petitioner
Mr. L. K. Pradhan, Advocate for respondent sole
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th OCTOBER, 2015

ORAL JUDGMENT :.

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties, at the stage of admission.
2. Learned advocate for the petitioner has pointed out that against the respondent, erstwhile wife, a decree of divorce had been passed by civil judge, senior division, Shrigonda on 17th

January, 2008, in the proceedings bearing HMP No. 21 of 2007. He further refers to that the respondent had even made an attempt for custody of children, however, she did not succeed in the same and the children are with the petitioner. Learned advocate for the petitioner further states that after decree of divorce, he has got remarried with one Chhaya.

3. Learned advocate for the petitioner further points out that in the proceedings initiated by the respondent pursuant to section 125 of the Criminal Procedure Code, her claim had been rejected under order dated 8th December, 2014 finding that respondent - wife was living in adultery. He contends that while deciding issue No.2 about desertion by the defendant in Regular Civil Suit No. 143 of 2012 (Special Civil Suit No. 172 of 2008) the court has cursorily considered that presently the respondent is not living in adultery. It is contended that the court should have considered effect of section 18 (3) of the Hindu Adoptions and Maintenance Act, 1956, wherein a Hindu wife would not be entitled to separate residence and maintenance from husband, if she is unchaste. He submits that section 25 of the Hindu Marriage Act, 1955 obligates an order for payment of maintenance at the time of passing decree and at any point subsequent thereto, by the court which had passed the decree.

In the present case, proceedings by the respondent had been prosecuted in a different court altogether and as such, the order passed is outside its jurisdiction. He contends that under the circumstances, the application for interim relief during pendency of the appeal from the decree passed in regular civil suit No.143 of 2012 ought to have been considered in favour of the petitioner, however the court has rejected the same on untenable grounds. He relies on a decision reported in *1983 Mh.L.J. 754 "Jagdish Premji Ruparel V. Bhanumati Jagdish Ruparel"* to contend that the proceedings initiated by the respondent in the court were not maintainable and the court had no jurisdiction.

4. On the other hand, learned advocate for the respondent submits that there is no substance in the contention with regard to jurisdiction, canvassed on behalf of the petitioner, for, section 19 (3) of the Hindu Marriage Act does show that the proceedings can be initiated by wife at a place, in the events and circumstances referred to under said provision. He further contends that such an objection had never been taken before the trial court, during pendency of the suit and as such, having regard to section 16 to 20 of the Civil Procedure Code, objection with regard to jurisdiction is not available to the petitioner now. He further contends that the decree of divorce obtained by the

petitioner has been *ex-parte* decree and an appeal is pending against the same. In the circumstances, no fault should be found with the impugned order in the writ petition.

5. This court, while issuing notice to the respondent, had directed the petitioner to deposit a sum of Rs.15,000/- to show his *bona fides*. Accordingly, said amount had been deposited and the same has even been withdrawn by the respondent. Looking at the nature of controversy involved in the main appeal pending before district court, Ahmednagar, parties resile to a situation where a decision on merits can be had from the appellate court at an early date. Learned advocates state that the appeal is almost ready for hearing. In the circumstances, I deem it appropriate that the situation can be taken care of by directing the petitioner to deposit a further sum of Rs.20,000/- in the appellate court, in order to show his *bona fides*. Said sum of Rs.20,000/- shall be deposited by the petitioner in the appellate court within a period of four weeks from the date of receipt of writ of this order. Appropriation of said amount of Rs.20,000/- shall take place upon final decision is rendered in the appeal by the appellate court. The district court shall decide the regular civil appeal No. 95 of 2014 as early as possible, preferably within a period of sixteen weeks from the date of receipt of writ of this

order.

6. As such, the matter is not being considered on merits and is being disposed of with aforesaid observations. Rule is made absolute accordingly.

7. Interim relief, which has been granted by this court will continue to remain in operation till disposal of the appeal.

[SUNIL P. DESHMUKH, J.]

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