

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

WRIT PETITION NO.1447 OF 2015

Meenakshi Prashant Kshirsagar	.. Petitioner.
Vs.	
Prashant Tukaram Kshirsagar	.. Respondent.

Mr.Pankaj Sutar a/w Vishwabhusan Kamble i/b Jayakar & Partner
for the Petitioner.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 13TH MARCH, 2015

P.C.

1. Heard learned counsel appearing for the Petitioner. The Petitioner wife has filed this petition under Article 226 of the Constitution of India. The Petitioner wife filed a petition in the year 2002 for grant of decree of divorce on the ground of cruelty. The petition was filed before the Family Court at Pune in the year 2002 and this Court by the order dated 23rd August, 2006 directed expeditious disposal of the petition filed by the petitioner within a period of three months. The petition was disposed of by the judgment and decree dated 21st April, 2007. A decree of divorce was passed on the petition filed by the petitioner.

2. The grievance made in this petition is that after

restoration of the said writ petition, the proceedings of the petition are being unduly delayed and the divorce petition of year 2002 which is still pending before the Family Court has not made any progress. In view of the averments made in the petition, we had called for a report from the learned Judge of the Family Court. Accordingly, the learned Judge of Family Court Pune has submitted a report dated 10th March, 2015. The report records that on 16th October, 2006 the petition filed by the petitioner was dismissed for non prosecution which was restored by the order dated 16th March, 2007 and was subsequently decreed on 21st April, 2007.

3. By the order dated 17th February, 2010 passed by the learned Judge of the Family Court, the said decree was set aside and the petition was restored. Thereafter, the petition filed by the Respondent husband for the restitution of conjugal rights was clubbed with the petition filed by the Petitioner.

4. The learned Judge has referred to the roznama which shows that the Respondent husband remained absent for considerably long time. He kept on sending applications for adjournment by post along with the medical certificates. The report further records that a transfer application was filed by the Respondent husband. The adjournments were sought by the respondent on the ground that the transfer application was pending. On 20th May, 2013 an application was made by the Respondent

husband for setting aside the order of the Family Court of directing that both the petitions should be fixed for hearing on day to day basis.

5. Thereafter various applications were made by the Respondent husband. After the learned Judge took charge of the Family Court No.5, for the first time on 11th August, 2014 the petitions were placed before her. The learned Judge has noted several difficulties which prevented her from proceeding with the petitions. It is stated that the Respondent husband underwent operation of hip joint replacement. Thereafter, he contended that the application for interim maintenance which was pending should be decided first. The learned Judge has noted that the entire record of the case shows that whenever the Court tried to proceed with hearing of the main petition, the respondent objected to that and filed several applications. It is stated that the respondent is contending that considering the fact that he has undergone the surgery of hip joint replacement, he is not able to walk and therefore, he is objecting to hear the matters on day to day basis. The learned Judge has assured this court that she is trying her level best to dispose of both the petitions.

6. The learned counsel appearing for the petitioner pointed out that the conduct of the respondent husband has been consistently objectionable. He pointed out that contempt notice was

issued by this Court to the respondent.

7. From the report of the learned Judge of the Family Court and the roznama of the proceedings annexed to the petition, we find that due to complete non cooperation by the husband that the proceedings have been delayed. From the report, we find that the learned trial Judge is trying level best to dispose of both the pending petitions.

8. The learned counsel appearing for the Petitioner submits that a time bound schedule may be fixed. Considering the conduct of the respondent husband, we find that it would be unjust to the learned Judge if we fix a time bound schedule. It is obvious that the learned trial Judge has made all possible efforts for expediting the hearing of the pending proceedings. The learned Judge will have to ensure that the adjournments are not granted to the respondent husband on any unreasonable ground.

9. Suffice it to say that disposal of the cases is not delayed due out to any default on the part of the trial Judge. In several cases, this Court has noticed that the parties appearing in persons are creating obstruction in the way of early disposal of cases.

10. Hence, we dispose of the petition. It is obvious that all possible efforts will be made by the learned Judge to dispose of the

petitions of the year 2002 as expeditiously as possible. The petition is disposed of. The report of the learned Judge shall be kept in a sealed envelope in the safe custody of the Registrar Judicial-I. An authenticated copy of this order be forwarded to the learned Judge of the Family Court.

(A.K. MENON, J.)

(A.S. OKA, J.)