

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL WRIT PETITION NO. 1861 OF 2015

Reeba Cherian

.....Petitioner

V/s.

Mr. George Jacob Vengal

....Respondent

Petitioner in person

Respondent in person

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 27, 2015

PC :

- 1) Heard respective parties in person at length.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein is seeking to modify the order dated 31/01/2015 as well as order dated 12/02/2015 passed by Principal Judge, Family Court, Mumbai in Petition No. A- 491 of 2012, praying therein to modify the trial schedule with not more than two dates in one month and to transfer the matter from the Court of learned Principal Judge, Family Court to another Court.

4) Petitioner herein submits that she would be working in notice period from 01/03/2015 and hence, it would be difficult to take leave to attend the Courts. In the order dated 31/01/2015, Principal Judge, Family Court, Mumbai has specifically passed an order that by agreement of both parties and convenience of respondent wife/petitioner herein, trial to proceed from 02/03/2015 to 13/03/2015 on a day to day basis at 2.45 pm daily. Although, the order shows that the trial was scheduled as per the convenience of the respondent wife, respondent wife filed an application seeking modification of the order. Both the parties were heard.

5) Learned Family Court in the order dated 31/01/2015 has observed that :

“7. The petitioner-husband has argued that the interim order of maintenance was passed by this Court on 01.09.2012 which was meant to be till final hearing. Hence, this application for enhancement of maintenance cannot be entertained. It was also vehemently submitted that the respondent-wife has an advocate on record. However, it is her practice to inform the High Court that this Court forced her to go on with the arguments in the absence of her advocate. However, such a situation will not arise in the present case as it was pressed by the respondent-wife today that she was ready to go on with the argument in spite of no reply filed by the petitioner-husband.

14. In view of the fact that this application at Exh. 104 has been made by the petitioner-husband for expediting the case and making it time bound, the respondent in her reply has admitted the same by saying that an early closure of this matter will allow her to devote enough time to look for a new job.

16. Since both the parties are interested in an early resolution of the matter, I can allot afternoon sessions on a daily basis for two weeks according to the choice and convenience of both the parties. Hence, application at Exh. 104 can be disposed off accordingly.

18. Now since I am deciding the main petition by consent of both the parties on a day-to-day basis, I need to go into the merits of this application as a final conclusion would be reached shortly.”

6) Family Court has rejected the application seeking rescheduling the trial and has passed an order reiterating that by agreement of both parties and convenience of respondent-wife, trial to proceed from 02/03/2015 to 13/03/2015 on day-to-day basis at 2.45 pm. Learned Principal Judge has further observed that the focus is on completing the trial, hence, all interim applications, contempt applications, if filed henceforth shall be heard only at the time of final hearing of the arguments.

7) Petitioner herein i.e. respondent in Family Court Petition No. A-491 of 2012 has challenged the orders. Her main contention is that she cannot attend the Trial Court for two weeks continuously as she cannot get leave for two weeks. According to her, she is likely to lose her job in the eventuality that she takes leave. It is pertinent to note that she has not filed any record from the office of her employer, stating that she cannot take leave or leave would be denied to her. She further submits that it would hamper her service conditions, not that she cannot take leave. In fact, Family Court, while passing the order had considered the convenience, more particularly of the petitioner-wife. It is further pertinent to note that respondent-husband herein travels from Kerala to Mumbai only for the purpose of attending the Court matters. At this stage, petitioner-wife submits that he does not come from Kerala, but comes from Bangalore. In any case, it is a matter of record that he has to come from a different State. Although, petitioner-wife had consented before the Family Court for expediting the trial and dates were fixed as per her convenience,

8) In fact, the trial has been pending for the last four years. Respondent herein had filed a petition for divorce in the State of Kerala. At the request and behest of the petitioner herein and by the orders of the Hon'ble Apex Court, trial has been transferred to Mumbai. Respondent herein submits that in fact, trial has been delayed on account of dilatory tactics at the instance of petitioner-wife. However, according to her, she had difficulties. She submits that due to the interim applications filed by the respondent-husband, trial has got delayed. Family Court has recorded sound and justifiable reasons for expediting the trial and keeping it on day to day basis. Family Court has also observed the conduct of the parties concerned.

9) It is a matter of record that petitioner herein had filed an application seeking transfer of the matter from the Court of Principal Judge, Family Court to any other Judge in the Family Court. Application was registered as Miscellaneous Application No. 209 of 2014. By an order dated 19/01/2015, this Court (Coram: Smt. R. P. Sondurbaldota, J.) has also assigned reasons for rejecting the application. Hon'ble Judge in the order dated 19/01/2015 has observed that petitioner herein had sought adjournments on the ground of ill-

ism

health of the Advocate for the applicant. It was also stated in the said proceeding that respondent-husband comes from Bangalore and not from Kerala. Hon'ble Judge had also recorded that he has to travel from outside to attend the Court proceedings in Mumbai. On the day of passing of order i.e. on 19/01/2015, respondent-husband was also under cross-examination. In spite of several orders passed by the Courts on several occasions, it prima facie appears that on every occasion, matter is being adjourned or rescheduled at the request of petitioner herein and with her convenience. Courts are taking sympathetic view. Today also, this Court has once again considered the convenience of the petitioner herein. Although, no fault is found with the order passed by the Family Court, in the interest of justice, once again trial is being rescheduled, only to consider the convenience of the petitioner herein. In any case, petitioner is not happy with rescheduling. She has agreed to cross-examine the respondent-husband on 04/03/2015, 05/03/2015 & 07/03/2015 voluntarily. This is a solemn undertaking given to this Court.

10) In order to expedite the trial and put an end to disputes between parties, this Court is inclined to fix further dates on 13/03/2015, 19/03/2015,

20/03/2015 & 27/03/2015.

11) Both parties give undertaking to this Court that when the witness is in the witness box, they would not refer to trifling events during the period of matrimonial disharmony. In any case, it appears from the submissions advanced across the bar that both the parties are interested in divorce, however, both of them see to push the blame on the other spouses. The grounds are different, but ultimately the prayer of both the parties is divorce and to put an end to their matrimonial relationship. It is a matter of record that in the interregnum, the question was about the maintenance as well as access to their only Child Tabita. Learned Family Court has rightly held that those would be a subject matters of final hearing.

12) Petitioner herein submits that she has also filed proceedings under Protection of Woman from Domestic Violence Act, 2005 which is pending at Bangalore. Petitioner had also filed petition under section 498 (A) of Indian Penal Code. It appears from the records that initially 'B' summary was filed. Petitioner wife submits that there was no proper investigation and therefore,

ism

'B' summary was filed. She has already filed an appeal seeking reopening of the said case which is pending in Bangalore. Parties are at logger-heads. During the pendency of the petition seeking divorce, respondent has filed a petition seeking permanent custody of their only child Tabita.

13) Petitioner herein submits that she has not yet received the copy of the custody petition. Be that as it may, it is apparent that Family Court as well as High Court are considering the petitions between petitioner and respondent over every trivial issue. Grievance of the respondent-husband is that the proceedings are protracted by the wife and it is high time that the proceedings are brought to its logic end and therefore, this Court is rescheduling the trial. This Court is hopeful that petitioner should be satisfied by the rescheduled trial since it is only her convenience which is being considered from day one. All other issues raised in the application need not be considered at this stage.

14) Petitioner in the present petition itself has prayed for transfer of the matter from Principal Judge Family Court, Mumbai to any other Judge of the Family Court. The said issue was already considered in the order dated

19/01/2015. No separate application has been filed seeking transfer, making out specific grounds to demonstrate that petitioner would be prejudiced. Submissions are being made orally that the Family Court is prejudiced, however, after observing the orders passed by the Family Court, this Court is of the opinion that Principal Judge Family Court had considered the contentions impartially, without having any prejudice against petitioner-wife. In fact, trial has been rescheduled as per convenience of the petitioner-wife. It is only the apprehension of the petitioner that Principal Judge, Family Court is biased against her and that she is forcing her to settle the matter. As a Judge of Family Court, Principal Judge is only making an endeavour to pacify the relations between the parties and see to it that they arrive at amicable settlement and do not waste their valuable time in Courts. Family Court, seized with this particular matter would be devoting a lot of time in the present case and only as a consequence, other cases would get protracted. This Court has also observed that petition between present parties is being heard by this Court at least for the last six months. Today also, I have heard this matter from 4.00 pm. It is almost 5.30 pm and this Court is rescheduling only the trial. Naturally rest of the board had to be discharged. Only because a

party apprehends prejudice, matter cannot be transferred. Petitioner herein has placed reliance upon the Judgment of Hon'ble Division Bench in the case of **Julie Jayesh Shah V/s Jayesh Trilok Kumar Shah**, wherein Division Bench of this Court (Coram: V. M. Kanade & P. D. Kode, JJ) has considered the facts of that particular case where in spite of the stay of further proceedings granted by the Principal Judge Family Court till 10/09/2012, hearing the application for access prior to that date was uncalled for and unwarranted. The facts in the said case are not applicable to the present case. Hence, oral prayer for transfer as on today and as a part of the present application is being rejected.

ORDER

- (i) Writ Petition is partly allowed.
- (ii) The trial in Petition No. A-491 of 2012 is rescheduled as follows:
- (iii) Petitioner herein shall cross-examine respondent-husband on 04/03/2015, 05/03/2015 & 07/03/2015. Thereafter, trial shall be fixed for recording of evidence of the respective parties on 13/03/2015, 19/03/2015, 20/03/2015 & 27/03/2015.
- (iv) Prayer for transfer of Petition No. A-491 of 2012 is rejected.

- (v) Rule made absolute in above terms.
- (vi) Writ Petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)