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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2827 OF 2014

Mira Anupam Nemani .. Petitioner
Vs.
Anupam Nemani .. Respondent

Mr.S.M.Gorwadkar a/w Ravi Girish Shinde, Advocate for the
Petitioner.
Ms.Sonali Kunekar a/w Ms.Bhakti A.Sutar i/b Mr.Vikas K.Mahangare,
Advocate for Respondent.

CORAM : R.G.KETKAR, J.
DATE : 17th February, 2015

P.C. :

. Heard Mr.S.M.Gorwadkar, learned Counsel for the
petitioner and Ms.Sonali Kunekar, learned Counsel for the respondent
at length. Rule. Mr.Vikas K.Mahangare waives service for the
respondent. At the request and by consent of the parties, rule is made
returnable forthwith and the petition is taken up for final hearing.

2. By this petition under Article 227 of the Constitution of
India, the petitioner-wife has challenged the judgment and order
dated 05/08/2013 passed by the learned Judge, Family Court No. 7,
Mumbai below Exhibit 1 in Misc. Application No. 239 of 2009. By that
order, the Family Court stayed hearing of the petition till the decision
of the Family Court Appeal pending before this Court. The Family
Court further directed the parties to submit latest development of the
appeal on affidavit pending before this Court.

3. In support of this petition, Mr.Gorwadkar submitted that Petition No. A-503 of 2004 was instituted by the respondent for divorce and for dissolution of the marriage against the petitioner herein. By the judgment and decree dated 18/03/2009, the petition was allowed. Aggrieved by that decision, the petitioner preferred appeal in this Court. The respondent has also preferred cross appeal against that decree. Both the appeals are pending in this Court. He further submitted that while disposing of the petition for divorce, the Family Court noted that the petitioner herein did not file application under section 25 of the Hindu Marriage Act, 1955 (for short 'Act') for permanent alimony. She had filed separate Petition No. C-188 of 2001 under the Hindu Adoptions and Maintenance Act, 1956. At the time of trial, she was made aware that both petitions can be clubbed together. However, as per the request of the parties, the Family Court proceeded to decide the petition for divorce. Under such circumstances, no alimony could be awarded to the petitioner herein under section 25 of the Act as no application was filed. He, therefore, submitted that the Family Court was not justified in staying the proceedings in view of pendency of the appeal in this Court as the issue of permanent alimony under section 25 is not the subject matter of challenge.

4. On the other hand, Ms.Kunekar supported the impugned order. She submitted that the Family Court, after considering the

pendency of appeals in this Court, observed that the High Court is the competent authority to correct error, if any, committed by the Family Court while deciding the petition and if petition under section 25 is decided, it will amount to interference in the judicial work of the High Court. The order of staying petition is purely discretionary order, therefore, no case is made out for invoking powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the respondent had filed petition for divorce in the Family Court. That was decreed on 18/03/2009.

Paragraph 197 of that order reads as under :

“Lastly, I would like to mention that in this case the respondent has not filed application under section 25 for permanent alimony. There is her separate Petition No. C-188/2001, under Hindu Adoptions and Maintenance Act. At the time of trial she was made aware that both the petitions can be clubbed together. However, as per the request of the respondent (the Petitioner herein), my predecessor has proceeded with the trial of this petition. Hence, without any application in this petition, no alimony can be awarded to respondent under Section 25 of the Hindu Marriage Act.”

6. Perusal of paragraph 197 extracted hereinabove shows that the Family Court recorded that the petitioner did not file application under section 25 for permanent alimony. Without application for permanent alimony, the Family Court declined to award alimony to the petitioner under section 25 of the Act. In other words, issue of grant of permanent alimony is not the subject matter

of the proceedings in Petition No. A-503 of 2004 and the appeals filed by the parties. In view thereof, I do not find any justification on the part of the Family Court in observing that if he decides the proceedings under section 25 of the Act, during the pendency of the Family Court Appeal in this Court, it will amount to interference in the judicial work of the High Court. The said premise and/or foundation is wholly misconceived as the issue of grant of permanent alimony is not the subject matter in Family Court Appeal pending in this Court.

7. In view thereof, the stay granted by the Family Court stands vacated and the Family Court is directed to decide the petition under section 25 of the Act on the basis of the evidence on record and on its own merits and in accordance with law.

8. It is made clear that while vacating the stay granted by the Family Court, I have not expressed any opinion on the merits of the case.

9. The Family Court is requested to decide the petition under section 25 within 4 weeks from the production of authenticated copy of this order. Order accordingly.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)