

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3888 OF 2015

Rameshwar Madhavrao Bachkar	... Petitioner
Vs.	
Sau. Pratibha R. Bachkar	... Respondent

Mr. Ashok B. Tajane, Advocate for the petitioner.

Ms. Neelam Bakshi i/b. Ms. Seema Chettri, Advocate for the respondent.

CORAM	:	MRS.MRIDULA BHATKAR, J.
RESERVED ON	:	AUGUST 12, 2015
PRONOUNCED ON	:	SEPTEMBER 2, 2015.

ORDER

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally at the stage of admission.

2. In this Writ Petitioner, the petitioner/husband has challenged the order dated 18th March, 2014 and 19th January, 2015. The respondent/wife has filed the petition bearing no. A-250 of 2013 against the petitioner/husband under section 9 of the Hindu Marriage Act for restitution of conjugal rights. She has also filed the petition bearing No. E-122/2013 under section 125 of Cr. P.C. for grant of maintenance. By the order dated 18th March, 2014 the learned Judge of the Family Court, Nashik directed both the parties that common evidence is to be recorded in Petition No. A-250 of 2013 and the matters can be disposed of by the common judgment. Thereafter, common evidence was produced by the respondent/wife at Exhibit 20. At the request of petitioner/husband, the matter was adjourned and it was fixed on 27th November, 2014. However,

the advocate of the petitioner/husband refused to take cross-examination. So, order of No cross-examination was passed. Then he moved an application for setting aside order of No Cross. Application Exhibit 34 was allowed and petitioner/husband was allowed to cross-examine but cost of Rs.2,000/- was imposed. Again, the petitioner/husband filed Application Exhibit 35 for recalling the order dated 18th March, 2014 passed by the Family Court of common recording and common disposal of two petitions. The learned Judge of the Family Court while rejecting the said Application on 19th January, 2015 has observed that her predecessor, who retired on 31st August, 2014, has passed the order on 18th March, 2014 and till then the petitioner/husband did not move any application before that Judge. The learned Judge did not find any merit in the matter and therefore, rejected the Application and directed the parties to proceed with the matter.

3. The learned counsel Mr. Tajane submitted that the Family Court has no power to pass the order of common recording of evidence in the criminal matter and civil matter which are filed in the Family Court. He submitted that for criminal matters filed under section 125 of Cr. P.C., a procedure of summons cases under Criminal Procedure Code is required to be followed and the civil procedure is not applicable to those matters, therefore, under section 10 of the Family Court Act, the Court has no power to merge the proceedings. He further submitted that under section 10(3) of the Family Court Act, in the matter of settlement of the parties, the

Court can adopt its own procedure, however, the civil and criminal matters cannot be merged, as he loses his right of Appeal if section 125 matter is clubbed and decided.

4. The learned counsel for the respondent submitted that the submissions are not in consistent with the legal position under section 10 of the Family Court Act.

5. Section 10(3) of the Family Court Act , 1984 reads as under:

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

6. It is true that the procedure adopted while conducting matters under section 125 is under section 126 of the Code of Civil Procedure. However, one has to understand that matters under section 125 are not purely criminal of nature, but proceedings are of quasi civil nature, as issue of maintenance to wife is involved and therefore, the respondent is not an accused and statement under section 313 is not recorded while dealing section 125. So, the proceedings under section 125 are not treated as purely and strictly criminal proceedings, though the power to issue warrant is given to the Court. The learned counsel for the petitioner/husband has not properly interpreted sub-section (3) of Section 10 of Family Court Act.

7. Chapter IV of the Family Court Act, 1984 lays down the procedure which is to be followed by the Family Court. Section 9 is about the duty of

the Family Court to make efforts for settlement. Under section 9, the Family Court shall make efforts in the first instance, wherever it is possible for settlement between the parties and for that purpose, it can follow such procedure as it may deem fit. Section 9 is exclusively about the settlement and section 10 is about the procedure which is to be followed generally. Under section 10(1) of the Family Court Act, the Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court dealing with all the matters except the matters covered under Chapter IX of the Cr. P.C. for grant of maintenance under section 125 of the Cr. P.C. Section 10(2) states that for the purpose of conducting the matters of maintenance under section 125 of Cr. P.C., the provisions of Cr. P.C. and rules made thereunder shall apply to the proceedings before the Family Court. It means that the Family Court while dealing with the issue of maintenance shall follow the procedure under Cr. P.C. which empowers the Court to issue warrants, pass order of interim maintenance and follow the procedure under section 126 of Cr. P.C. Hence, the evidence is to be recorded in the presence of the respondent. However, the power to hear ex-parte are also given to the Magistrate if the respondent is deliberately avoiding the service of summons or attendance in Court.

8. Section 10(3) is divided into three parts -

- (a) Nothing in sub-sections (1) or (2) shall prevent a Family Court from laying down its own procedure. Hence, the Family Court is free to lay down its own procedure irrespective of Sub-sections (1) and (2);
- (b) The procedure can be laid down with a view to arrive at settlement in respect of subject matter of the suit or

proceedings. This portion is consistent with Section 9 because it speaks about the settlement between the parties;

- (c) The procedure can be laid down with a view to arrive at the truth of the facts alleged by the one party and denied by the other. This relates to disputed facts.

9. The question is that whether part 3 is restricted to only settlements or whether it is dehors a settlement. The procedure can be laid down to find out the truth of the facts which are agitated and contested between the parties. It is to be noted that though there is use of word “or”, it is not to be read conjunctively with the word “settlement” but it is to be read disjunctively, as the word “at” is used before the words “the truth. The double use of the word “at” in the sentence disjuncts the later clause from the earlier one. The Family Court can lay down its own procedure in respect of (i) settlement; and (ii) adjudication. Therefore, the submissions of the learned counsel that the matter under section 125 of Cr. P.C. and any other Civil Petition filed under the Family Court Act cannot be tried together, are baseless. A common evidence can be recorded by the Family Court in the maintenance matter under section 125 of Cr. P.C. and any other petition that may be divorce or custody or under maintenance and Guardian Wards Act. Thus, there is no violation of the procedure laid down under section 10 of the Family Court Act. The impugned order passed by the learned Judge of the Family Court cannot be faulted with. Hence, the Writ Petition is dismissed.

10. The learned counsel for the petitioner seeks continuation of the

interim stay granted earlier, as the petitioner wants to test the order before the Hon'ble Supreme Court.

11. In view of this, interim protection, if any, to continue till 8th October, 2015.

(MRS.MRIDULA BHATKAR, J.)