

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3655 OF 2015

Dr. Mrs. Sangeeta Amit Bhasale	... Petitioner
Vs.	
Dr. Amit Bhasale	... Respondent

Mr. Rahul S. Kadam, Advocate for the petitioner.
Mr. Abhijit D. Sarwate, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JULY 30, 2015**

P.C.:

Not on board. Upon mentioning, taken on board.

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

3. In this Writ Petition, the petitioner/wife challenges the order dated 23rd December, 2014 passed by the learned Judge of the Family Court, Pune by which the earlier order which was passed on Applications Exh. 5 and 25 dated 15th July, 2014 thereby directing the respondent/husband to pay Rs.20,000/- per month to the petitioner towards interim maintenance from the date of application, i.e. 4th May, 2012 till final disposal of the main petition. The petition involves a very peculiar issue. The petitioner/wife has filed an Application Exhibit 5 for interim maintenance of Rs.60,000/- per month. Exhibit 25 was the counter application filed by

respondent/husband for directing the petitioner/wife to pay Rs.10,000/- per month towards maintenance. These two Applications were disposed of by reasoned order on 15th July, 2014. Application Exh. 25 filed by the respondent/husband was rejected and Application Exh. 5 filed by the petitioner/wife for maintenance was partly allowed. On 16th July, 2014, the respondent/husband filed pursis that though the order is passed deciding the Application for maintenance, no arguments were advanced by the respondent/husband and as no opportunity was given to him or to his lawyer to make submissions on the point of maintenance, the said order be reviewed and set aside. On the said pursis, the learned Judge who passed the order on 15th July, 2014 directed the other side to file say. The say was filed specifically denying the contention that no opportunity was given to the parties to make submissions. Thereafter, the learned Judge was transferred and other Judge took over the charge of the said Court and the petition, being in the nature of Review Application, heard the parties and perused the roznama. As there were some entries in the roznama, the learned Judge formed an opinion that no arguments were heard on Exhibits 5 and 25 and therefore the respondent should be given an opportunity of hearing. Hence, the Review Application was allowed and both the Applications Exhibit 5 and 25 are kept for hearing.

4. The learned counsel for the petitioner has submitted that in the order dated 15th July, 2014, the previous Family Court Judge discussed

the contentions of the respondent and has considered the Application on merit and passed a reasoned order. Under such circumstances, the facts mentioned in the judgment are to be taken as truth and subsequent Judge ought to have rejected the Application for recalling the impugned order. He submitted that in the roznama also, the words "Order" on Exhibits 5 and 25 are repeatedly mentioned. This shows that these two Applications were heard and the matter was fixed for order on subsequent dates. He submitted that the order passed by the learned Judge of recalling the order dated 15th July, 2015 is illegal, which amounts to great prejudice and injustice to the wife. On merits, he submitted that the petitioner/wife has not received a single paise till today and as per the order dated 15th July, 2014, the respondent/husband is in arrears of Rs.7,50,000/-.

5. The learned counsel for the respondent while opposing this Petition has submitted that the respondent was really not heard on Exhibits 5 and 25. He also relied on the roznama wherein Application Exh. 5 was shown for arguments. He submitted that in fact the submissions were advanced by both the parties on Exhibit 19, which is on the point of production of documents by the wife. He further argued that immediately on the next day, i.e. 16th July, 2014, the respondent moved pursis before the Court asking for recalling the order, as he was not heard. He also relied on the submission on application which was presented to the Family Court for recalling the order. On merit, he submitted that the respondent/husband is

unemployed though he is holding a medical degree from Russia but it is not recognized in India. So, he has to do necessary course and therefore, he is not earning. On the other hand, the petitioner/wife is BDS and is practicing. She has regular source of income and therefore, his counter claim is on merit. He opposed the order dated 15th July, 2014 passed by the Family Court Judge.

6. Perused the submissions made by learned counsel for both the sides. In the order dated 15th July, 2014, the learned Family Court Judge has mentioned about the contentions raised by the respondent/husband on the point of giving maintenance. There is discussion in respect of his earning and thereafter the order was passed. After going through the order, it appears that the learned Judge had passed the order after hearing the parties. If so, then in the ordinary course it is not correct to withdraw the said order and especially by his successor. His successor cannot sit in the Appeal of the order passed by his or her predecessor.

7. In the present case, the facts are peculiar and that can be ascertained from the conduct of the respondent/husband. The order Exhibit 5 and 25 was passed on 15th July, 2014 and pursis was moved by the respondent/husband immediately on the next day, i.e. 16th July, 2014 and thereafter an application was moved on 28th July, 2014 wherein it was specifically mentioned that no arguments of the respondent/husband were

heard on Exhibit 5 and 25. This Application ought to have been decided by the same Judge, however, it appears that the learned Judge gave opportunity to the petitioner/wife to say and in between the learned Judge was transferred. Considering this facts and as the Court has to adhere to the number of *audi alteram partem*, it is necessary to give audience to all the parties. It appears that there is no illegality in recalling the said order. Both the parties will be given opportunity to put up their submissions and learned Judge will decide the matter on merits afresh and under such circumstances, no prejudice will be caused to either of the parties.

8. However, a grievance by the learned counsel for the petitioner/wife that till today no money is paid to her. Without going to the merits of the matter, though the petitioner is BDS and respondent is also highly qualified, the petitioner being a wife, the respondent/husband is hereby directed to deposit Rs.2,00,000/- immediately on or before 6th August, 2015 in the Family Court as a temporary arrangement. As the matter is to be heard on 25th August, 2015, the learned Judge preferably to hear the matter on that day or on or before 3rd September, 2015.

9. Writ Petition is disposed of.

(MRS.MRIDULA BHATKAR, J.)