

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5345 OF 2014

Shri Pramod Krishnarao Aher ... Petitioner
vs.
Sou. Leena pramod Aher ... Respondent

Ms. Suverna Telegote, Advocate for the petitioner
Mr. D.P.Adsule, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 30th January, 2015.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein is challenging the correctness and the validity of the order dated 25.3.2014 passed by the Family Court, Nashik in Petition No.A-147 of 2013. The petitioner herein has filed a Hindu Marriage Petition under Section 13(1)(ia) of the Hindu Marriage Act against the respondent on 30.3.2013. During the pendency of the said petition, the respondent herein filed an application under Section 23 of the Hindu Marriage Act on 27.11.2013. The matter was posted for appearance on 4.1.2014. On 18.2.2014, the Family Court has passed an order that the petitioner has failed to file Say. Hence, the matter

was to proceed without Say. The petitioner then filed Misc. Application seeking liberty to file Say in the interest of justice, although the Say was not filed on the first given date. The learned Family Court has observed that since no Say order is passed the opponent i.e. the petitioner had not filed Say. No sufficient reason was shown. Hence, the application for filing Say was rejected. It is true that the application ought to have been accompanied with the written Say. There was an inadvertent error on the part of the learned Advocate representing the petitioner and hence only an application was filed which was not accompanied by Say and hence the Family Court had rightly rejected the application.

3. In the interest of justice, it would be necessary to grant liberty to the petitioner to file his Say in the main proceedings as well as in the Misc. application. The respondent herein has filed an application under Section 125 of Cr.P.C. However, no orders are passed on the said application. In view of this, the learned Family Court is directed to decide the application under Section 125 of Cr.P.C. within four weeks from the date of receipt of this order. The petition herein deserves to be allowed upon imposing costs upon the petitioner.

ORDER

- (i) The Petition is allowed.
- (ii) The order dated 25.3.2014 passed by the Family Court, Nashik, is hereby

quashed and set aside.

(iii) The petitioner shall file a fresh application accompanied by Say and the Demand Draft or Pay order of Rs.5,000/- within one week from today.

(iv) Parties to act on an authenticated copy of this order.

4. Petition is allowed in the above terms and disposed of. Rule is made absolute.

(SMT.SADHANA S.JADHAV, J.)