

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6498 OF 2014**

**Dr. Ashish Mehta**

**.. Petitioner**

**Versus**

**Mrs. Chaula Ashish Mehta and another**

**.. Respondents**

**Ms. Krupali H. Rajani, Advocate for the Petitioner.**

**CORAM : R.M. SAVANT, J.**

**DATE : 13<sup>th</sup> JANUARY, 2015**

**PC.**

1. The writ jurisdiction of this Court is invoked against the order dated 30<sup>th</sup> December, 2013 passed by the Learned 6<sup>th</sup> Joint Civil Judge, Senior Division, Thane, by which order the application Exh.46 filed by the Petitioner came to be rejected.

2. The Petitioner herein is the Applicant who has filed Marriage Petition No.412 of 2011 seeking a decree of divorce against the Respondent No.1 herein on the ground of adultery. It is the case of the Petitioner that the Respondent No.1 who is his wife is in an adulterous relationship with the Respondent No.2 herein. All the three parties are doctors by profession and presently are in Canada. It appears that in the present Marriage Petition, the Petitioner herein has obtained DNA report

on the basis of the Mouth Swab of the child Arushi and himself. The said report is to the effect that the chances of the Petitioner being the biological father of the child Arushi are non-existent i.e. zero. The said DNA report is on record of the instant Marriage Petition. It is thereafter that the instant application Exh.46 came to be filed by the Petitioner seeking the relief that the Petitioner, the child Arushi and the Respondent No.1 herein i.e. wife be subjected to the DNA test. The Trial Court has rejected the said application interi-alia on the ground that since the report in respect of the DNA test of the Petitioner Dr. Ashish Mehta is already available, the necessity of again subjecting the child Arushi to the DNA test is not warranted. The second ground is that the blood sample which has to be collected for DNA from the person, the consent of that person is required, in the instant case the consent of the child Arushi has not been obtained, even the consent of the Respondent No.1 to collect the sample of Arushi has not been obtained. The third ground is that in so far as the case of adultery is concerned, since the DNA report of the Petitioner is already on record, it would always open for the Petitioner having regard to Section 112 of the Indian Evidence Act to bring such material on record to show that he is not the father of the child Arushi. The Trial Court has thereafter observed that the evidence in support of non access must be clear, distinct, satisfactory, cogent and conclusive. As indicated above, the Trial Court has accordingly

rejected the application Exh.46.

3. The learned counsel appearing on behalf of the Petitioner sought to draw this Court's attention to the statement appearing in paragraph 5 of the instant Marriage Petition as also the averments in paragraphs 42 and 43 of the M. J. Petition No.A-736 of 2009 which was filed by the Respondent No.1. In so far as the averments made in paragraphs 42 and 43 are concerned, in paragraphs 42 and 43 the Respondent No.1 who is the Petitioner has stated to the following effect :-

“42. The Petitioner states and submits that sometime in or about mid 2006, this Petitioner grew friendly with a man and indulged in an intimate relationship.

43. The Petitioner states and submits that in general, life was smooth and when Arushi was born on 19.04.2007.”

4. In so far as the instant Marriage Petition is concerned, the Petitioner has stated in paragraph 5 that in view of the fact that his apprehension and doubt had some weightage and therefore he underwent the DNA test to ascertain the fertility of the child Arushi and the Petitioner received the final certificate of DNA analysis, wherein it has been stated that the Petitioner is excluded as biological father of the child Arushi as the percentage of probability of paternity was merely 0.00 percent. In my view the said averments do not further the case of the Petitioner. In so far as the application Exh.46 is concerned, in view of the grounds on the basis of

which the Trial Court has rejected the said application Exh.46 which have been already adverted to herein above, the order passed by the Trial Court cannot be faulted with. In so far as subjecting a minor to DNA test is concerned, one of the relevant consideration is the effect or the impact the same would have on the psyche of the child as well as her/his future. In my view, applying the said consideration, also the impugned order passed by the Trial Court cannot be faulted with. No case for interference is therefore, made out. The Writ Petition is accordingly dismissed.

**[R.M. SAVANT, J]**