

Meenu w/o. Sunil Agarwal	...	Petitioner
Vs.		
Sunil s/o. Omprakash Agarwal	...	Respondent

CORAM : R. G. KETKAR, J.
DATE : 25TH FEBRUARY, 2015

Heard Mr. Saraogi, learned Counsel for petitioner and Mr. Bubna, learned Counsel for respondent at length.

3. In support of this Petition, Mr. Saraogi submitted that the learned trial Judge did not decide the application properly. He submitted that the impugned order was passed on the same day on which the application was made. In other words, without affording fair and reasonable opportunity to the petitioner, the impugned order striking out the defence was passed. The order striking out defence has serious consequence, and therefore, the Family Court ought to have given opportunity to defend the application. He further submitted that the Family Court also committed error in not accepting the explanation given by the petitioner namely, 'under compelling circumstances, she

was required to leave India.' He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Bubna supported the impugned order. He submitted that the application exhibit-22 under Order 39, Rule 11 of C.P.C. was made on 01.04.2014. On that application, the learned trial Judge passed order "other side to say". The petitioner filed her say on 07.04.2014. The impugned order was passed on 26.05.2014. Thus, petitioner was given fair and reasonable opportunity to defend the application. He further submitted the learned trial Judge has considered the explanation given by the petitioner and found that the said explanation was not worthy of acceptance. He submitted that in view thereof, no case is made out for invocation of 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 far as the submission made by Mr. Saraogi that the petitioner was not given fair and reasonable opportunity to defend the application is concerned, the said contention is stated to be rejected. As noted earlier, application exhibit-22 under Order 39, Rule 11 was made on 01.04.2014. Reply was filed on 07.04.2014 and the impugned order was passed on 26.05.2014. It, therefore, cannot be said that without affording fair and reasonable opportunity to the petitioner, the impugned order was passed. As far as the explanation given by the petitioner that under compelling circumstances, she was required to leave India and go to U.S.A. is concerned, the Family Court noted that the respondent-husband filed application exhibit-15 seeking injunction against the petitioner restraining her from removing both the children from the jurisdiction of the Family Court. On the day of filing of application at exhibit-15, the petitioner was present in the Court. Her say was called

on that application. The petitioner gave undertaking in her handwriting on exhibit-15 to the effect that “I do not intend to travel and remove children till next date of hearing”. The Family Court considered the undertaking and passed the order to the effect that “the respondent (petitioner herein) shall abide with her undertaking till the filing a detailed say by her”. The matter was posted on 13.03.2014 for filing a detailed reply by the petitioner on exhibit-15. However, prior to that, the petitioner left the country alongwith her children.

6. The Family Court, in paragraph 8, noted that the petitioner did not seek any permission of the Court. She did not even intimate the said fact to the Court. Though the petitioner was fully aware of the undertaking given to the Court and that the order directing her to abide with her undertaking, it was incumbent on the part of the petitioner at least to give intimation to the Court prior to leaving the country. The Family Court did not accept the explanation given by the petitioner that she was required to leave country under compelling circumstances. The Family Court, therefore, recorded that from the conduct of the petitioner, it is evident that she has deliberately and knowingly committed breach of undertaking given by her. In view thereof, the Family Court passed the impugned order.

7. After hearing the learned Counsel appearing for the parties, I do not find that the Family Court committed any error in passing the impugned order. In any case the petitioner can invoke the provisions of Order 39, Rule 11(2) C.P.C. by making or amending for the default or contravention or breach to the satisfaction of the Family Court. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)