

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6327 OF 2015

Udita Nabha	... Petitioner
vs.	
Ranjeet Nabha	... Respondent

Mrs. Taubon Irani, for the Petitioner.
Mr. A.H.H. Ponda a/w. Mr. Suraj Iyer, Mr. Kunal Vaishnav and
Mr. Girish Kalla i/b. Gansh and Co., for the Respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JULY 09, 2015

PC.:

. This Petition is directed against the order dated 1st July, 2015 passed by the learned Judge, Family Court No. 6, Bandra, Mumbai on Exhibit 78 i.e. the application made by the Petitioner/wife for issuance of witness summons. The marriage Petition of the Petitioner bearing No. A-2400 of 2011 which was made for alimony is pending before the Family Court, Bandra wherein the evidence of the Petitioner/wife is recorded and now she moved the application for issuance of witness summons to other witnesses which is marked as Exhibit 78. In the said application she prayed that witness summons

to be issued to four witnesses which are enlisted therein. Out of four witnesses, witness Nos. 2 Kanwarani Sohinder Nabha and No. 5 Eino Mehta are on the issue of property of Kanwarani Nabha i.e. the mother in law of the Petitioner/wife and the other witness No. 3 Lloyd Pinto is on the point of income tax returns from India and from United States of America of Respondent/husband and witness No. 4 Ganesh Iyer is an officer from HDFC bank, Fort, Mumbai on the point of details of the account of Respondent/husband in HDFC bank.

2. The learned counsel for the Petitioner/wife has submitted that the order passed by the learned Judge of the Family Court is illegal as the learned Judge has not taken into account the previous application and the contentions raised therein by the Petitioner/wife; so also the conduct of the Respondent/husband of not producing the documents ordered earlier by the learned Judge of the Family Court. She submitted that the learned Judge while rejecting the application has wrongly held that the Respondent/husband will produce the documents which are asked for and therefore the application is prematured. The learned Judge has unnecessarily given importance to the fact that the matter is time bound and is to be decided on or

before 20th July, 2015. It is further submitted that the learned Judge of the Family Court while rejecting the application has wrongly interpreted the ratio laid down in the cases which are relied by the Respondent/husband. She submitted that the learned Judge has lost sight of the spirit of Order 16 Rule 1(2) of the Code of Civil Procedure and when such application for summons is filed, the Court has taken into account the purpose for which the witnesses are proposed to be summoned. The Petitioner in her application(Exhibit 78) has specifically given the reasons for calling these witnesses. She submitted that the learned Judge of the Family Court by its order dated 6th April, 2013 has directed the Respondent to produce the documents narrated in the application(Exhibit 31). However, till today, the Respondent has not complied that order. Pursuant to the said order, a letter was sent by the Petitioner/wife to Respondent/husband for production of the said documents. She submitted that the claim of the Petitioner is for maintenance and therefore the evidence of these four witnesses in order to bring the financial condition of the Respondent/husband, is necessary.

3. The learned counsel for the Respondent/husband has

submitted that the scope of the Writ Petition under Article 227 of the Constitution of India is limited and the power of the Superintendent under Article 227 of the Constitution of India is to be used sparingly. He submitted that the issuance of summons to the witnesses is a interlocutory order and even if two views are possible, it can not be considered that then such order of the trial Court is not to be entertained within the scope of Article 227 of the Constitution of India. He submitted that it should not be an error in law. He supported the order passed by the learned Judge of the Family Court. He submitted that no specific reasons are given by the Family Court for issuance of summons to these witnesses. He submitted that the Respondent is having only one account in HDFC bank. In the application (Exhibit 78) the number of the said account is given and the statement of the said account is already produced by the Respondent/husband. He further submitted that the Respondent has already produced his income tax returns of the relevant period which is directed by the Court and also he is going to produce the income tax returns of the year 2015, during his evidence. He further submitted that the witness No. 2 Kanwarani Sohinder Nabha is his mother and her property can not be considered for deciding his

income or earning of the Respondent/husband. The witness No. 5 Eino Mehta is the valuer of the property of his mother and therefore the evidence of these two witnesses is not required to decide the issue.

4. Perused the order passed by the learned Judge of the Family Court and the documents which are produced before the Court. So also the application (Exhibit 78) and previous orders which are pointed out by the parties.

5. The case is made time bound till 20th July, 2015. The statement to that effect is made in the order as a matter of fact. The order passed by the learned Judge of the Family Court is well reasoned and he has dealt with the reasons given by the Petitioner for issuance of the witness summons to the witnesses enlisted in the application. When the application is filed for issuance of witness summons before the Court, the Court has to consider the relevancy of the evidence of those witnesses and whether it is going to be helpful to the Court to adjudicate the issue before the Court. Not in each and every application filed before the Court for issuance of witness

summons, Court has to issue summons. A party is required to give reasons for calling the witnesses and the learned Judge has to specify whether the evidence of such witness has bearing over the issue or not. The learned Judge of the Family Court has rightly held that the Petitioner will get an opportunity to cross examine the Respondent/husband on the point of documents which he has not produced and the documents which are required to be produced.

6. Considering these circumstances, I do not find any illegality in the order passed by the Judge of the Family Court.

7. Hence, the Petition stands dismissed.

(MRS.MRIDULA BHATKAR, J.)