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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7562 OF 2014

Sameena Ehsan Ul Haque Shaikh .. Petitioner

Vs.

Ehsan Ul Haque Shaikh .. Respondent

Mr.J.S.Kini a/w Mr.Suresh Dubey, Advocate for the Petitioner.
Mr.Shivaji K.Farakate, Advocate for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 12th February, 2015

P.C. :

. Heard Mr.J.S.Kini, learned Counsel for the petitioner and Mr.Shivaji Farakate, learned Counsel for the respondent at length. Rule. Mr. Farakate waives service. At the request and by consent of the parties, rule is made returnable forthwith and the the petition is taken up for final hearing.

2. By this petition under Article 227 of the Constitution of India, petitioner-wife has challenged i) order dated 17/07/2014 below Exhibit 21 ii) order dated 17/07/2014 below Exhibit 22 and iii) order dated 17/07/2014 below Exhibit 23 passed by the learned Judge, Family Court No.7, Mumbai in in Petition No.B/4 of 2013. By order dated 15/04/2014, the Family Court had imposed costs of Rs.3,000/-

and expenses of witness Rs.1,000/-.

3. The petitioner filed application Exhibit 21 seeking relief of reduction of costs imposed. By the order dated 17/07/2014 below Exhibit 21, the Family Court partly allowed the application and directed the petitioner herein to pay costs of Rs.1,500 and expenses of Rs.1,000/- and accordingly modified order dated 15/04/2014.

4. By order dated 17/04/2014 below Exhibit 22, the Family Court rejected the application for framing following additional issues :

(a1) Whether the respondent would have rights in the suit property in her capacity as the wife of the petitioner, de hors the position as to whether she has contributed for the purchase of the suit flat.

(b) Whether the divorce that petitioner alleges to have given to the respondent is valid in the eyes of law.

(b1) For such further and other reliefs as the facts of the case may require.

5. By order dated 17/07/2014 below Exhibit 23, the Family Court rejected the application taken out by the petitioner for excluding from consideration evidence of Rahmat Ali Quazi examined by the petitioner.

6. Mr.Kini invited my attention to paragraph 5 of the application dated 16/04/2014 Exhibit 21 and submitted that having regard to the fact that the petitioner is a house-wife looking after two children with extreme difficulty, the order dated 15/04/2014 imposing costs may be recalled. Mr.Farakate, on the other hand, submitted that petitioner is delaying the trial by seeking

adjournments. In my opinion, in such contingency, the Family Court should have insisted upon the petitioner to give undertaking by extending full co-operation for the early disposal to the trial. It is only in case of breach of undertaking, the Family Court should have imposed costs. Mr.Kini, upon taking instructions from the petitioner who is present in the Court, makes a statement that the petitioner will not seek undue adjournment and will extend fullest co-operation for early trial of the petition. The statement made by Mr.Kini is accepted in the form of undertaking. In view thereof, the order dated 17/07/2014 below Exhibit 21 is set aside and application is allowed.

7. As far as the order below Exhibit 22 is concerned, having regard to paragraph 6 of the written statement, where the petitioner has specifically contended the alleged divorce given by the respondent herein to the petitioner is not in accordance with the decision of the Full Bench of this Court, the Family Court ought to have framed issues No. (a1) and (b) as suggested in the application dated 16/04/2014.

8. In view thereof, order dated 17/07/2014 is quashed and set aside and application Exhibit 22 is partly allowed. The Family Court shall frame following additional issues.

(a1) Whether the respondent would have rights in the suit property in her capacity as the wife of the petitioner, de hors the position as to whether she has contributed for the purchase of the suit flat.

(b) Whether the divorce that petitioner alleges to have given to the respondent is valid in the eyes of law.

9. As far as order dated 17/04/2014 below Exhibit 23 is concerned, having regard to the fact, the validity of the divorce given by the respondent is questioned, I do not find that any error is committed by the Family Court in passing the order below Exhibit 23. In other words, respondent will proceed with examination of Rahmat Ali Quazi.

10. It is also made clear that in case, the respondent does not examine any other witness in support of his contention as regards validity of divorce, the petitioner will be at liberty to apply for recalling the respondent herein for his future cross examination, in view of framing of additional two issues extracted hereinabove.

11. Subject to above, rule is made partly absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)