

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8236 OF 2015

Mrs. Tricia Rosario.] ... Petitioner

Versus

1. Mr. Ivan Rosario,]
2. The State of Maharashtra.] ... Respondent

Mr. Mohan Waghmode a/w Ms. Kranti S. S. Anand for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 09, 2015

P. C. :-

1. Rule.
2. Notice has already been issued to the parties that this matter will be disposed of finally at the stage of admission.
3. Mr. Mohan Waghmode, learned Counsel for petitioner, has stated that service has been effected upon the respondents and necessary affidavit of service has been filed.
4. The challenge in this petition is to the order dated 08/07/2015 by which the petitioner's application below Exh.125

seeking recall of order dated 19/05/2015 has been dismissed. By the order dated 19/05/2015, the Family Court declined to recall the witness and afford opportunity to the petitioner to examine him in support of her case.

5. The record indicates that there was some lapse on the part of the petitioner in payment of 'Bhatta' charges and further, on one occasion when the witness appeared, neither the petitioner nor her Advocate were present. In this regard, there is reference to some material which indicates that on the said date, the petitioner was unwell and her Advocate had sustained burn injuries on her leg and therefore the absence. Although the Family Court is right in stating that the petitioner should have been more diligent in the matter, this is a case where yet another opportunity requires to be granted to the petitioner. Mr. Waghmode has assured this Court that if one more opportunity is granted to the petitioner, the petitioner will ensure that the examination of the witness proceeds without any hindrance or excuse. This assurance is accepted. The petitioner to abide by this assurance particularly because the witnesses whom the petitioner seek to summon, are bank officials/company officials and their time is not to be trifled away for such reasons.

6. Therefore, in the peculiar facts and circumstances of the present case, the impugned order dated 08/07/2015 is set aside. The order dated 19/05/2015 is also set aside. The Family Court is directed to issue yet another summons to the two witnesses and the

petitioner is directed to ensure that the examination of such witnesses proceeds on the date when such witnesses appear for the purpose of deposing in the matter.

7. Rule is made absolute to the aforesaid extent.

8. Considering that the petitioner is pursuing the matter for maintenance to herself and her 10 year old child, it will not be appropriate to impose any costs upon the petitioner. Further, the Family Court is directed to expedite the hearing in the petition, particularly since the petition was instituted in the year 2007 and the petitioner is now stated to be afflicted by a serious ailment.

9. The petition is disposed of in the aforesaid terms.

10. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)