

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8870 OF 2014**

Smt. Warsha @ Elee
Kusumchand Javeri

Petitioner

Vs

Mr.Suren Bhagwant Goregaonkar

.. Respondent

Mr.Y.S.Bhate, Advocate for Petitioner.

Mr.Pradip Chavan i/b Pradip Chavan & Associates, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 03/02/2015

PC:

1. Heard Mr. Y.S.Bhate, learned counsel for the petitioner and Mr. Pradip Chavan, learned counsel for the respondent at length.
2. Rule. Mr.Chavan waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 1.7.2014 passed by the learned Principal Judge, Family Court Bandra in Miscellaneous Application No. - of 2014 in M.J.Petition No.A-1525 of 1991. By that order, the Family Court observed that the Petition can be admitted in Family Court provided that there is prayer of charge on the husband's property and secondly to the extent of the decree passed on 17.5.1999, i.e. to the extent of

claim of Rs.6000/-. It was further observed that the prayer for enhancement cannot be entertained against the respondent herein who is brother of the deceased husband of the petitioner.

4. Mr.Bhate invited my attention to Section 7 of the Family Courts Act,1984 and in particular clauses (a) to (g) of Explanation (2) of Section 7. He submitted that in clauses (a) to (c) , a suit or proceedings between the parties to marriage are contemplated. In so far as other clauses, a suit or proceedings between the parties to a marriage are not contemplated. On the other hand, Mr Chavan submitted that the petitioner had instituted Petition No.C-1504 of 1983 under section 18 of the Hindu Adoption and Maintenance Act,1956. The petitioner's husband Narendra had instituted Petition No.A-1525 pf 1991 under section 27(b) of the Special Marriage Act for divorce. Both the petitions were clubbed together and were disposed of by common Judgment and order dated 17.5.1999. The Petition instituted by the petitioner was dismissed. The petition instituted by the petitioner's husband was allowed. The marriage between them was dissolved by decree of divorce. The husband was directed to pay maintenance at the rate of Rs.6000/- per month to the petitioner from the date of the order under section 25 of the Hindu Marriage Act,1955.

5. Mr. Chavan submitted that the petitioner's husband died on 15.3.2012. He submitted that the Family Court was justified in not entertaining prayer for enhancement of maintenance against

the respondent herein who is brother of the deceased husband of the petitioner. Perusal of the impugned order shows that the Family Court did not consider any submissions advanced by the parties and merely recorded that the prayer for enhanced maintenance is not maintainable against the respondent herein.

6. On this count alone, the impugned order requires to be set aside so as to permit the parties to agitate this point before the Family Court. Hence, the following order:

(i) The impugned order is set aside and Misc. Application No.-- of 2014 In Petition No.A-1525 of 1991 is restored to the file of the Family Court.

(ii) The Family Court will consider the contentions advanced by the parties and decide the same on the basis of the material on record and in accordance with law. All the contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(iii) The parties agree that they will appear before the Family Court on 16.2.2015 and for that, no fresh notice be issued to them.

(R.G.KETKAR, J.)