

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8953 OF 2013

Mr. Raxon Philip

.....Petitioner
(Orig. Resp. no.1)

: V/S :

Mrs. Rinku Raxon

.....Respondent
(Orig. Petitioner)

The Secretary

....Orig. Resp. no.2.

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Mrs. Kokila Venkatachalam, Advocate for the petitioner.

Mr. R.T. Lalwani i/by. Mr. Prakash Mahadik, Advocate for respondent no.1.

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Coram :- Smt. R.P. SondurBaldota, J.

15th April, 2015.

P.C. :-

1). This petition filed by the husband challenges the order dated 29th August, 2013 passed by the Family Court, Mumbai on the application at Exhibit-65. There have been contentious issues between the parties as regards the attendance to the proceedings pending in the Family Court, which is for declaration of title to a property filed by the respondent, wife. The trial in the petition has

commenced and the respondent is under cross-examination by the petitioner. The proceedings are pending before the Principal Judge of the Family Court.

2). On 29th August, 2013 the petitioner filed an application styled as “application for orders on the grounds of transferring the matter”. The prayer in the application reads as follows :-

“necessary orders be passed in view of the transfer in the interest of justice and equity.”

. The application was signed only by the Advocate for the petitioner. The supporting averments in the application for the absolutely vague were that, the petitioner had intimated the learned Advocate that his father was undergoing treatment in Apollo Hospital, Ahmedabad, Gujarat for multiple organ failure. Consequently, the petitioner could not personally remain present in the Court. The application also refers to the e-mail received from the petitioner in which he had stated that, he did not have any faith in the Court and would be going for transfer of the matter to another Court. This communication between the petitioner and his Advocate were annexed to the application.

3). By the order passed on the very day, the learned Principal Judge dismissed the application and imposed costs quantified at Rs.20,000/- upon the petitioner. The order further

records that, if the learned Advocate does not proceed with the cross-examination, there would be no option but to close the cross-examination of the respondent. Thereafter the learned Judge, by a separate order passed in rojnama, infact closed the cross-examination. There are further riders to the order. One is based on the request made by the Advocate of the petitioner for an adjournment on the ground that she wanted to challenge the order. That application was rejected with an observation that, it was a ploy to protract the trial. On the same day at 2.45 p.m. the respondent and her advocate appeared in the Court and filed an affidavit enclosing the photographs clicked by the respondent's advocate of the brother of the petitioner and an Advocate from Ahmedabad. The Affidavit was taken on file and the arguments advanced on behalf of the respondent were recorded that, the brother of the petitioner ought to have stayed back with the father and the petitioner ought to have attended the Court proceedings.

4). The learned Judge has in the impugned order noted that, the petition has been pending for five years and refers to the direction from this Court to conclude old matters. The Judge has further recorded generally that it has become a herculean task for the Court to conclude old matters when parties and their Advocates do not co-operate and the Court is left with no option but to adjourn

the matters in the interest of justice. According to the learned Judge, inspite of the indulgence shown, the petitioner and his Advocate were seen seeking vicarious pleasure in prolonging the matter to the detriment of their own case. The learned Judge then refers to the past record and grievance of the respondent who is working abroad and has to travel to India on each date of the matter.

5). The impugned order is nothing but an over-reaction to the application at Exhibit-65. Perusal of the application shows that, it was neither for an adjournment nor for transfer. If the learned Judge wanted to treat the application as one for transfer, the same ought to have been dismissed by her, by simply recording that the application was not maintainable before her. She could not have heard the application for transfer of the proceedings pending in her own Court. If the application was to be treated as application for adjournment to enable the petitioner to apply for transfer, the Learned Judge have ought to simply considered the earlier attendance by the parties, the reason stated on behalf of the petitioner for adjournment i.e. the serious ailment of the petitioner's father and decided the application accordingly in a dispassionate manner. There ought to have been a balance struck between the inconvenience caused to the respondent in travelling from abroad

on each date of the matter and the inconvenience of the petitioner in attending the matter while his father is critically ill in the hospital. It is neither for the Court nor for anybody else to decide as to who should attend to the father.

6). The conduct of the Advocate appearing for the respondent in the Family Court must also be disapproved. Clicking photographs of the Advocate for the petitioner alongwith the brother of the petitioner and the advocate from Ahmedabad, tendering the same in the Court alongwith an Affidavit and submitting that the brother of the petitioner could have attended to the father, was unprofessional and unbecoming for an officer of the Court as this entire exercise was done after the application at Exhibit-65 was disposed off. In the circumstances, the order impugned in the petition cannot be sustained. The petition is disposed off by setting aside the order dated 29th august, 2013 passed on the application at Exhibit-65. The petitioner is granted time of 2 weeks to file an application for transfer, if he so desires. Otherwise, he shall attend to the matter on the future dates diligently.

(SMT. R.P. SONDURBALDOTA, J)