

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9760 OF 2015
AND
WRIT PETITION NO. 9761 OF 2015

Bhalchandra Dattaram Korgaonkar .. Petitioner
vs.
Chitra Vasant Shirsat .. Respondent

Mr. Bhalchandra Korgaonkar, Petitioner present in person.
Mr. Sahil Mahajan a/w. Mr. U. Salunkhe for Respondent.

CORAM : M.S. SONAK, J.
DATE : 14 OCTOBER, 2015.

P.C. :

- 1) Both the Petitions can be disposed of by common judgment and order.
- 2) In Writ Petition No.9760 of 2015, the challenge is to the order dated 21.08.2015, by which the Family Court has declined to issue witness summons to certain witnesses. By application dated 04.08.2015, the petitioner applied for issuance of witness summons to Dr. Sameer Shinde, Maxcare Product Pvt. Ltd. and to Mrs. Mrunal Datar. The Family Court has held that such witnesses are not at all necessary for determining the main issues which arise in the Petition before the Family Court. The Family Court has also made reference to the decision of this Court in Writ Petition No.11342 of 2014 instituted by the very petitioner where the petitioner had applied for summoning eight witnesses to this Court, but this Court

restricted the issue of summons only two witnesses.

3) Mr. Bhalchandra Korgaonkar who appeared in person submitted that the Family Court has made reference only to the issues of cruelty, adultery and desertion, has however, forgotten to make reference to one of the main issues which arises in the Petition before the Family Court i.e. the issue of custody of his minor son. Mr. Korgaonkar further submitted that the witnesses proposed to be examined are necessary in the context the issue of custody. Mr. Korgaonkar took me to the documents and submitted that since the documents are private documents, it is necessary that they are proved by issuing summons to the said witnesses.

4) In first place, reference was rightly made by the Family Court to the order dated 18.03.2015, made by this Court in the earlier Petition instituted by the petitioner. The petitioner, in the said Petition, was insisting upon summoning eight witnesses. However, this Court upon due consideration of the matter, has held that out of eight, the evidence of only two witnesses can be considered as relevant and, therefore, the petitioner's application was allowed only in respect of two of the witnesses. Relevance of the order dated 18.03.2015 is that, it indicates that the petitioner seeks witness summons in respect of several witnesses even though the same may not be relevant for determination of the issues which arise in the Petition.

5) Secondly, the petitioner seeks to examine Dr. Sameer Shinde for proving some prescription issued by him on 23.11.2006 in respect of the

petitioner's minor son. Even with regard to the issue of custody, the said document is hardly relevant and in any case, there is absolutely no necessity of issuing summons to Dr. Sameer Shinde. The petitioner seeks to examine Maxcare Product Pvt. Ltd. for the purposes of proving a bill/tax invoice, by which, the petitioner has stated to have purchased one night latch for Rs.540/- on 05.03.2008. Again, the document is totally irrelevant and is certainly not necessary to examine some representative of the Company for the purposes of proving the said document. Finally, the petitioner seeks witness summons to Mrs. Mrunal Datar in the context of some receipt dated 09.04.2013 in an amount of Rs.200/- and some literature concerning Spelling Bee context. Again, the documents are irrelevant and there is absolutely no necessity for examining Mrs. Mrunal Datar. The petitioner states that he has himself obtained orders for expeditious disposal of the petition before the Family Court. However, the impression which the petitioner gives is that he is himself bent upon to delay the proceeding by filing such frivolous applications. There is absolutely no jurisdictional error in the making of impugned order. There is no case made out to interfere with the impugned order.

6) Accordingly, this Petition is dismissed with cost of Rs.10,000/- (Rs. Ten Thousand) which the petitioner shall pay to his minor son on or before 06.11.2015. The Family Court to ensure that such cost of Rs.10,000/- (Rs. Ten Thousand) are paid by the petitioner to the

respondent, so that respondent is able to use the same in the interest of minor son Balkrishna.

7) In Writ Petition No.9761 of 2015, the challenge is to the order dated 20.07.2015, by which the Family Court has declined to declare Mr. Vijaykumar S. Kadam, Assistant Police Inspector, as hostile. As noted earlier, by order dated 18.03.2015, the petitioner was permitted to be issued witness summons, to two out of eight witnesses. One of the two, was the witness Mr. Vijaykumar Kadam. Witness summons was permitted to issue to this Police Officer, as it was the case of the petitioner that his complaint to the Police against the respondent, had been registered as noncognizable complaint and further, it was urged by the petitioner that the witness had informed the respondent about the filing of petition for divorce. The knowledge regards the complaint was disputed by the respondent and consequently, permission was granted to examine Mr. Vijaykumar Kadam. In pursuance of the aforesaid Mr. Vijaykumar Kadam has deposed in the matter. Mr. Vijaykumar Kadam has stated that the complaint dated 14.11.2008 was received and the same was recorded as N.C. Mr. Vijaykumar Kadam has further stated that he did not contact the respondent / opponent and further he did not ask anybody to contact the respondent. Witness has also made general statement that the police decide the registration of complaint on the basis of contents and assessment of the complaints. In these circumstances, the Family Court is right that

there was hardly any occasion to prolong the evidence of Mr. Vijaykumar Kadam and that too by declaring him hostile. Once this witness deposed that he did not contact the respondent and that he did not ask anybody to contact the respondent, there is no question of declaring him hostile simply because the deposition of the Officer was not on the lines expected by the petitioner. Reliance upon the decision of the Hon'ble Apex Court in the case of **Sat Paul vs. Delhi Administration**¹, is also misplaced. In the said case, the Apex Court has held that discretion is conferred by Section 154 upon the Court in the matter of declaring a witness as hostile. In this case, the discretion has been reasonably exercised and there is no perversity involved. There is accordingly no merit in this Petition as well and the same is liable to be dismissed and is hereby dismissed. However, since costs have already been imposed in the earlier Writ Petition, no separate costs are being imposed in the present Petition.

8) Accordingly, both the Petitions are hereby dismissed with costs as aforesaid.

9) All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

¹ (1976) 1 SCC 727,