

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5023 OF 2015

Sandip Shankar Lal Kedia ... Petitioner

Vs.

Pooja Sandip Kedia & 2 Ors. ... Respondents

A/W

WRIT PETITION NO.471 OF 2015

Pooja Sandip Kedia ... Petitioner

Vs.

Sandip Shankar Lal Kedia ... Respondent

Mr.A.H.H. Ponda i/b Prakash Mahadik for the Petitioner in WP/471/2015
Mr.R.T. Lalwani for Resp. in WP/5023/2015
Mr.S.S. Kedia, present – in – person as Petitioner in WP/5023/2015 and
as Respondent in WP/471/2015

CORAM: MRS.MRIDULA BHATKAR, J.

ORDER RESERVED ON: JUNE 12, 2015
ORDER PRONOUNCED ON: **JUNE 29, 2015**

ORAL ORDER:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally, at the stage of admission.
2. Both the Writ Petition Nos.5023 of 2015 and 471 of 2015 are heard together as they are filed by the same parties against each other. Writ

Petition No.471 of 2015 is taken out by the petitioner – wife challenging the order dated 6.12.2014 passed below exhibit 122 by the Family Court in marriage proceeding No.A-802 of 2012, thereby rejecting the prayer of the wife seeking an order permitting the cross-examination by video conferencing or for appointment of a Court Commissioner to record cross-examination at Dubai. Writ Petition No.5023 of 2015 is for setting aside the order dated 15.4.2014 under exhibits 30 and 40 in petition No.A-802 of 2012. The said exhibit 30 is the application filed by the respondent – husband in the main petition for stay of the proceedings. The learned Judge of the Family Court, Mumbai by her order dated 15.4.2014 rejected both the applications by reasoned orders.

3. The petitioner – husband in Writ Petition No.5023 of 2015 appeared in person and argued that there is a travel ban by the Dubai Court to take out the child Arnav from Dubai so also the Dubai Court has passed a decree of divorce in favour of the petitioner husband on 12.12.2013. The said order is not set aside in appeal and the High Court by its order in Writ Petition No.88 of 2014 has upheld the validity of the said order and the said order as on today is in force. He further submitted that the Supreme Court has extended the stay granted by the High Court to its order and the main matter is pending before the Supreme Court and is now kept for final hearing in the last week of July, 2015. Under such circumstances, there is no point to proceed before the Family Court in India. He further submitted

that the learned Judge of the Family Court has placed the matter for settlement. However, the learned Judge suddenly started recording evidence by putting the wife in the witness box. He further submitted that this Court by its order dated 1.11.2014, has taken a view that in such a matter, the parties in their better and larger interest, to appear personally before the Family Court and therefore no order of cross-examination by video conference is to be allowed.

4. The learned Counsel for the wife has submitted that the wife is ready to come to India for the cross-examination personally but she needs to bring her child with her as the child is small and she cannot keep her child in Dubai and come here for the cross-examination which may go on for few days. It is submitted that she is ready to pay the expenses for the video conference or the appointment of the Court Commissioner. The learned Counsel further submitted that the learned Family Court Judge while considering this application, has observed that no appropriate apparatus and technical instruments were available in the Family Court to record evidence by video conference. However, today, these facilities are provided and, therefore, video conferencing is possible. Secondly, he argued that though there is a travel ban, the child can come to India if the father does not object. In Writ Petition No.5023 of 2015 wherein stay to the proceedings before the Family Court is prayed, Mr.Ponda submitted that there is no stay on the main petition i.e., A-802 of 2012 before the

Family Court by the High Court or the Supreme Court. He submitted that earlier also, the matter was fixed for final hearing before the Supreme Court. It is further submitted that in fact the Supreme Court has passed an order on 21.8.2013 directing to decide their issues before the Indian Court as both the parties, including the child, are Indian citizens. He further submitted that in the said Special Leave Petition, the husband has given an undertaking on 21.8.2013 that he shall not move Dubai Court for obtaining any order, however, he got a decree of divorce from Dubai Court on 12.12.2013 and thus, the undertaking given before the Supreme Court is breached; and the order of the Supreme Court dated 21.8.2013 is violated. Under such circumstances, there is no bar to proceed with the matter before the Family Court. He further pointed out that his case for judicial suppression, which is the main petition and the prayer for access, are filed first in point of time i.e., 3.4.2012 and the divorce petition was filed in Dubai on 21.4.2014. However, he fairly conceded that husband had initiated proceedings for Divorce, custody and other ancillary reliefs on 8.3.2012 before Dubai Courts. It is further submitted that the parties are Hindus and the order passed granting divorce is under Shariat law, therefore, it is not binding. Hence, the proceedings before the Family Court can proceed.

5. Heard both the parties for sufficient time on 11.6.2015. Next day, after the arguments, when and the matter was reserved for orders, the

husband / party-in-person has produced a huge compilation of nearly 1000 pages on 12.6.2015. It is difficult for this Court thereafter to go through this compilation. It appears that both the parties have deep rooted grievances against each other and they have enough resources to go on fighting till the honourable Supreme Court so also the Courts outside India. After going through the orders passed by the honourable Supreme Court, the order of the Division Bench of this Court, I am of the view that as on today, there is no bar on the Family Court to proceed with the matter which is filed by the petitioner-wife. The undertaking is given by the petitioner – husband before the Supreme Court in August 2012 that he would not proceed against the petitioner wife in Dubai Court but both the parties shall submit to the jurisdiction of the Family Court at Bandra. It is apparent from the petition for judicial separation filed by the wife and the petition for divorce filed by the husband before the Dubai Court that the parties do not want to stay with each other. However, they are fighting for the custody of the child and it should not happen that the child is to put to the stake and used as a pawn to pamper and satisfy their respective vengeance, desires and egos.

6. After hearing both the parties and on going through the orders passed by the Family Court, the order of the learned Single judge of this Court dated 29.4.2013, the order of the hon'ble Supreme Court dated 21.8.2013 and of the Division Bench of this Court dated 17.9.2014, I am of

the considered view that the petitioner – wife shall remain present before the Family Court for her cross-examination personally and she shall be allowed to bring the child alongwith her to India. Keeping the child in Dubai and asking her to come here for cross-examination, I find is not conducive to the mental and physical health of the child and will cause inconvenience to the child.

7. The submissions of both the parties are interlinked. The hon'ble Supreme Court has fixed the matter for final hearing in the last week of July, 2015. I have not come across any specific order of putting bar on the recording of evidence by the Family Court in this petition. The learned Single Judge has already taken a view that no ante suit injunction can be granted against the petitioner – husband for he taking out proceedings in Dubai. The injunction granted by the Family Court was set aside by the learned Single judge of this Court by order dated 29.4.2013 against which appeal is preferred which is pending before the hon'ble Supreme Court. However, in the said proceedings, stay was granted and that is extended by the hon'ble Supreme Court in which the undertaking was given by the petitioner husband not to obtain any order from Dubai Court and there is no bar in proceeding before the Family Court. Moreover, it is to be noted that the petition before the Family Court is part heard. The affidavit of examination-in-chief is already filed by the petitioner wife and she is put in the box for her cross-examination and her 3 pages cross-examination is

recorded by the learned Counsel for the petitioner husband. It is to be noted that the petitioner husband at the relevant time was represented by a lawyer and the lawyer did not take objection for cross-examination of the wife. Neither did she take any objection for cross-examining the wife nor did she place any purshis or application to conduct cross-examination without prejudice. Thus, the petitioner husband had submitted to the jurisdiction of the Family Court, Bandra. The Family Court at Bandra can proceed smoothly for recording of evidence, cross-examination of the witness and also to decide the access and custody issue after interrogating the child personally. However, as there is a travel ban by the Dubai Court and if the husband does not want to request the Dubai Court to lift the ban. Then, the wife can be cross-examined by video conferencing. However, the child is required to be produced before the Counsellor to assess his psychological status and to know his assessment about his parents. It is made clear that if the child is brought in India, at the time of cross-examination of the wife, then, the father can be given an access for a few days in India. Thus, no illegality is found in the order of the learned Judge of the Family Court, who rejected the prayer of the wife to be cross-examined by video conferencing. It appears that now the necessary equipments are provided to the Family Court and, therefore, if the child is not brought in India, then only the Family Court can take a view to arrange the cross-examination by video conferencing.

8. Thus, Writ Petition No.5023 of 2015 is hereby dismissed. Writ Petition No.471 of 2015 is also rejected with rider of lifting travel ban imposed by the Dubai Court. If it is not lifted then only the Family Court can go for cross-examination by video-conferencing.

9. The Petitioner – husband, appearing in person, in Writ Petition No.5023 of 2015 prays that this order be stayed for eight weeks to enable him to challenge the order before the hon'ble Supreme Court. Mr.Ponda, the learned counsel appearing for Respondent – wife has submitted that the Family Court is not going to proceed with the matter and the party will also not press for preponing the matter. The matter is on 30th July, 2015 and he has sufficient time to move the hon'ble Supreme Court as in the hon'ble Supreme Court the Special Leave Petition is fixed on 21st July, 2015.

10. Under such circumstances, as the petitioner is getting four weeks to test this order before the Family Court, I am not inclined to stay the order. Hence, the prayer for stay is rejected.

(MRS.MRIDULA BHATKAR, J.)