

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12062 OF 2015

Santosh R. Maniyar	..	Petitioner
VS.		
Sapna S. Maniyar	..	Respondent

Mr. S. M. Kamble for Petitioner.
Mr. P. P. Kulkarni for Respondent.

CORAM : M. S. SONAK, J.
DATE: 22 DECEMBER 2015

P.C. :-

- 1] **Not on board. Upon production, taken on board.**
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition to the orders dated 16 April 2015 and 12 October 2015, both of which have the effect of displacing the petitioner from filing the written statement in Hindu Marriage Petition No. 11 of 2013.
- 4] There is delay of over one year in filing the written statement. The record also indicates that the petitioner had refused to accept the summons issued by the Trial Court. The petitioner, however,

has some explanations in this regard i.e. he was out of station and there was some death in the family. Although, the explanation does not inspire much confidence, considering the submission of the petitioner that he is prepared to pay substantial costs but may be granted liberty to file his written statement, interests of justice will be met if one such opportunity is granted to the petitioner. The trial in the suit is yet to commence, though, the respondent – wife, who is the petitioner before the Trial Court has already filed her affidavit in lieu of examination in chief.

5] Therefore subject to the petitioner paying costs of Rs.50,000/- to the respondent, the impugned orders are set aside and the petitioner is granted liberty to file his written statement.

6] This petition is therefore disposed of with the following order:

- (A) The impugned orders are set aside subject to the petitioner paying costs of Rs.50,000/- (Rupees Fifty Thousand) to the respondent;
- (B) The petitioner shall pay Rs.25,000/- to the respondent within four weeks from today. Such amount to be paid by the Demand Draft or Bank Transfer;
- (C) Once such amount of Rs.25,000/- is paid, the Trial Court to accept the petitioner's written statement on record but on

provisional basis;

(D) The Trial Court may then frame issues in the matter and grant liberty to the respondent to file fresh affidavit in lieu of examination in chief;

(E) The petitioner to deposit the balance amount of Rs.25,000/- within a period of four weeks from the date of payment of the first instalment of Rs.25,000/- again by Demand Draft or by Bank Transfer;

(F) In case there is any default in the payment of either first or second instalment, this petition shall be deemed to have been dismissed. If there is default in payment of the second payment, the written statement filed by the petitioner on record, shall have to be ignored;

(G) The petitioner also undertakes that he shall regularly pay the maintenance amount and further, the petitioner shall within four weeks from today clear the arrears of maintenance, if any, without any excuse. In case there is any failure to clear the amount of arrears within a period of four weeks from today, the Trial Court not to take the written statement on record. The clearance of arrears of maintenance is also a pre-condition to the filing of the written statement by the petitioner;

(H) In case the petitioner does not pay the arrears of maintenance or the first instalment of Rs.25,000/- within a

period of four weeks from today, this petition shall be deemed to have been dismissed with costs of Rs.25,000/-. The Trial Court to ensure that such costs are recovered from the petitioner;

(I) The hearing before the Trial Court is expedited. The Trial Court shall endeavour to dispose of the proceedings within one from today;

(J) Rule is made absolute to the aforesaid extent.

(K) All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka