

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 7 OF 2016
WITH CA/4115/2016 IN FCA/7/2016

JAYKUMAR KHELNATH MAGAR
VERSUS
MANGALA JAYKUMAR MAGAR

...
Advocate for Appellant : Mr. S.R. Bodade

CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.

DATE : 31ST MARCH, 2016.

PER COURT:

1] Heard.

2] The appellant has approached this Court, challenging the order by the Family Court passed below Exhibit 5 restraining the appellant from entering the house situated at 64, "Abhijeet", Builders Society, Nandanvan Colony, during the pendency of the said litigation.

3] Mr. Bodade, learned counsel for the appellant, strenuously contends that the said house is constructed by the appellant from his own funds and appellant who is owner of the house cannot be prohibited from entering the said house. In fact, it is the respondent who has developed illicit relations. According to learned counsel, the conduct of the present respondent is improper. Wild and vague allegations are made by the present respondent and the Family Court was swayed by the said wild allegations made by the present respondent. False and frivolous allegations are made in the complaint by the present respondent.

4] In the interregnum, the present appellant due to his ill health was required to stay at Pune with his elder son. According to learned

counsel, the judgment of the Family Court being not legal and proper, deserves to be set aside.

5] As it transpires, the appellant was not staying in the house at Nandanvan Colony recently. According to the appellant he was not permitted, but the fact remains that he was not staying in the house. The order passed below Exhibit 5 is sheerly based on prima facie case. It is submitted that, now, the matter is fixed for recording evidence of the parties. In the light of that, it would not be appropriate to go into the rival contentions. Even otherwise, the court has to decide the case at the time of final trial based on the evidence adduced before it and the observations made at the time of deciding Exhibit 5 would be of no avail.

6] Considering the fact that the matter is now ripe for evidence, we are not considering the present appeal on merits, also, taking into account the aforesaid conspectus of the matter. In our view, interest of justice would be sub-served if the Family Court is directed to dispose of the proceedings before it expeditiously.

7] The Family Court shall dispose of the proceedings pending between the parties expeditiously, preferably within nine months. Needless to state that, the Family Court will have to decide the proceedings on the basis of the evidence adduced before it, dehors the observations made at the time of deciding the application Exhibit 5. The appeal is accordingly disposed of. No costs. Civil application for stay of the impugned order also stands disposed of.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-