

THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.792 OF 2016

Mayank Jaigopal Gupta,]
Aged 30 years (DOB: 24th Jan 1985),]
Profession: Presently residing at]
24/A, Chemin De La Greube,]
1214-Vernier, Geneva, Switzerland].. Petitioner

Versus

Mrs. Neha Mayank Gupta,]
having maiden name]
Miss Neha Suresh Goel,]
Age 20 years (DOB: 14th Nov. 1987),]
Profession: Presently residing at]
C-20-0-1, Palm Beach CHS, Sector-4,]
Nerul, Navi Mumbai-400 706].. Respondent

Mr. Ishwariprasad Bagaria, for the Petitioner.

Mr. Siddharth Murarka i/by Law Chamber of Siddharth Murarka, for
the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 17th MARCH 2016

ORAL JUDGMENT

1. Rule, having regard to the challenge raised in the above
Petition made returnable forthwith and heard.

2. The above Petition takes exception to the order dated 23.12.2015 passed by the Learned Judge of the Family Court, Mumbai, by which order, the application Exh.11 filed by the Petitioner came to be rejected.

3. It is not necessary to burden this order with unnecessary details considering the narrow controversy involved. The Respondent herein has filed Marriage Petition No.A264 of 2014 for annulment of the marriage between her and the Petitioner herein which took place on 01.08.2013. The annulment of the marriage is sought inter-alia on the grounds mentioned in the said Marriage Petition. For the purposes of adjudication of the instant Petition, it is not necessary to go into the said aspect. The Petitioner herein claims to be a citizen of Switzerland and is residing in Geneva. There is no dispute about the fact that a copy of the said Marriage Petition was served upon the Petitioner. It seems that after the copy was served the Respondent addressed a letter to the Family Court that he be furnished with a copy of the Marriage Petition translated in French as per the Geneva Convention. Be that as it may, the Marriage Petition was proceeded with and in view of the fact that the Respondent did not appear in the matter. The Learned Judge of the Family Court it seems has passed an order to proceed an ex-parte against the Petitioner on 10th October 2015 (as per the Learned Counsel appearing for the

Respondent). The Petitioner filed the instant application Exh.11 for being permitted to be represented by advocate. It is required to be noted that the Respondent herein is represented by a lawyer after permission was granted to her in that behalf. In the said application the Petitioner has stated that he does not have adequate legal knowledge and that there is possibility of question of law arising and that he would not be in a position to conduct the said case on his own adequately. It is therefore prayed that he may be permitted to appoint the advocates mentioned in the said application. The said application Exh.11 is dated 08.12.2011 which was affirmed before the concerned authority in Geneva and sent back and thereafter filed on 23.12.2015 in the Family Court. The said application came to be rejected by the Trial Court i.e. Learned Judge of the Family Court who has endorsed on the same which endorsement is to the following effect "Respondent absent hence rejected". It is the said order which is taken exception to by way of the above Petition. The Petitioner vide clause (b) seeks relief that the written statement of the Petitioner be taken on record.

4. However, in so far as the impugned order is concerned, it was the submission of the Learned Counsel for the Petitioner Mr. Bagaria that since the Respondent wife is represented by an advocate, the application filed by the Petitioner was required to be allowed as obviously the

Petitioner is not competent to conduct the matter especially when the Respondent is represented by advocate. The Learned Counsel sought to place reliance on Rule 37 of the Family Court Rules under which such permission according to him can be granted.

5. Per contra, the Learned Counsel appearing for the Respondent Mr. Murarka would submit that since the Petitioner has kept away from the proceedings, the order passed by the Trial Court was warranted as an application could only be filed if the party is present in Court. The Learned Counsel sought to draw this Court's attention to the absence of the Petitioner in various other proceedings which are pending between the parties i.e. proceedings filed under Section 498-A and the proceedings under the Domestic Violence Act.

6. Having heard the Learned Counsel for the parties, I have considered the rival contentions. In the instant case, as indicated above, the order to proceed ex-parte against the Petitioner was passed sometime in October 2015. Thereafter the application Exh.11 was moved on 23.12.2015 by the Petitioner seeking permission to be represented by advocate. In my view, the Trial Court has erred in rejecting the application only on the ground that the Petitioner was absent. The application as indicated above has been affirmed before the appropriate authority in

Geneva and therefore the Trial Court was required to consider the application notwithstanding the fact that the Petitioner was absent. It is required to be noted that the Respondent wife is represented by advocate and therefore it was all the more necessary to permit the Petitioner to be represented by advocate. The Learned Counsel for the Respondent herein has not been able to point out any provision wherein an application duly sworn in a foreign country could not be filed in the Courts in India in the absence of the party. In my view, therefore, the impugned order dated 23.12.2015 is required to be quashed and set aside and is accordingly quashed and set aside. The application Exh.11 would stand allowed.

7. The Petitioner i.e. the Respondent in the Marriage Petition No.A264 of 2014 would be entitled to be represented by advocate/advocates. In so far as the Petitioner's prayer for the written statement to be taken on record is concerned, it seems that on the same date i.e. on 23.12.2015 an application came to be filed by the Petitioner for taking the written statement on record, but it seems that the said application was not accepted by the Learned Judge of the Family Court, in view of the fact that the Respondent was not permitted to be represented by advocate.

8. In my view, therefore, it would be just and proper to direct

the Learned Judge of the Family Court to take the application of the Petitioner for taking his written statement on record and thereafter decide the same in accordance with law. Needless to state that the contentions of the parties in that respect are kept open for being urged before the Family Court. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute.

9. Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]