IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1964 OF 2016

Mrs. Tricia Rosario .. Petitioner
vs.
Mr. Ivan Rosario and anr. .. Respondents

Ms Kranti S. S. Anand for the Petitioner.
Mr. Sushant Chavan for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 18 FEBRUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 30 January 2016, by which, the Family Court has dismissed the Petitioner's application for summoning yet another witness, i.e., Kotak Mahendra Bank Ltd.

2] Ms Kranti S.S. Anand, the learned counsel for the Petitioner, points out that summoning this witness, as also the other witnesses like Income Tax Officials, Officials from ABN AMRO Bank and Canara Bank is vital to the Petitioner's case, particularly since Respondent No.1 has neither stepped into the witness box nor he is prepared to disclose any details with regard to his residential address or his employment details. The learned counsel has pointed out that there are several monetary transactions upon which, such witnesses will possibly be in a position to throw light. The learned counsel for the Petitioner makes reference to the application (List of Document at Exhibit-B, at page 28 of the paper book) to submit that the examination of all such witnesses is necessary.

3] Earlier, the Petitioner had approached this Court by way of Writ Petition No. 8236 of 2015, challenging the order dated 8 July 2015, by which, the Petitioner's application seeking recall of order dated 19 May 2015 has been dismissed. By order dated 19 May 2015, the Family Court declined to recall the witnesses and afford opportunity to the Petitioner to examine them in support of her case. The witnesses in the said case was Officials from Price Water House Coopers Pvt.Ltd. and City Bank.

4] This Court, in its order dated 9 October 2015, despite noting that the Petitioner was not very diligent in the matter, granted the Petitioner yet another opportunity in the matter of examination of said witnesses. This was granted on the basis of assurance by the learned counsel for the Petitioner that if one more opportunity is granted to the Petitioner, the Petitioner will ensure that the examination of the witnesses will be proceeded without any hindrance or excuse.

5] In pursuance of the order dated 9 October 2015, the two witnesses were recalled and have been examined. At the stage, when, the order dated 9 October 2015 came to be passed, the matter, which was originally instituted in the year 2007, had advanced considerably. After the examination of the two witnesses, the Petitioner has now once again applied for issuance of summons to the witnesses of Kotak Mahendra Bank Limited. In the course of arguments, in this Court, the learned counsel for the Petitioner states that it is necessary to examine the Officials from Income Tax Department, Officials from ABN AMRO Bank as well as Canara Bank.

6] It does appear that the Petitioner, intends to embarking upon some kind of fishing expedition in a matter instituted in the year 2007, wherein, already, sufficient opportunity have been granted to the Petitioner, the Petitioner, cannot go on insisting that Court summons be issued to several bank Officials or Income Tax Officials on the spacious plea that they will be in a position to throw some light upon the financial dealings of the Respondent. When viewed from this perspective, there is no necessity to find any fault with the impugned order.

7] It may be true that the Petitioner, is prejudiced in the matter on account of non-cooperation by the Respondent. It is possible that the Respondent, on his own, has not made any disclosures with regard to his present whereabouts or his financial position. However, this does not mean and imply that the Petitioner is permitted to insist upon the issuance of witness summons to various banks and financial institutions, one after other in a bid to find out, whether, such banks and financial institutions, have any evidence in this regard. If this is permitted, the proceedings will never conclude. Besides, there are several other provisions available under the law in terms of which the Petitioner can call upon the Family Court to raise adverse inference against the Respondent, if at all, the Petitioner's case that the Respondent is not making true and full disclosure to the Family Court, is correct. However, in a matter of this nature, the Petitioner cannot be permitted to go on insisting that the witness summons should be issued to the bank Officials and Income Tax Officials.

8] The learned counsel for the Respondent has stated that the address set out in the cause title, i.e., B-1/20, BEST Nagar, Goregaon (West), Mumbai - 400 104, is correct address of the Respondent. He has also stated that Respondent No.1 presently resides in Dubai and that he undertakes to furnish his correct address in Dubai to the Family Court, within a period of one week from today or in any case on or before 23 February 2016. This undertaking is accepted.

9] In any case, it is made clear that the observations in this order are only *prima-facie,* if ultimately, the proceedings are decided against the Petitioner, the Petitioner is granted liberty to challenge the impugned order in the substantive appeal, which may she choose to file against the final decision of the Family Court, should such decision be adverse to her. It is necessary to make a direction in this regard, because, it is not the intention of the Court to deny the Petitioner any remedies available to her under the law. However, it is to be noted that at least *prima-faice,* sufficient opportunity have been granted to the Petitioner, including by way of examining the witnesses from Price Water House Coopers Pvt. Ltd. and City Bank. At least, at this stage, it is not possible to accede to the request of the Petitioner to issue witness summons to several other Officials from financial institutions and Income Tax Department.

10] With liberty as aforesaid, this petition is dismissed. Again, for the reasons recorded in the earlier order dated 9 October 2015, this Court, refrains from imposing any costs upon the Petitioner.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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