

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2855 OF 2014**

Mr. Rakesh Rajkumar Varma		Petitioner
<u>Vs.</u>		
Mrs. Sunita Rakesh Varma		Respondent

Mr. S.V. Deolekar, Advocate for the Petitioner.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 21st June, 2016

P.C.

1 This petition challenges the order dtd. 18th January, 2014, by which the Family Court, Mumbai imposed costs of Rs.50,000/- on the petitioner. The challenge in the petition is limited to the quantum of the costs imposed. The petitioner also seeks permission to continue with the application for restitution of conjugal rights being clubbed with the divorce petition.

2 The petitioner, who is a practising advocate had filed petition for the restitution of conjugal rights. On the date of the order, he made a statement before the Family Court through his advocate that he did not want to proceed with his petition and sought to withdraw it. His application for withdrawal was opposed by the respondent contending that the questions raised therein of

maintenance and right to the matrimonial house are yet to be decided. The Family Court rejected the objections with observation that the same could be taken up in the petition for divorce filed by the respondent subsequently. While the order of withdrawal of the petition under Order 23, Rule 1 Code of Civil Procedure was being dictated, the learned counsel appearing for the petitioner interrupted the dictation for setting up a condition for withdrawal. He submitted that the petitioner did not want to withdraw the petition, if his proposal for divorce was not considered. The Family Court disproved the conduct of the petitioner by saying that it amounted to playing with the provisions of law, and there cannot be conditional prayer for withdrawal. With these observation, the court did not disturb the order permitting withdrawal of the petition by the petitioner, but imposed costs of Rs.50,000/- upon the petitioner. The reasons set out for imposing of costs are that the petition has been pending since 2009. During the pendency of 5 years, the respondent had to attend to the court on several dates and therefore she was required to be compensated.

3 In the facts and circumstances of the case and the conduct of the petitioner as reflected in the order, I find no infirmity whatsoever in the quantum of costs awarded. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)