

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4011 OF 2014

Smt. Sharada Devidas Sadhu	..	Petitioner
VS.		
Devidas Ganpat Sadhu	..	Respondent

Mr. A. B. Tajane i/b. Mr. Nitin Mulye for Petitioner.
Mr. Sachin B. Chandan for Respondent.
Mr. Devidas Ganpat Sadhu – Respondent present in person.

CORAM : M. S. SONAK, J.
DATE : 20 JUNE 2016

P.C :

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 6 December 2013, by which, the Family Court, Nashik has declined to recall '*No WS Order*' and to take on record the written statement of the petitioner – wife.

3] Upon hearing the learned counsel for the parties, in my judgment, in the peculiar facts and circumstances of the present case, the impugned order is quite harsh and therefore, the same is required to be set side. On 19 February 2010, the petitioner had

applied for some time to file written statement. The application was rejected and on the same date, '*No WS Order*' was made. The petitioner has stated that she was under the bonafide impression that her application for grant of time to file written statement is yet to be decided. However, at the later stage, upon realising that '*No WS Order*' has in fact been made on 19 February 2010 itself, application was filed for recall and leave to file written statement. No doubt, delay involved in the present case is substantial. However, explanation has been offered by the petitioner, in the matter of such delay. In so far as the delayed period is concerned, the Family Court is no doubt, entitled to make appropriate orders, in case the petitioner makes any claim for arrears of maintenance. This is because the petitioner cannot claim any benefit on the basis of her own delay in the conduct of the proceedings. However, this is a fit case for recalling the '*No WS Order*' and granting liberty to the petitioner to file her written statement.

4] Accordingly, the impugned order dated 6 December 2013 is set aside. The '*No WS Order*' is also set aside. The petitioner is granted leave to file her written statement in Petition No. A 422 of 2010. Mr. Tajane, the learned counsel for the petitioner states that such written statement will be filed on 30 June 2016 positively. In case the written statement is filed by 30 June 2016, the Family

Court to take the same on record and proceed with Petition No. A 422 of 2010. However, if no written statement is filed by 30 June 2016, then, the liberty hereby granted will stand revoked and this petition shall be deemed to have been dismissed.

5] Further, the Family Court is directed to dispose of the Petition No. A 422 of 2010 as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

6] The parties to appear before the Family Court on 30 June 2016, which is the date fixed by the Family Court in the matter and to file authenticated copy of this order. Mr. Tajane, the learned counsel for the petitioner states that the written statement will be filed on the said date.

7] Rule is disposed of accordingly.

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

(M. S. SONAK, J.)