

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5592 OF 2016
ALONGWITH
WRIT PETITION NO. 5672 OF 2016

Suneeta Bafna

...Petitioner

V/s.

Rajkumar Bafna

...Respondent

* * * * *

Ms. S.S. Gokhale i/by. Ms. Seema Sarnaik, Advocate for the petitioner.

Mr. Vivek Kantawala i/by. Vivek Kantawala & Co., Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 23RD JUNE, 2016.

P.C. :-

1). This is a common order on the above two petitions by which the petitioner, wife seeks to challenge two orders, both dated 16th April, 2016 by which the Family Court dismissed her two applications for summoning witnesses to support her case.

2). Writ Petition No. 5592 of 2016 arises out of the application dated 16th April, 2016 by which the petitioner desired to summon the Prothonotary & Senior Master of this Court for production of High Court Suit No. 1697 of 1972 and the consent decree passed therein dated 11th December, 1979. The Family

Court, dismissed the application on two grounds. First ground was of, long pendency of the matrimonial petition i.e. pendency since the year 2010. The second ground was that, it is open for the petitioner to obtain certified copies of the documents proposed to be produced.

3). Writ Petition No. 5672 of 2016 challenges the order on the application dated 7th April, 2016 by which the petitioner applied for summons to five witnesses of religious charitable trusts calling upon them to produce documents regarding donations given to trust in cash and in kind of S.M. Bafna Family or Bafna Charitable Trust or any other Trust of S.M. Bafna Family from time to time in the last 20 years. The five Trusts to which the summonses were proposed to be issued are :-

1. Shri Adinath Rajendra Jain Shwetamber Pedhi (Trust)
Shree Mohankheda Mahatirth Rajgad, Dist. Dhar, Madhya Pradesh-454116. Special Reference to donations given at Swargarohan Shatabdi Samaroh held in December, 2006.
2. Shree Rajendrasuri Jain Kirti Mandir Tirth Trust, Sevar Road, Shree Rajendra Suri Marg, Bharatpur, Rajasthan, Tel. 05644260405. With special reference to documents of donations relating to Mahatsav held in April, 2007.
3. Sheth Motisha Religious and Charitable Trust, 180 Motisha Lane, Byculla (East), Mumbai-400 027.
4. Shri. Mahavir Swami Jain Shwetamber Tapagach Trust, Near Old Post Office, Bhinmal-343029, Dist. Jalore,

Rajasthan, Tal-02969 222369.

5. Bafna Charitable Trust, 12, Nagin Mahal, 3rd Floor, 82, V.N. Road, Churchgate, Mumbai-400 020, with special reference to- Trust Deed, Assets, Donations made and received by Trust, Income & Expenditure, Balance Sheet of the Trust since inception.

4). The Family Court, dismissed the application on the ground of long pendency of the matrimonial petition, as also, the stage at which the application was being made. It noted that the evidence of the petitioner, who is the respondent to the matrimonial petition, is already closed. Further, the documents and witnesses mentioned in the application, are not relevant in the petition for divorce, as also to know the financial status of the respondent. It also noted that, even otherwise, the Trust being a Public Charitable Trust, the documents such as income expenditure and balance sheet of the Public Trust being public documents, the petitioner can obtain certified copies thereof.

5). The undisputed position of the matter is that, the respondent filed the petition for divorce on 16th April, 2010. The petitioner filed her written statement on 15th January, 2011. Thereafter, the evidence in the matter commenced. On 19th July, 2014 the evidence of the respondent was closed. On the same day, cross-examination of the petitioner commenced but it could be concluded only on 6th July, 2015. Then, by the order dated 6th August, 2015 Commissioner was appointed to record evidence of

two witnesses of the respondent, being a psychiatrist and a Councillor. Then, the petition was adjourned on five dates to enable the petitioner to file affidavit of evidence of her other witnesses. When the petitioner failed to file affidavit of any witness or to keep any witness present, the Family Court, by the order dated 17th December, 2015 treated the evidence of the respondent as closed. The respondent, thereafter, remained absent on four dates. When the final arguments on the petition were advanced and the petition was adjourned for judgment on 8th January, 2016 the petitioner filed an application for setting aside the order dated 17th December, 2015 of closure of her evidence, on the ground that she desired to examine her father. The application was allowed and the petitioner filed affidavit of examination-in-chief of her father. But later, the father failed to remain present in the Court to subject himself to cross-examination. Therefore, his affidavit of examination-in-chief was discarded. Thereafter, the applications herein came to be filed.

6). Ms. Gokhale, the learned Advocate appearing for the petitioner, vehemently submits that the witnesses relating to the five Trusts are required to be examined for the purpose of bringing on record, the correct financial status of the respondent. She submits that, the family of the respondent has not only set up a Trust by name, Bafna Trust, but has also been donating huge amounts to religious charitable Trusts. She has referred to several religious programmes conducted in different temples at different

places where the family of the respondent had contributed substantially. She submits that, not only the names of the family members of the respondent have been mentioned in those programmes but also there have been invitation cards carrying the photographs of the parents of the respondent and several other donors. She refers to the cross-examination of the petitioner to submit that, the respondent has not been forthright in disclosing his income and has been avoiding questions relating to his financial status. Perusal of the cross-examination of the respondent shows that, there are no specific questions put to him as regards the contributions by his family to the five Trusts. It was necessary for the petitioner to create a foundation for evidence of these witnesses by asking proper questions in cross-examination. In any case, the contribution being by the Family, one fails to understand as to how the same would disclose the financial status of the respondent. Also, the petitioner could have obtained certified copy of the public documents. Hence, the petitions are dismissed.

(SMT. R.P. SONDURBALDOTA, J)