

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6312 OF 2015

Shri Vikrant Shankar Adnaik.] ... Petitioner

Versus

Sou. Rupali Vikrant Adnaik.] ... Respondent

Mr. A. S. Patil for Petitioner.
Mr. S. T. Bhosale for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 22, 2016

P. C. :-

1. The challenge in this petition is to the order dated 26/05/2015 by which the Family Court at Kolhapur has granted the respondent-wife an additional opportunity to file written statement in the matter and has directed that the matter be proceeded from the said stage.

2. Mr. A. S. Patil, learned Counsel for petitioner, has submitted that several opportunities had been granted to the respondent. The respondent was even represented by an Advocate. However, the respondent failed to file her written statement. The matter was adjourned from time to time and ultimately on the crucial

date, posted only for pronouncement of Judgment. Relying upon the provisions of Order 9 Rule 7 of the Code of Civil Proceedings, 1908 ('CPC'), Mr. Patil pointed out that when the matter is posted for pronouncement of Judgment, the Court, has no option but to pronounce the Judgment and on the said date, there was no question of even entertaining any application for setting aside 'No Say' order and for granting any additional opportunity in the matter. Without prejudice, Mr. Patil pointed out that even in the application made by the respondent, there are hardly any reasons set out and therefore, assuming without admitting that the Family Court had any discretion in the matter, such discretion was not validly exercised. For all these reasons, Mr. Patil submitted that the impugned order is without jurisdiction and is liable to be set aside.

3. Mr. S. T. Bhosale, learned Counsel for respondent, submitted that the respondent is a poor lady who resides at Solapur and the proceedings instituted against her were at Kolhapur. Therefore, it was not possible for the respondent to file her written statement. The impugned order, upon taking into all such circumstances, has permitted the respondent to file written statement and there is no perversity in the exercise of such discretion.

4. Mr. Patil, by way of rejoinder, submitted that the petitioner had instituted a transfer petition before this Court urging for transfer of the matter from Kolhapur to Solapur. However, this Court, upon being apprised of the position that the matter is kept only for

pronouncement of Judgment, declined to entertain the transfer petition, which was disposed of as infructuous.

5. Having considered the aforesaid contentions and perused the record, in my judgment, there is no case made out to interfere with the exercise of discretion by the Family Court though the Family Court has erred by not awarding any costs in favour of the petitioner. The Family Court has relied upon the provisions contained in Order 8 Rule 10 of the CPC for the purposes of extending the period for filing of written statement. That apart, in the facts and circumstances of the present case, it cannot be said that the provisions of Order 9 Rule 7 of the CPC are attracted in all their vigor, particularly considering that these are proceedings before the Family Court. For the same reason, the decision in the case of *Arjun Singh Vs. Mohindra Kumar and Ors.*¹, on which reliance was placed by the learned Counsel for petitioner, is distinguishable. Ultimately, this is the case where a discretionary order has been made by the Family Court. The application lodged by the respondent had mentioned that the respondent resides at Solapur, her brother is ailing and in absence of any help, she was not in a position to file written statement in time. The Family Court having positively exercised discretion and condoned the delay, there is no case made out for interference with such discretion. The circumstance that the transfer petition was disposed of as infructuous, in fact, assists the respondent since after the dismissal of the said petition, the respondent realized that there is no

¹ AIR 1964 (SC) 993

option but to rush to the Kolhapur Court and seek leave to file the written statement.

6. For all the aforesaid reasons, there is no necessity to interfere with the impugned order except by way of awarding costs to the petitioner, which in the facts and circumstances of the present case, are quantified at Rs.5,000/-. The respondent is therefore directed to pay costs of Rs.5,000/- to the petitioner within a period of six weeks from today. The payment of costs shall be a condition precedent in the taking account of the written statement of the respondent. Further, considering the circumstance that the proceedings in Petition No.A-112 of 2014 have been delayed for reasons attributable to the respondent, the Family Court is directed to dispose of such proceedings as expeditiously as possible and in any case, within a period of one year from today.

7. The Rule is disposed of in the aforesaid terms.

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

(M. S. SONAK, J.)