

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8668 OF 2016

Smt. Bharati Sachin Ramshchandra Petitioner

Vs.

Shri. Sachin Rameshchandra Respondent

Mr. Sanjiv Kadam alongwith Mr. Prashant Badole, Advocate for the Petitioner.

Ms. Devika Deshmukh i/by Nachiket Khaladkar, Advocate for the Respondent.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 27th July, 2016

P.C.

1 This petition filed by the wife seeks two reliefs. The relief at prayer clause (b) is for transfer of proceedings in the Family Court to the Court other than the one in which it is pending and the relief at prayer clause (d) is for setting aside the orders dtd. 5th July, 2016 and 12th July, 2016. Mr. Kadam, the learned advocate for the petitioner states that the petitioner does not press the relief at prayer clause (b) i.e. transfer of proceeding from the court where the same is pending and that the relief in terms of prayer clause (d) alone should be considered.

2 There are two petitions pending before the Family Court filed by the parties against each other for divorce. The petitions have been clubbed together and the joint trial being conducted. The respondent-husband has stepped into the witness box first during the trial. His cross-examination commenced on 29th September, 2015 and is incomplete till date.

3 On 5th July, 2016, the petitioner filed application for adjournment claiming that her advocate who was out of India since May, 2016 would be returning on the night of 7th July, 2016 and requested for adjournment of one week. The Family Court rejecting the application considering the facts that the hearing of the petition is expedited by this court with a direction to the parties to co-operate for expeditious disposal. Besides the cross-examination of the respondent-husband had been pending for a long time. Thereafter on the same day, the Family Court passed order on the main proceedings that the matter will proceed without the cross-examination of the respondent-husband.

4 Two days thereafter i.e. on 7th July, 2016, the petitioner again applied for an adjournment contending that she was extremely aggrieved by the order passed on 5th July, 2016 and she desired to file an application for transfer of the proceedings. The application was strongly opposed. The Family Court though disbelieved the claim made by the petitioner in her application,

was inclined to grant a short adjournment to the petitioner by way of a last chance.

5 Thereafter instead of proceeding with the cross-examination of the respondent, the petitioner on 12th July, 2016 once again applied for an adjournment on the ground of filing of Miscellaneous Application No.4522 of 2016 before the Principal Judge, Family Court for transfer. The Family Court, by detailed order dismissed the application by imposing costs of Rs.500/-. In the order, the Family Court once again noted that the petitioner has been playing delaying tactics and had utter disregard to the orders of the court. Such conduct on the part of her could not be entertained. Then by another order passed in the main proceedings, the Family Court forfeited the right of the petitioner to lead evidence in the matter on the ground that despite oral directions, she had failed to file her affidavit of examination-in-chief and she was unnecessarily arguing with the court and not ready to file her evidence. The court then posted the petitions for final hearing.

6 Perusal of all the four orders i.e. the two orders impugned in the petition as well as the two orders refusing adjournments to the petitioner, in fact justifies the action taken by the Family Court against the petitioner. Therefore the petition is in fact liable to be dismissed. However, solely by way of an indulgence to the petitioner and in the larger interest of serving

the ends of justice. I am inclined to allow the petition and set aside the two orders on condition that the petitioner pays costs quantified at Rs.15,000/- to the respondent-husband on/or before tomorrow. Both the advocates inform that the matter before the Family Court is posted tomorrow. In that circumstance, the petitioner shall pay the costs on/or before tomorrow. If the petitioner fails to pay the costs within the time granted, the present petition shall stand dismissed without any further reference to the court and her rights to lead evidence will remain forfeited. In the event of payment of the costs, the Family Court shall permit the petitioner to cross-examine the respondent. The petitioner shall complete the cross-examination of the respondent within one week from tomorrow. Ms. Deshmukh, on instructions the respondent states that the respondent will not be examining any other witness. In that case either on the very date as completion of cross-examination or on the next date, depending upon the convenience of the Family Court, the petitioner shall be ready with her evidence. Mr. Kadam, on instructions from the petitioner, who is present in the court, states that she desires to examine, in all, three witnesses including herself. She shall complete her evidence within a period of one month.

Parties to act on authenticated copy of the order.

(Smt. R.P. SondurBaldota, J)