

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10965 OF 2015

Sau. Suvidha Rajesh Shinde.] ... Petitioner

Versus

Shri Rajesh Gorakhnath Shinde.] ... Respondent

Mr. Anant Vadgaonkar for Petitioner.

Mr. Raju M. Yamgar a/w Mr. Samadhan Kashid for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- FEBRUARY 10, 2016

P. C. :-

1. **Rule.**

2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith. Even otherwise, on 06/02/2016, the parties were put to notice that this petition will be disposed of at the stage of admission.

3. The challenge in this petition is to the common order passed below Exh.13 and Exh.16 by the Civil Judge Senior Division, Thane, on 28/08/2015. By application at Exh.13, the respondent-husband had urged that a 'No WS Order' be made against the petitioner-wife. By application at Exh.16, the petitioner-wife had

applied for some time to file her written statement. By the impugned order dated 28/08/2015, the respondent-husband's application at Exh.13 has been allowed and the petitioner-wife's application at Exh.16 has been rejected. The impugned order comprises, in all, two paragraphs and the entire reasoning is contained in para 2 which reads thus:-

*“2. Perused the record and proceeding. The respondent has failed to file the WS inspite of sufficient opportunity. The grounds shown in the application are not proper. Hence, application filed by the respondent at Exh.16 is rejected. In view of this, application filed by petitioner at Exh.13 is allowed. Necessary order is being passed below Exh.1.
Parties to note.”*

4. The learned Counsel for respondent-husband has attempted to defend the impugned order by pointing out that several opportunities had been granted to the petitioner and therefore, there was no justification in seeking additional time to file written statement.

5. In my judgment, however, the impugned order is clearly unsustainable. The petitioner-wife, in response to the application at Exh.13 by which the respondent-husband had urged that the 'No WS Order' be made against her, had pointed out that she is a lady presently residing at her native place along with one small child. She had pointed out that her financial position is very poor and she is unable to afford to attend the Court and that now she has now engaged an Advocate. This say of the petitioner-wife was required to

be read along with the petitioner's own application at Exh.16 seeking time to file the written statement.

6. The petitioner-wife, in her application at Exh.16, had clearly stated that she presently resides at her maternal home at Atpadi, District Sangli. She has one small child. Her parents are farmers and her financial position is very weak. The petitioner had also pointed out that she is unable to afford to attend the Court regularly and despite all these difficulties, she has now engaged an Advocate. For all these reasons, the petitioner had applied for some additional time to file written statement.

7. The aforesaid facts, about which there is no serious dispute, were more than sufficient to grant the petitioner some time to file her written statement. It is to be noted that the petitioner resides in the village of Atpadi, District Sangli. She has to take care of her small child. She does not appear to have any source of income and relies upon her parents who are agriculturists. The suit has been instituted at Thane which is at a distance of over 450 kilometers from Sangli. Despite all this, the Trial Court has chosen to reject the petitioner's application by a laconic statement that '*the grounds shown in the application are not proper*'.

8. The Trial Court, in the facts and circumstances of the present case, should have exhibited greater sensitivity in the matter. The Trial Court ought to have appreciated that a single

lady who is enjoined to take care of her small child residing almost 450 kilometers away is bound to have some difficulties in filing the written statement within time. It is precisely for cases of this nature that discretion has been vested in the Trial Court in the matter of grant of extension of time and this was certainly a case where the discretion should have been exercised in favour of the petitioner-wife. This Court appreciates that the pressure to dispose of matters at an early date is quite considerable. However, the Trial Court, cannot afford to ignore that there is always a human face seeking justice and the consideration that is required to be shown to this human face, far outweighs the pressures of early disposals.

9. For the aforesaid reasons, the impugned order dated 28/08/2015 is hereby set aside. The petitioner is granted four weeks time to file her written statement. The learned Counsel for petitioner states that the next date fixed before the Trial Court is 02/03/2016 and that the petitioner will file her written statement on the said date. In any case, four weeks time is granted to the petitioner to file her written statement.

10. The learned Counsel for parties also state that they will prevail upon the parties to try and sort out their disputes amicably. This is indeed a welcome gesture. If necessary, the Trial Court may refer the parties to mediation. The Trial Court to also consider whether some suitable mediator is to be appointed at Sangli where the Petitioner, presently resides alongwith her small child.

11. Rule is made absolute. Considering the reasonable approach of the learned Counsel for respondent, there is no case made out for imposition of any costs.

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

(M. S. SONAK, J.)