

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12542 OF 2016

Shri. Sudarshana Keshav Kotian	]
Hindu adult, Aged about 40 years	]
Occ. Service, Indian Inhabitant presently	]
Having his address at MEP Division,	]
At Alia Trading & Contracting Co. WLL	]
PO. Box No.9523, Salwa Road,	]
Opp. Nissan Showroom, Doha, Qatar	]
And permanently residing at Kotian Villa,	]
Post Uppoor, Udipi Taluk,	]
District Karnataka – 576 105	]..... Petitioner.

Versus

Smt. Vinatha Sudarshana Kotian	]
Hindu adult, Aged 34 years,	]
Occ. Service, Indian Inhabitant	]
Presently residing at Villa No.1253,	]
Road No.2441, Block No.524,	]
Manama, Bahrain	]
And alternatively address at	]
403, Kamal Apartment,	]
Lokhandwala Complex	]
Andheri (West), Mumbai – 400 058	]..... Respondent

Mr. V K Rathod i/by Mr. K S Shetty for the Petitioner.
Mr. R Pinto for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 18th NOVEMBER, 2016

ORAL JUDGMENT

1 Rule. Having regard to the nature of the challenge raised made returnable forthwith and heard by the consent of the Learned Counsel for the parties.

2 The writ jurisdiction of this Court is invoked against two orders i.e. the order dated 06.08.2016 and the order dated 25.08.2016 passed by the Learned Judge of the Family Court, Mumbai, by which order, the applications filed by the Petitioner for being permitted to file his affidavit of evidence came to be rejected. The Petitioner is the husband and the Respondent is the wife who are involved in two Marriage Petitions being M.J. Petition No.A-2438 of 2012 filed by the Respondent wife for divorce and M.J. Petition No.A-1890 of 2013 filed by the Petitioner husband for restitution of conjugal rights. The Family Court having regard to the scope of said two Marriage Petitions clubbed them together and is trying them together. It seems that the Petitioner could not file his affidavit of evidence in the said proceedings on the date fixed by the Family Court and the Learned Advocate appearing for the Petitioner therefore sought an adjournment so as to enable him to file the said affidavit of evidence. The same was done by the Learned Advocate for the Petitioner vide his application filed on 06.08.2016 in which application he stated the reason as to why the affidavit of evidence was not filed. The reason was the misunderstanding regarding the next date on the part of the Learned Advocate for the Petitioner. The said application came to be rejected by the Learned Judge of the Family Court on the ground that there were no reasons on the basis of which time

could be granted to file the affidavit of evidence and that the affidavit of evidence could have been filed with an application on the said day. The Learned Advocate for the Petitioner has thereafter filed one more application on 25.08.2016 pointing out the difficulties of the Petitioner for not filing the affidavit of evidence and seeking an adjournment for the same. In the said application the Learned Advocate stated that the Petitioner with great difficulty has got a job in Qatar and that the Petitioner should not be made to suffer for the mistake of the Advocate. The said application also came to be rejected by the Learned Judge of the Family Court by the second order dated 25.08.2016 on the ground that the Petitions were pending for final arguments and there was no reason to grant time to the Petitioner. As indicated above, it is the said two orders i.e. 06.08.2016 and 25.08.2016 which are taken exception to by way of the above Petition.

3 The Learned Counsel for the parties point out that the said M.J. Petitions have been kept for final hearing on 21.11.2016. Having regard to the reasons mentioned in the applications, in my view, it would be just and proper and the interest of justice requires that the Petitioner herein be given an opportunity to lead his evidence so that there is a fair trial in so far as the said two Marriage Petitions are concerned. If such an opportunity is granted, no prejudice would be caused to the Respondent

except that the adjudication of the said Marriage Petitions would be a bit delayed. For the fact that the Petitioner did not file his affidavit of evidence within time stipulated by the Family Court, the Petitioner can be visited with some costs. The impugned orders dated 06.08.2016 and 25.08.2016 are accordingly quashed and set aside. The applications filed by the Petitioner would resultantly stand allowed. The Petitioner would be entitled to file his affidavit of evidence. The same to be done by him latest by 02.12.2016. No further time would be granted to the Petitioner to file his affidavit of evidence. If the Petitioner does not file his affidavit of evidence as directed by the instant order his right to file the same would stand forfeited. If the affidavit of evidence is filed within the time stipulated by this Court, the Family Court would permit the Respondent to cross-examine the Petitioner. The parties would co-operate in the completion of the cross-examination at the earliest. The Petitioner to pay costs of Rs.3000/- to the Respondent on or before 02.12.2016. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute.

4 The parties to inform the Learned Judge of the Family Court of the aforesaid development.

[R.M.SAVANT, J]