

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

WRIT PETITION NO. 10889 OF 2014

Mrs. Shilpika Kalra

...Petitioner

vs.

Manish Kalra

...Respondent

Mr. Karan Bhosale i/by Wasim Ansari, Advocate for the petitioner.

Mr. Vikram Deshmukh a/w Ms. Shreni Shetty, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.
Date : 21st July, 2016

P.C. :

1. By this petition the petitioner wife seeks four reliefs. The first relief is for transfer of Marriage Petition No. A-1691 of 2009 filed by the respondent pending before the Principal Judge, Family Court, to any other Court of competent jurisdiction. The second relief is for expeditious hearing of the application at Ex.73 for enhancement of interim maintenance awarded to the petitioner. The third relief is for de-novo recording of cross-examination of the petitioner either before the Commissioner or before another court. The fourth relief is for expungement of the remarks recorded by the Family Court against the petitioner. In the alternative, she seeks expungement of the adverse remarks made by the Family Court during recording of evidence as well as in the order dated 30th October, 2014. During pendency of this petition, the learned Principal Judge, Family

Court, Bandra retired. Consequently, the first prayer has become infructuous.

2. As regards the second prayer Mr. Deshmukh, the learned advocate for the respondent points out that the petitioner had agreed for hearing of the application at the time of the trial. This fact is not disputed by the petitioner. In any case, since the recording of evidence in the trial is substantially complete, there can be no direction for consideration of the application for enhancement of maintenance before the trial. Besides the petitioner is already receiving maintenance from the respondent. By the order dated 21st April, 2012 the respondent is directed to pay maintenance at the rate of Rs.15,000/- per month to the petitioner from the date of the application till the final hearing of the main petition. By the second order dated 12th September, 2012 the respondent is directed to pay a sum of Rs.45,000/- per month to the petitioner towards licence fee or rent and Rs.2,00,000/- towards security deposit to enable her to acquire a separate accommodation in her own name on Leave and Licence basis. The enhancement now sought by the petitioner is to the extent of 50% of the salary of the respondent by way of maintenance and Rs.75,000/- per month towards the licence fees.

3. Prayers (c) and (d) of the petition concern the complaints of the petitioner about the recording of the evidence before the Family Court. She contends that the approach of the learned Principal Judge before whom the trial was pending was biased and partial. During the course of cross-examination, the statements made by her were not correctly recorded and when the petitioner tried to point the same out to the Court, the Court had declined to consider the same. Next, the Court has passed

very severe and stern remarks pertaining to the conduct of the petitioner. It is apprehended that the said remarks would prejudice the petitioner at every stage of the litigation. The petitioner had on 30th October, 2014 made an application to bring to the notice of the Court the incorrect and incomplete recording of the evidence during the cross-examination. The learned Judge passed an adverse order on her application.

4. The petitioner has produced part of Notes of Evidence containing the remarks about her conduct. The first note dated 25th August, 2014 is at para 54 of her cross-examination, the same reads as follows :

“Note : The respondent has been told several times to keep her cool. She is getting agitated for every question asked. She is now warned not to speak more than required and only answer the questions put to her as she is under cross examination. May it be known that arguments will follow after the evidence is recorded.”

5. The second note dated 30th October, 2014 is at para 67 of her cross-examination. The same reads as follows :

“Note : This witness goes beyond the questions and she is totally out of control regarding her demeanor in the Court and she is continuously shouting on the court. She has been warned several times. But she is not controlling herself. Even her Ld. Adv. at this juncture told her to control herself or else she will withdraw her vakalatnama in the matter. I am constrained to add here that the respondent is threatening the court that since the court is not recording everything she says, the cross examination should stop here. I am pained to note this type of conduct as the court is not required to record 10 sentences for one question as the relevance of the questions and answers is very pertinent to the court, to observe. This is the last warning given to the respondent to behave properly and to maintain the decorum of the court.”

6. The third note dated 17th November, 2014 is at para 80 of her cross-examination. The same reads as follows :

"Note : The respondent is absolutely fit as she is speaking to the court in a loud voice. She informs the court that she is not well and is advised rest. She has produced a certificate from a Dr. in Noida. It appears it is a prescription and not any certificate as is submitted by the respondent. The manner in which she is addressing the court, she can answer questions in cross-examination for 20 minutes. As the matter is of 2009, I am constrained that the cross will have to proceed today. The respondent has told the Court that she will not answer at any cost and the Court can pass any order which will be challenged in the higher forum. At this point the respondent has walked out of the court. The Court and petitioner's Ld. Adv. Are waiting for the respondent. The respondent is back in the court. Hence the cross examination has commenced.

At this stage the respondent has left the court again.

The respondent appears to be absolutely fit as she is going in and out of the court so many times. Except for a little cough, her voice is as loud as ever. Hence there is no problem for her to answer the questions. I have reserved the afternoon to conclude the entire cross examination."

7. The fourth note dated 17th November, 2014 at para 81 of her cross-examination reads as follows :

"Note : The respondent is misbehaving in court and deserves an action for contempt. She is asking the court as to how a woman can do this to a woman. Infact this question should be asked to herself by her as why she is misbehaving in the court. I have already recorded her contention that she is not well. However her demeanor suggests otherwise. I can not grant adj. As the balance cross-exam is said to be barely for a few more minutes. Witness is saying that she cannot stand when she has been offered a seat.

Q : Since you refuse

Note : Once again the respondent has moved away from the witness box. She is walking in the court up and down and this is a certain sign of contempt of court. I wonder why her advocates are not present. It is 03.50 pm. and there is no head way through the cross.

At this stage the respondent has given an application for seeking a date as she is said to have an appointment in KEM hospital at 4.00 pm. it is already 03.55 pm. hence the respondent will not even reach KEM hospital. The respondent has wasted the time of this court for 1 hour and could have answered the questions and concluded the cross.

As the respondent is behaving in an impossible and uncontrollable manner she is directed that she should keep her advocates present on next date. As and by way of last chance an adjournment is granted to her on payment of cost of Rs.5,000/- to the petitioner. It is made clear that the respondent shall observe decorum of the court and behave in a peaceful manner on future dates. If she does not answer the questions put to her in cross on the next date, not only will this court strike off her defence, but I will have no option but to take sterner remedy against such a miscreant. The same be noted by the respondent. Even if the respondent wants to change her advocate as she suggested, it will not mean that she can take further adjournment as she is duty bound to face cross examination and conclude it on next date."

8. Mr. Bhosale, the learned advocate for the petitioner submits that the observations quoted above can neither be said to be connected nor relevant to the matter in dispute before the Family Court. Therefore, the learned Principal Judge ought not to have made the same. According to him, at least the court could not have opined on the physical condition of the petitioner. He heavily relies upon the medical certificate dated 18th November, 2014 produced by the petitioner of the next date to substantiate the health of the petitioner.

9. In my opinion, the notes quoted above are nothing but recording demeanor of the witness, by the court during the course of recording of evidence. It being the record of the court as to what transpired during the course of hearing before it cannot be expunged. The same must be accepted as the true record of the proceedings. Besides, there is not just one instance of friction. The notes of evidence shows that it was happening repeatedly and the court was duty bound to record the same. Therefore, there is no question of expunging any note or observation from the record. It may not be out of place to mention here that even before this court the petitioner has twice changed her advocates. She has been filing applications in person, mentioning the applications for circulation despite having an advocate representing her.

10. There are two orders dated 30th October, 2014 with which the petitioner has grievance. The first order is on the application at Ex.104 filed by her in person for immediate hearing of the application for enhancement of maintenance. It reads as under :

"ORDER : The interim maintenance order was passed on 4.4.12 by my part-I. The enhancement application has been filed on 29th Aug. 2013. By an order dated 28.8.13, the application was to be heard @ final arguments as the trial of this 5 yrs. Old petition was in progress. Today, it is pressed to be heard "immediately". Hence, petitioner is directed to file reply to the said application as the next date. It is to be noted that the interim order for maintenance is passed till the final hearing of the petitioner. Both parties had agreed that the enhancement application be held at the time of final hearing. Now there is this sudden pressure being created by the respondent to hearing of the said application for enhancement."

The order speaks itself and there is nothing in it which can be said to be incorrectly recorded or noted.

11. On 30th October, 2014 the petitioner had filed an application for correcting her statement in cross-examination. This application was also filed by her in person. It was submitted at 4 pm. when the court was busy in hearing another matter. The application was rejected holding that the evidence had been recorded as per the answers of the petitioner and she cannot be permitted to change her stance and answers in such manner. In the order then the court has further recorded the demeanor of the petitioner in following words :

"The Respondent has to be checked and warned after every question as she answers so many things at a time for e.g. she starts by saying "she does not recollect". Then she moves as to same thing which is absolutely not relevant to the question put to her by the Ld. Adv. In Cross-examination. Her out bursts are furious and conduct is uncontrollable. After I recorded her demeanor, in the evidence, pursuant to requesting her to answer to the question and not beat around the bush, she calmed down to some extent. It is rather difficult to conduct Cross-examination of this witness and her further giving such applications as desired by her without the approval & signature of her Ld. Adv. amounts to unwarranted interference in the cause of justice."

In my opinion, the above observation in this order is again record of the proceedings before the Family Court and cannot be expunged in such manner. It is open for the petitioner to make submissions before the Family Court at the time of arguments on her justification of her conduct. Hence, the petition is liable to be dismissed. At the highest the only thing that can be said for the petitioner is, if she co-operates in early completion of the evidence and early disposal of the petition,

which has been pending since the year 2009, the Family Court will can be asked not to be influenced by the observations quoted above. The petition is accordingly dismissed with costs.

[Smt. R. P. SondurBaldota, J.]