

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

WRIT PETITION NO.12864 OF 2016

Mrs. Sarika Mahendra Sureka

..Petitioner

Versus

Mr. Mahendra Sureka

..Respondent

Mr. S. R. Borulkar i/by Mr. S. V. Chaugule for the Petitioner.

Mr. Ajit Kocharekar for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 23rd NOVEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 26.10.2016 passed by the Learned Judge of the Family Court No.3, Mumbai, by which order, the Application Exh.170 filed by the Petitioner for cross-examination of the expert witness whose evidence would be adduced by the Respondent herein came to be allowed and application Exh.172 filed by the Petitioner for further cross-examination by the Respondent came to be rejected.

2 The marriage between the Petitioner and the Respondent took place on 22.05.1991. The Respondent husband has filed a Petition for divorce being M.J. Petition No.A-1270 of 2011 on the ground of cruelty and adultery. The Petition is at the stage where the evidence of the expert i.e. the representative from one Helik Forensic Laboratory is to

be recorded on 29.11.2016. Prior thereto, the evidence of the Respondent who is the Petitioner in the said Marriage Petition and the evidence of the Petitioner is over. It seems that the Respondent to buttress his case based on the said two grounds had produced a CD allegedly containing the conversation between the Petitioner and an unknown person who the Respondent alleges to be the paramour of the Petitioner. The record does not disclose that the said CD has been marked as an exhibit. It appears that an order came to be passed directing the Petitioner to give her voice sample which order came to be challenged in this Court but has not been interfered with. It is on the basis of the said voice sample that the recording in the CD has been compared by the said expert i.e. Helik Forensic Laboratory and a report has been submitted in the Court and as indicated above, the evidence of the witness from the said Helik Forensic Laboratory is to be recorded on 29.11.2016. In view thereof, the Petitioner filed the said two applications i.e. application Exh.170 that she may be permitted to cross-examine the witness from the said Helik Forensic Laboratory and that in the light of the report the Respondent be permitted to be further cross-examined. In so far as the application Exh.170 is concerned, as indicated above, the same has been allowed by the Learned Judge of the Family Court. However in so far as the application Exh.172 is concerned, the same has been rejected inter-alia

on the ground that the Petitioner had an opportunity to cross-examine the Respondent on the aspects mentioned in the application and that mere submission of the report by the expert would not entitle the Petitioner to further cross-examine the Respondent.

3 The Learned Counsel appearing for the Petitioner Mr. S. R. Borulkar and the Learned Counsel appearing for the Respondent Mr. Ajit Kocharekar would make submissions for and against the recall of the Respondent for further cross-examination.

4 In my view, having regard to the fact that the evidence is as yet not complete, and having regard to the fact that the report from the expert is now on record and in respect of which report the witness from the said Helik Forensic Laboratory would be examined, as also having regard to the fact that the record does not disclose that the said CD has been marked as an exhibit meaning thereby has been proved in accordance with the requirements of law. It would be just and proper and in the interest of a fair trial that the Petitioner is given an opportunity to further cross-examine the Respondent on the aspects of the authenticity and custody of the said CD. If the said course of action is followed, the same would obviate future complications in the trial. Hence the impugned order dated 26.10.2016 passed by the Learned Judge of the

Family Court No.3, Mumbai in so far as it rejects the application Exh.172 is quashed and set aside. The application Exh.172 would stand allowed restricted to the CD. The further cross-examination of the Respondent would be allowed albeit to the extent of the authenticity and custody of the said CD. Needless to state that the Petitioner would not be entitled to re-open the evidence.

5 Since the Marriage Petition is now kept on 29.11.2016 for recording the evidence of the said expert witness, the further cross-examination of the Respondent restricted to the CD would be conducted before the evidence of the expert witness is recorded. The same would therefore be done on 29.11.2016 and preferably completed on the same day. The Petition is allowed to the aforesaid extent and disposed of.

6 Parties to act upon a copy of this order duly authenticated by the Court Associate/Shirestedar.

[R.M.SAVANT, J]