

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11944 OF 2015
AND
WRIT PETITION NO. 12314 OF 2015

Ramesh G. Rege .. Petitioner
vs.
Anjali R. Rege .. Respondent

Mr. B.M. Patwardhan for the Petitioner - Ramesh.
Mr. Abhijit D. Sarwate for the Respondent – Anjali.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 27 January 2016.
Date of Pronouncing the Judgment : 29 January 2016.

JUDGMENT :-

- 1] Heard the learned counsel for the parties. Perused the record.
- 2] The following proceedings are pending between the parties in Family Court No.3 at Pune presided over by Judge (Smt. Swati Chauhan):

- a. *PA 850 OF 2005 for divorce on account of cruelty and desertion (Petitioner Vs Respondent 1)*
- b. *COUNTER CLAIM OF RESPONDENT 1 in PA 850/2005 claiming maintenance*
- c. *PC 41 OF 2005 claiming maintenance (Respondent 2 Vs Petitioner)*
- d. *PB 32 OF 2007 claiming money (Respondent 1 vs. Petitioner)*
- e. *PB 9 OF 2009 for declaration of benami properties bought by Petitioner in the name of Respondent 1 (Petitioner Vs Respondent 1)*
- f. *Darkhast no. 71 of 2015 in PC 41 of 2005 for recovery of arrears of alleged interim maintenance*

- for 4 months (Respondent 1 Vs Petitioner)*
g. *Darkhast no. 72 of 2015 in PA 850 of 2005 for recovery of alleged arrears of interim maintenance for 4 months (Respondent 2 Vs Petitioner).*

3] By Miscellaneous Application No. 110 of 2015, the Petitioner applied to the Principal Judge, Family Court at Pune (Principal Judge) for transfer of the aforesaid proceedings from Family Court No.3 to any other Court alleging bias against the Presiding Officer.

4] By order dated 4 November 2015, the Principal Judge has dismissed the Petitioner's application. This order dated 4 November 2015 has been challenged by the Petitioner in Writ Petition No. 11944 of 2015.

5] The Petitioner has also instituted Writ Petition No. 12314 of 2015 purporting to directly invoke the powers of this Court under Section 24 of the Code of Civil Procedure, 1908 (CPC) read with Article 227 of the Constitution of India, again, for the purposes of seeking transfer of proceedings from Family Court No.3 to any other Court, again, alleging bias against the Presiding Officer. Mr. Sarvate, learned counsel for the Respondent, has objected to the maintainability of Writ Petition No. 12314 of 2015. However,

considering that the issues raised in both the petitions are common, it is appropriate if both petitions are disposed of on merits.

6] Mr. Patwardhan, learned counsel for the Petitioner, by reference to certain instances has submitted that the Presiding Officer is biased against the Petitioner and therefore, the Petitioner has a reasonable apprehension that he will not be able to get justice in the proceedings pending in the Court presided over by the said Presiding Officer. In this regard, Mr. Patwardhan made reference to the following instances:

a] On 15 July 2015, when neither the Petitioner nor his advocate could attend the proceedings before this Court, adjournment was applied for. The adjournment was declined and certain adverse orders were made on the said date;

b] On 3 August 2015, the advocate for the Respondent was permitted to argue Darkhast No. 72/2015 fully and without any time restrictions. However, advocate for the Petitioner was directed to complete his arguments within five to ten minutes. The protest by the counsel for the Petitioner went unheeded. The application made by the Petitioner below Exhibit-10 in the

said Darkhast proceedings has rejected outright, thereby depriving the Petitioner of submitting his objection to the Darkhast application;

c] In Darkhast Application No. 72 of 2015, the order was made on 3 October 2015 and the Presiding Officer orally declared the operative portion in the Court. The Presiding Officer went on to state that unless the arrears of interim maintenance are paid on or before 12 October 2015, the petition will be dismissed and defence of the Petitioner in the counterclaim of the Respondent will be struck off on 12 October 2015. As, there were hardly five working days between 3 October 2015 and 12 October 2015, the Petitioner applied for extension of time, since he intended to challenge the order dated 3 October 2015 before the High Court. However, the same was declined;

d] On 3 October 2015, the Respondent-wife applied for directions that the interim maintenance amount be paid to her directly and not through the Court. Even without furnish of copy of such application, the Presiding Officer within minutes

made an order to the effect that the interim maintenance amount be paid directly to the Respondent.

7] The aforesaid, are the instances referred to in Miscellaneous Application No. 110 of 2015, on the basis of which transfer was applied for by the Petitioner. In the two petitions, however, the Petitioner, has made reference to some more instances, which according to the Petitioner make out a case of bias against the Presiding Officer. The same are as follows:

a] On 5 November 2015, the Petitioner applied for stay of proceedings in P.A. No. 850 of 2005, as the Petitioner intended to challenge the order in M.A. No. 110 of 2015. This was rejected with costs of Rs.5000/-;

b] On 5 December 2015, the Presiding Officer called upon the Petitioner to accept service in PB No. 28 of 2015 from the Sheristedar, despite, the Petitioner pointing out that no notice of said proceedings had been received by him in the due course of law;

c] There is third incident of denial of suitable date to the advocate for the Petitioner and further, preponment of date in

order to convenience the Respondent, but inconvenience the Petitioner. The rejection of the Petitioner's application for change of dates and insistence that the matter be taken up on date inconvenient to the Petitioner.

8] Mr. Patwardhan vehemently submitted that all the aforesaid instances are more than sufficient for establishing that the Presiding Officer is biased against the Petitioner and therefore, the proceedings may be transferred to some other Court. He relied upon the decision of this Court in case of *Julie Jayesh Shah Vs. Jayesh Trilok Kumar Shah*¹.

9] In my judgment, no case is made out for transfer of proceedings. The Principal Judge had called for report from the Presiding Officer and upon perusal of the same, the Principal Judge has rightly declined transfer of proceedings. Even if, some of the instances cited by the Petitioner are to be accepted, the same cannot be viewed *de hors* the circumstances in which they took place. The record reveals that the Petitioner is used to filing multiple proceedings and applications. In fact, the Petitioner, has at one stage asserted that it is his right to do so. The Presiding Officer is also

1 Family Court Appeal No. 119 of 2012 decided on 1 November 2012

reeling under directions for expeditious disposal of the proceedings. If the total perspective is kept in mind, then the dispatch with which the Presiding Officer is proceeding in the matter, cannot be criticized as indicative of any bias against the Petitioner or in favour of the Respondent.

10] As noted earlier, we are concerned with several proceedings as well as several miscellaneous applications therein. There are directions for expeditious disposal of all such proceedings. The record does indicate at least *prima-facie* that the Petitioner is resisting the expeditious disposal of such proceedings or at least, the Petitioner is responsible for the bulk of pending proceedings by continuously filing one application after other. Besides, the Petitioner is bent upon challenging every act or procedural order, including the question of dates upon which the proceedings are to be fixed. There are orders which require the Petitioner to pay interim maintenance to the Respondent. When faced with applications for execution, the Petitioner has himself taken out applications seeking recall or variation of interim maintenance order made in the year 2006 and further, that the Petitioner himself be paid maintenance by the Respondent-wife. The Petitioner, then, insist that all such

applications be taken up before the other matters can proceed. The Petitioner time and again asserts that it is his right to file applications and secure adjudication thereon and further, that the Courts are obliged to do so. From the record, it does appear the Petitioner is interested in stalling the progress of the proceedings on merits. Faced with a situation of this nature, the Presiding Officer is required to do her best in order to take up and dispose of the Petitioner's applications and objections on one hand and at the same time, to make efforts to dispose of the main proceedings finally, in view of directions for expedition. Therefore, even assuming without accepting that there is any basis in the contention of Mr. Patwardhan that the adjournments are being denied to the Petitioner, or that time restrictions are being imposed upon him or that directions are being issued for payment of interim maintenance on the pain of disposal of main proceedings or striking of defence, it cannot be said that all this is indicative of any bias on the part of the Presiding Officer. In this case, liberty of filing all kinds of applications is really not being denied to the Petitioner. In fact, the Petitioner is availing such liberty in full measure. However, in order that all such applications are entertained and at the same time, the disposal of main proceedings do not lag behind, some strictness on the part of

the Presiding Officer is to be expected. At any rate, such strictness cannot be criticized as having its origins in bias or ill-will.

11] The Petitioner has indeed indulged in making reckless allegations. The allegations appear to have been made to embarrass the Presiding Officer, so that Presiding Officer may herself recuse from the matter. At one stage, even I was tempted to dismiss the allegations of bias against the Presiding Officer, but at the same time to order transfer of proceedings, so that the apprehensions in the mind of the Petitioner howsoever baseless they may be, do not survive. However, considering the number of proceedings pending and the proceedings which the Petitioner continues to file, such a course of action might prove counter productive. It is very likely that the Petitioner will be emboldened by an order of this nature and such an order might prove to be against the interests of administration of justice. If, on basis of such allegations, matters are transferred, the same will affect the morale of Presiding Officers.

12] As noted earlier, there is really no basis for alleging bias against the Presiding Officer. The instances referred to by the Petitioner, have to be viewed in the entire context in which they may

have taken place. The conduct of the Petitioner is also very important. The litigant cannot, on one hand, make applications after applications to provoke the Presiding Officers and thereafter, apply for transfer, when, the Presiding Officer refuses to be provoked, but proceeds to dispose of such applications with dispatch. The decisions of the Presiding Officer may be right or may be wrong. If they are wrong, they can always be corrected before the appeal or writ Courts. However, every adverse order, cannot be criticized as having its origins in some bias or ill-will.

13] There is no merit in the allegation with regard to preponment of the date. As pointed out by Mr. Sarwate, all matters are clubbed together. It appears in the main matter, a particular date was already granted. By error, a different date was granted in one of the connected matter. In order to achieve consistency, if the later date is preponed, no malice or bias can be read into the action. Similarly, if the superior court has not stayed proceedings, then, the Family Court is not obliged to simply adjourn the proceedings on the ground that the Petitioner has instituted proceedings before the superior court and some stay order is expected. All such matters have to be viewed in the perspective in which they took place. The

Presiding Officer necessarily has discretion in such matters. In the facts and circumstances of the present case, it cannot be said that discretion has been exercised arbitrarily or with any unequal hand. The Principal Judge, who had examined the matter in great details, has rightly opined that this was not a fit case for transfer.

14] The facts and circumstances in the case of *Julie Shah (supra)*, offer no comparison to the facts and circumstances in the present case. In any case, in matters of transfer on the basis of allegation of bias, it is the facts which assume importance. The decision in case of *Julie Shah (supra)* is therefore, of no assistance to the Petitioner.

15] For all the aforesaid reasons, these petitions are dismissed. The interim orders granted earlier stand vacated.

(M. S. SONAK, J.)