

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.6626 OF 2016  
(Kailas Janardhan Kumawat Vs. Bharti Kailas Kumawat)

Mr.N.D.Sonavane, Advocate for the petitioner.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 12/07/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 09/03/2016 passed by the Trial Court in HMP No.81/2011 by which application Exh.54, seeking withdrawal of the divorce proceedings, has been rejected.

2. I have considered the strenuous submissions of Mr.Sonavane, learned Advocate for the petitioner/husband. It is contended that the petitioner is the master of his proceedings and if he does not desire to proceed with the said proceedings, he cannot be compelled to prosecute the same.

3. The respondent/wife has been served through Court notice. Yet, no appearance has been entered either in person or through an Advocate.

4. The Trial Court, while passing the impugned order, has recorded certain factors by which the request for permitting the husband to withdraw the divorce proceedings, has been rejected. There is no dispute that if the withdrawal of such proceedings is not *bonafide* and is accompanied with an oblique motive, the Court could refuse leave to the husband to withdraw such a proceeding.

5. The record reveals that the wife is granted Rs.5,000/- maintenance per month and Rs.3,000/- for her son by the Family Court u/s 125 of the Cr.P.C. in proceeding No.E-269/2012. The arrears have mounted to Rs.2,10,000/-. The husband has assailed the said order before this court at the Principal Seat and the same is pending. The husband is permitted to deposit the portion of the said amount.

6. In the proceedings on hand before the Trial Court, issues were cast. The petitioner has also filed HMP No.56/2015 seeking restitution of his conjugal rights. The respondent/wife has also filed petition bearing No.A-12/2011 seeking restitution of conjugal rights and the same has been allowed on 17/10/2014. As the respondent/wife has to attend HMP No.81/2011 at Nashik, travelling expenses @ 2,000/- has been granted to her. The Trial Court has rejected Exh.54 on the ground

that the wife would be deprived of maintenance of Rs.2,000/- per month, which in fact is not maintenance amount but is towards her travelling expenses for attending the said proceedings.

7. This matter was heard on 07/07/2017. Considering the facts in HMP No.81/2011, I was inclined to permit the petitioner to withdraw the said proceedings by quashing the impugned order subject to the condition that the petitioner/husband would file an affidavit in this Court stating that he would clear all the arrears of maintenance amount and he would undertake never to file another divorce proceeding after withdrawing the present divorce proceedings. Learned Advocate for the petitioner submits that the petitioner has orally instructed him to make such a statement, but has not come forward to file an affidavit.

8. Considering the above, I deem it proper to pass a conditional order as follows :-

[a] The petitioner husband shall file an affidavit/ undertaking in HMP No.81/2011 within one month stating that if he is permitted to withdraw the said proceedings, he would thereafter never file a divorce proceeding.

[b] The abovesaid condition upon being fulfilled and after the petitioner clears all the arrears of maintenance as on date by depositing the said amount in the Court or pay it directly to the

respondent/wife within one month, the Trial Court would permit him to withdraw HMP No.81/2011.

[c] If the above conditions are complied with in the time specified, the impugned order dated 09/03/2016 shall stand quashed and set aside.

9. The above stated both conditions should be complied with by the petitioner on or before 15/08/2017, pursuant to which the Trial Court may dispose of the said proceeding as withdrawn.

10. If the said conditions are not fulfilled, HMP No.81/2011 shall be adjudicated upon by the Trial Court.

( Ravindra V.Ghuge, J.)