

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 1040 OF 2017**

ARUN SHARMA

... PETITIONER

Versus

ROXANN SHARMA

... RESPONDENT

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Mr. Anacleto Viegas with Mr. Ryan Menezes and Ms. Uma Prabhudessai, Advocates for the Petitioner.

Ms. Maria Caroline Collasso, Advocate for the Respondent.

**CORAM : C.V. BHADANG, J.****DATE : 13<sup>th</sup> December, 2017****ORAL ORDER:**

By this petition, under Article 227 of the Constitution of India, the petitioner is challenging the order dated 17.07.2017, by which an application (Exhibit-281), filed by the petitioner for “production of additional documents”, has been dismissed.

2. The brief facts are that the matrimonial petition, filed by the petitioner against the respondent for custody of their child, which is registered as Matrimonial Petition No. 59/2013/II, is pending before the learned Senior Civil Judge at Margao. Admittedly, the petitioner has concluded his part of the evidence. It appears that there was an order granting interim custody of

the child to the respondent. The petitioner filed Civil Miscellaneous Application No. 1/2016/II in the aforesaid matrimonial petition, for taking action of contempt against the respondent, on the allegation that the respondent has breached some of the conditions of the interim order, granting custody to the respondent. The petitioner examined himself (AW-1), along with Mr. Vijay Shinde (AW-2), Mr. Manzoor Shaikh (AW-3) and Mr. Sanket Khedekar (AW-4), as his witnesses.

3. Essentially, the gravamen of the allegation was that the respondent has travelled to Mumbai between December, 2015 to August, 2016, although, she was required to stay at Betalbatim, Goa. On account of such travel, the petitioner could not exercise his visitation rights. Be that as it may, the record discloses that the learned Trial Court, by an order dated 13.06.2017 has *prima facie* held that the respondent has committed contempt and a reference is made to this Court, which is registered as Contempt Petition (Main) No. 24/2017. It is further a matter of record that the respondent has challenged the order of the learned Trial Court in Writ Petition No. 975/2017. Both, the contempt petition as well as the writ petition, are pending before this Court. The dispute in the present petition pertains to a leave sought by the petitioner to

produce his own deposition along with the deposition of Mr. Vijay Shinde (AW-2), Mr. Manzoor Shaikh (AW-3) and Mr. Sanket Khedekar (AW-4), recorded in Civil Miscellaneous Application No. 1/2016/II in the matrimonial petition. The learned Trial Court by an order dated 17.07.2017 has dismissed the application (Exhibit-281), thereby refusing leave to produce the said documents.

4. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

5. It is contended by the learned Counsel for the petitioner that the deposition of the petitioner and the three witnesses is recorded in a connected matter, involving breach of the order granting interim custody. It is contended that the matter of contempt is essentially connected with the matrimonial dispute between the parties. It is submitted that the evidence so recorded can be said to be “public documents”, under Section 17 of the Evidence Act and having regard to the presumption under Section 80 of the Evidence Act, the “documents”, can be allowed to be produced.

6. On the contrary, the learned Counsel for the respondent has submitted that the evidence, the copies of which are sought to be produced, is recorded in a separate proceeding, in which the only issue was whether, the respondent has committed breach of the orders granting interim custody. It is submitted that the issue involved in the contempt petition and the matrimonial petition are different and distinct. It is submitted that in any case, the evidence recorded in those proceedings, cannot form substantive evidence in the matrimonial petition. It is submitted that the respondent has cross examined the petitioner and his witnesses in Civil Miscellaneous Application No. 1/2016/II, only on the limited aspect of contempt and not on the issue involved in the matrimonial petition and as such, permission to produce evidence, would cause prejudice to the respondent.

7. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. The litigation between the parties has a checkered history. The matrimonial petition has been expedited by this Court as well as by the Hon'ble Supreme Court. In the matrimonial petition, the petitioner has already closed his

side and now it is for evidence of the respondent, where cross examination is over. The evidence recorded in one judicial proceedings, cannot be considered or read as substantive evidence in another judicial proceedings. If, according to the petitioner, these witnesses were also relevant with regard to the issue involved in the matrimonial petition, the petitioner ought to have examined them in the matrimonial petition as well, which is not done. The learned Counsel for the respondent is right in contending that the witnesses were crossed examined only on the limited aspect of issue of custody of the child. Apart from all these reasons, the significant aspect is that the learned Trial Court, after considering the record in Civil Miscellaneous Application No. 1/2016/II, has *prima facie* come to the conclusion that a case for contempt is made out. It is true that the said order is subject matter of challenge before this Court in Writ Petition No. 975/2017. Subject to the orders passed in the said writ petition, it will always be open to the petitioner to contend that there is *prima facie* contempt made out. The only ground on which the production is sought is that the respondent is not entitled to the custody of the child, in view of her conduct i.e. breach of certain conditions and if that be the intention and object, nothing prevents the petitioner to rely on the orders passed in Civil Miscellaneous Application No. 1/2016/II, albeit,

subject to any orders passed in Writ Petition No. 975/2017 and in the Contempt Petition (Main) No. 24/2017. Subject to this, no case for interference is made out. The petition is accordingly dismissed.

**C.V. BHADANG, J.**

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