

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3550 OF 2017

Tejaswini Omkar Chavan ... Petitioner
Vs.
Omkar Bajirao Chavan ... Respondent

Mr Sanjay Kulkarni for Petitioner.
Mr. Shriram S. Kulkarni for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 21, 2017

P.C. :

Heard Mr. Sanjay Kulkarni, learned Counsel for petitioner and Mr. Shriram Kulkarni, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has judgment and order dated 02.08.2016 below exhibit-59 as also the judgment and order dated 04.01.2017 below exhibit-65 passed by the learned Judge, Family Court No.3, Pune in P.A.No.415 of 2013. By order dated 02.08.2016, the learned trial Judge rejected the application exhibit-59 made by the petitioner seeking permission to file additional written statement. By order dated 04.01.2017, the learned trial Judge rejected the application made by the petitioner under Order VIII, Rule 9 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for filing additional written statement and for discarding the earlier written statement filed on record at exhibit-6.

3. In support of this Petition, Mr. Sanjay Kulkarni submitted that written statement dated 13.05.2013 at exhibit-6 was submitted by the petitioner's father in his own handwriting. The said written statement is neither signed by her nor verified by her as contemplated by Order VI, Rules 14 and 15 of C.P.C. The written statement does not conform to

the requirements of C.P.C. In the alternative, he submitted that the written statement was signed by the petitioner under the pressure and coercion of her father. The said written statement is not a written statement of the petitioner in the eyes of law. He submitted that the petitioner may be permitted to file written statement by discarding the earlier written statement dated 13.05.2013 at exhibit-6. Petitioner may be given liberty to file application for framing additional issue, whether the written statement dated 13.05.2013 filed at exhibit-6 is written statement in the eyes of law or not.

4. On the other hand, Mr. Shriram Kulkarni has tendered certified copy of the written statement dated 13.05.2013, duly initialed by the respondent, who is present in the Court and also by him today. The same is taken on record and marked 'A' for identification. Mr. Shriram Kulkarni submits that the said written statement is duly verified by the petitioner herein. He further invited my attention to the application exhibit-59 filed by the petitioner. In that application, petitioner prayed for filing additional written statement as per Order VIII, Rule 9 of C.P.C. In that application, she did not contend that the said written statement is neither signed nor verified by her. No allegation was made to the effect that she signed the written statement under the pressure and coercion of her father. By order dated 02.08.2016, the learned trial Judge rejected the application. The learned trial Judge noted the submissions to the effect that petitioner was unaware of legal provision and for want of funds, she could not engage lawyer to prepare her written statement. The learned trial Judge observed that though the provisions of C.P.C. are not rigidly applicable in the matrimonial litigation, it cannot be relaxed to such an extent that it causes unreasonable benefit to one party and unreasonable loss and delay to another. The learned trial Judge further noted that petitioner filed number of applications and has hotly

contested the hearing in person. On the earlier occasion, she was herself ready to conduct the cross-examination of the petitioner in the absence of her lawyer. In paragraph 6, the learned trial Judge noted that the reason given by the petitioner that for want of funds, she could not engage lawyer cannot be accepted because on previous occasion, the Court had asked her whether she would require free legal aid. Petitioner herein preferred to conduct the hearing in person. The learned trial Judge accordingly rejected the application.

5. Mr. Shriram Kulkarni also invited my attention to the application at exhibit-65 wherein also no case is made out that the written statement is neither signed by her nor verified by her and for the first time, during the course of arguments before this Court, the said contention is advanced. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of application exhibit-59 shows that petitioner merely made prayer for filing additional written statement in terms of Order VIII, Rule 9 of C.P.C. For the reasons recorded in paragraphs 5 to 7 of the order dated 02.08.2016 , I do not find that the learned trial Judge has committed any error in rejecting the application.

7. In so far as the order below exhibit-65 is concerned, in paragraph 12, the learned trial Judge dealt with the contentions raised in the written statement at exhibit-6 and observed that the written statement at exhibit-6 is also per se contemptuous, scornful, insulting, disdainful, defamatory, scandalous, libelous, denigratory, slanderous, calumnious, disgraceful, shocking, rude, raucous, rowdy, raw, spicy. After perusing

the written statement, I am of the opinion that the written statement is also pervert. A perusal of the certified copy tendered by Mr. Shriram Kulkarni, which is taken on record and marked 'A', clearly shows that petitioner has verified the written statement dated 13.05.2013. During the course of hearing, Mr. Sanjay Kulkarni submitted that the certified copy of the written statement supplied to the petitioner does not have the last page containing verification. Petitioner, who is present in the Court, also reiterated the said submission. I called upon Mr. Sanjay Kulkarni as also the petitioner as to whether they are ready and willing to place certified copy of the written statement supplied to the petitioner on record of this Court so as to call for R & P or call for report of the concerned Court on this point. After taking some time to deal with this query, petitioner did not tender certified copy of the written statement supplied to her. In view thereof, I am not inclined to call for the R & P as also report from the concerned Court. That apart, the said contention was not raised either in exhibit-59 or exhibit-65 and for the first time, during the course of hearing of this Petition, the said contention was raised.

8. As the petitioner has signed and verified written statement at exhibit-6, which is evident from certified copy marked as 'A', the submission of Mr. Sanjay Kulkarni that the said written statement is neither verified nor signed by the petitioner and does not conform to the requirements of C.P.C. cannot be acceded to. After perusing the material on record, and in particular the written statement filed by the petitioner herein, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. Liberty is reserved to the parties to file application for disposal of the proceedings in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order thereon. Order accordingly.

(R. G. KETKAR, J.)