

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 5696 OF 2016

Tanuja Hemant Barge
Versus
Hemant Anandrao Barge

...Petitioner

...Respondent

Mr.D.D.Rananaware, for the Petitioner.

Mr.Suresh S.Lanke, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 12th January,2017.

ORDER:

1. Heard finally by consent of the parties. By the impugned order dated 2 March 2015 the learned Civil Judge, Senior Division, Satara, has rejected the application of the Petitioner filed below Exhibit 14 whereby the Petitioner had prayed for interim maintenance. The ground on which the application has been rejected, accepting the objection as raised on behalf of the Respondent-husband is that, the fact, that the Petitioner had only one kidney, was suppressed by the Petitioner at the time of marriage and, therefore, the Petitioner was under incapacity for procreation of children. A case of fraud as being pleaded on behalf of the Respondent, has been accepted by the learned Trial Judge in rejecting the application praying for maintenance. Learned Counsel for the Petitioner in assailing

the impugned order would submit that the impugned order is passed completely overlooking the clear facts of the case as also the provisions of law which would not warrant dismissal of maintenance application on this ground. He submits that the objection which was raised on behalf of the Respondent was also untenable and that such an objection would never have been accepted in deciding the maintenance application.

2. On the other hand Mr.Lanke, learned Counsel for the Respondent supported the impugned order and would submit that the observation as made by the learned Trial Judge that there is a fraud which was played by the Petitioner, is correct and therefore, no interference is required.

3. Having heard the learned Counsel for the parties and having perused the impugned order, in my opinion, there is much substance in the contention as urged on behalf of the Petitioner. Admittedly, the application for consideration before the learned Trial Judge was an application praying for interim maintenance. By the observations as made in paragraphs 4 and 5, the learned Trial Judge has accepted that there is a fraud played on the Respondent by the Petitioner by suppressing the fact that she has only one kidney. In my opinion, this observation cannot be

sustained. Even in considering the marriage petition, the Court is required to consider whether the grounds for granting of divorce under Section 13 read with Sections 5 and 12 of the Hindu Marriage Act, in any manner are made out. The case of the Respondent admittedly was of fraud which required evidence to be led in adjudication of the marriage petition. In my opinion, at the interim stage, the observations as made in paragraphs 3, 4 and 5 of the impugned order thus could not have been made. The learned Trial judge ought to have considered the application for maintenance on its own merit, keeping aside the main objection in the marriage petition which is required to be gone into and decided at the final adjudication of the marriage petition. The approach of the learned Trial Judge is wholly erroneous.

4. Accordingly, the impugned order is quashed and set aside. The application of the Petitioner under Exhibit 14 is restored to the file of the learned Trial Judge to be decided in accordance with law, after hearing the parties.

5. All contentions of the parties on the merits of the matter are expressly kept open.

6. Needless to observe that the learned Trial Judge shall decide the application on its own merit without being influenced by the observations made in the impugned order and the present order.

7. The Writ petition is allowed in the above terms. No costs.

8. The parties are directed to approach the learned Trial Judge on 30 January 2017 at 11 a.m. The parties undertake to co-operate with each other in adjudication of the application which shall be decided by the learned Trial Judge as expeditiously as possible in any case before 28 February 2017.

(G.S.KULKARNI, J.)