IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8536 OF 2017

Mrs. Alka Rajesh Niwal ...Petitioner

Versus

Mr. Rajesh Ramdas Niwal ...Respondent

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Mr. Rajesh A. More with Ms Amrita Agrawal for the Petitioner.
Mr. Rajesh S. Jadhav for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th SEPTEMBER, 2017.

P.C.:-

Rule. Respondent waives service. By consent, rule is made returnable forthwith.

2. The Petitioner herein has challenged the order dated 2nd November, 2015 whereby the learned Judge of the Family Court No.2, Pune has rejected the request of the Petitioner to dispose of the application dated 16.12.2013 for setting aside the “no written statement” order.

2. Perused the records and considered the submissions advanced by Mr. Rajesh More, the learned counsel for the Petitioner and Mr. Rajesh Jadhav, the learned counsel for the Respondent.

3. It appears that the Respondent-husband has filed petition bearing P .D. No.22 of 2012 for custody of minor children and petition bearing P. A. No.564 of 2011 for restitution of conjugal rights. The Petitioner herein had not filed written statement in the Petition bearing P. D. No.22 of 2012, which was for custody of minor children. The learned Judge by order dated 3rd January, 2013 noted that no written statement was filed and adjourned the matter for evidence of the Respondent.

4. It appears that the Petitioner herein had filed an application dated 16.12.2013 for setting aside the "no written statement" order and to permit her to file the written statement. The said application at Exhibit 40 was marked for say. The extract of the Roznama, which is placed on record indicates that the Respondent had not filed his reply to the said application. The said application was not taken up for hearing and remained pending without any further order on the same.

5. The records reveal that both the parties had filed a joint purshis on 12.11.2014 for clubbing both the petitions i.e. P.D. No.22 of 2012 and P.A. No.564 of 2011. The Petitioner-wife had already filed

her written statement in the Petition bearing P.A. No.564 of 2011. The Trial Court recorded the evidence in both these Petitions without in fact disposing of the application dated 16.12.2013 at Exh.40. The Petitioner brought this fact to the notice of the learned Judge by an application dated 22.4.2015. The learned Judge, however, dismissed the said application mainly on the ground that said application was filed on 16.12.2013 and that the application has not been pressed since then. Needless to state that the Petitioner-wife having filed the said application and the learned Judge having already called upon the Respondent to file his say on the said application, it was for the learned Judge to dispose of the said application before proceeding to record evidence of the respective parties. The Petitioner was not required to take any further steps for the disposal of the said application. It therefore follows that the application could not have been dismissed on the ground that the Petitioner had not taken any steps for the disposal of the application and or on the ground that the application was pending since long. In the light of above, the impugned order cannot be sustained.

4. Hence, the Petition is allowed. The impugned order dated 2.11.2015 is quashed and set aside. The learned Judge is directed to

dispose of the application dated 16.12.2013 on its own merit. Rule is made absolute.

5. Both parties to appear before the Family Court on **9.10.2017 a 11.00 a.m**

(ANUJA PRABHUDESSAI, J.)