

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6374 OF 2015

Siddesh Amrut Anvekar,	]	
Age : 36 Years, Occ. Service,	]	
Permanently residing at B/454,	]	
Abbas Wado, Canca, Mapusa, Goa	]	
Also having address at Flat No.2003,	]	
Dosti-Vrishti, Wing-C, Vartak Nagar,	]	
Thane (West) – 400 606.	]	 Petitioner

Versus

Shwetal Siddesh Anvekar,	]	
Age : 26 Years, Occ.: Service,	]	
Residing at Flat No.203, 2 nd Floor,	]	
Manikraj Building, Chulna Road,	]	
Manikpur, Vasai (West), Dist. Thane.	]	 Respondent

Mr. Dharmendra M. Joshi for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH OCTOBER 2017.

ORAL JUDGMENT :

1. Heard learned counsel for the Petitioner. Respondent and her counsel are absent. Heard finally, at the stage of admission itself.

2. This Writ Petition is directed against the order dated 5th January 2015 passed by the Principal Judge, Family Court, Mumbai, thereby rejecting the Petitioner's application, bearing Civil

Miscellaneous Application No.226 of 2014, preferred for setting aside the order of dismissal of the Petition, bearing No.A-1461 of 2012, filed by him. The said Petition was filed by the Petitioner seeking divorce on the ground of adultery and cruelty. Respondent had appeared in the said matter and also filed her written statement resisting the said Petition. Thereafter, affidavit-in-evidence of the Petitioner was filed and the matter was posted for cross-examination. However, as the Petitioner remained absent thereafter on four dates, the Petition came to be dismissed, for default and for want of prosecution, with costs of Rs.10,000/- on 15th September 2014.

3. The Petitioner, therefore, filed an application, bearing Civil Miscellaneous Application No.226 of 2014, for setting aside the said order of dismissal within time; however, the said Miscellaneous Application also came to be dismissed vide impugned order dated 5th January 2015.

4. The submission of learned counsel for the Petitioner is that, if Petitioner was not interested in proceeding with the Petition for divorce, he would not have filed this affidavit-in-evidence. Not only that, on 15th September 2014, when the matter came to be dismissed for default, he was very much present and had prepared the

application to be filed in the Court for appointment of 'Commissioner' to transcript the C.D. and place the transcription of C.D. on record. It is submitted that, the Petitioner was and is genuinely interested in prosecuting the matter, but, on account of certain difficulties, as he could not remain present on earlier dates, hence the matter came to be dismissed for default with costs and his Miscellaneous Application also, for setting aside the order of dismissal of Petition, came to be rejected with costs.

5. Learned counsel for the Petitioner submitted that, he has already deposited the entire cost of Rs.10,000/- awarded by the Trial Court on 15th September 2014 and the costs of Rs.25,000/- granted to the Respondent on 5th January 2015.

6. Considering these facts on record and having regard to the aspect that this is a matrimonial litigation, which the parties should be given an opportunity to contest on merits, instead of being dismissed for default, as it has got long term and far-reaching consequences; not only on their marital life but also on the life of the children, the interest of justice requires that the Petition be restored to its original file, so that it can reach to its logical conclusion.

7. As the Trial Court has already imposed costs and those costs

are deposited also and the matter has remained lingering from the year 2014, the order passed by the Trial Court deserves to be set aside.

8. Accordingly, the Writ Petition is allowed. The impugned order dated 5th January 2015 passed by the Trial Court in Civil Miscellaneous Application No.226 of 2014, is set aside. The order of dismissal dated 15th September 2014 passed by the Family Court, Mumbai, in Petition for divorce, bearing No.A-1461 of 2012, is set aside. Petition No.A-1461 of 2012 is restored to its original file.

9. The Petition for divorce, bearing No.A-1461 of 2012, is kept before the Trial Court on 7th November 2017. The Trial Court to decide the same as expeditiously as possible and Petitioner to extend utmost co-operation in deciding the matter.

[DR. SHALINI PHANSALKAR-JOSHI, J.]