

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.5243 OF 2017

T.Anil Prabhu

.. Petitioner

vs

Preeti Anil Prabhu

.. Respondent

Mr.Kuldeep Nikam for Petitioner

None for Respondent

CORAM : G.S.KULKARNI, J

DATE: 20.12.2017

P.C.

Heard learned counsel for the petitioner.

2. The challenge in the present petition is to the impugned order dated 26.4.2017 passed by the learned Judge, Family Court at Pune rejecting the application of the petitioner to file affidavit of evidence within a reasonable time. By an order dated 12.5.2017 this Court had recorded the assurance of the petitioner that on or before 29.5.2017, the petitioner shall file affidavit in lieu of Examination-in-Chief before the trial Court and will not seek extension of time to file affidavit in lieu of Examination-in-chief. Learned counsel for the petitioner states that in pursuance of the statement so made and

recorded by this Court, the affidavit of evidence has been filed before the trial Court before 29.5.2017. Thereafter on 6.12.2017 as service to the respondent was awaited, this Court had directed the petitioner to again serve the respondent. It was also directed that the petitioner shall deposit Rs.25,000/- by way of security of costs before the trial Court on or before 15.12.2017 with liberty to the respondent that if the respondent is satisfied with the amount of costs, the respondent need not attend the proceedings of this petition on the adjourned date of hearing. However, if the the respondent wishes to contest the petition she was free to attend the matter on the adjourned date.

3. The Office report indicates that the respondent is served as also an affidavit of service is placed on record. With the assistance of the learned counsel for the petitioner, I have perused the documents as placed on record including the roznama of the proceedings before the trial Court. Page 116 of the paper book are the relevant dates. On 20.4.2017 the cross-examination of the respondent's witness was completed and the proceedings were

adjourned to 24.4.2017 for the petitioner to file his affidavit in lieu of Examination-in-chief. Prior to the said adjourned date that is on 20.4.2017 the petitioner had moved an application seeking extension of time by three to four weeks to file affidavit in lieu of Examination-in-chief. The grounds on which extension was sought was that the temporary custody of the child for 50% of summer vacation was availed by the petitioner and that it will be difficult for him during the said period to prepare the affidavit of evidence. The respondent also did not contest the application and stated that during the Summer vacation access was agreed between them on 7.5.2017 and from 16.5.2017 to 31.5.2017 and the Court should pass suitable orders. The learned Judge of the Family Court by an order dated 20.4.2017 *inter alia* observed that the proceedings were old proceedings and that there was intention on the part of the petitioner to delay the proceedings as seen from the record of the proceedings and rejected the said application. The petitioner thereafter again moved an application on 21.4.2017 seeking similar prayers and *inter alia* seeking adjournment for four weeks to allow

the petitioner to prepare the affidavit of Examination in-chief. By the impugned order the application came to be granted in following terms :

“ This application is granted as a last chance and the matter is fixed on 26th April 2014 for filing his claim affidavit. If the respondent fails to file his claim affidavit on 26.04.2017, then his right to lead evidence would be forfeited. Thereafter, the matter will be fixed on 28 and 29th April 2017 on daily board for further hearing.

2. This order is dictated and pronounced in open court in presence of the petitioner.”

4. In assailing the impugned order learned counsel for the petitioner submits that the impugned order was *ex-facie* harsh in-as-much as in the given facts and circumstances, it was impossible for the petitioner to comply with the said orders and file affidavit of evidence on 26.4.2017. It is submitted that the trial Court ought not to have forfeited the right of the petitioner to lead evidence by immediately placing the matter on 28 and 29.9.2017. It is submitted that now the affidavit of evidence as assured to the Court has already been placed on record before the trial Court before 29.5.2017 and thus an opportunity be granted to the petitioner to contest the

proceedings.

5. I have perused the impugned order. I have also perused the various other documents as placed on record. In my opinion, considering the anxiety which is reflected in orders dated 20.4.2017 and 21.4.2017 it cannot be said to be without any merits. In the facts and circumstances of the case, observations of the Court appear to be quite appropriate. The learned Judge has observed that the proceedings pertain to the year 2011. The petitioner at all material times was conscious that he is required to contest the proceedings and that in the sequence of the events an affidavit in lieu of Examination in-chief was required to be filed. However, despite sufficient time as available to the petitioner, the petitioner appears to have shown a neglect in presenting the affidavit of evidence in-chief in time. It is not the case that suddenly the petitioner has been told to file affidavit of evidence. Thus, the impression as asserted by the petitioner in the application seeking an adjournment is completely misconceived to say the least. Undoubtedly, the observations as

made by the learned Judge of the Family Court of delay which would be caused in adjudication of the proceedings are correct observations. The learned Judge has come to the conclusion that considering entire record and there was an intention on the part of the petitioner to delay the proceedings, such observations cannot be said to be unjustified.

6. Be that as it may, interest of justice would however require that a fair opportunity be given to the petitioner and as noted by this Court in its order dated 4.5.2017 the petitioner's affidavit in lieu of Examination-in-chief has already been filed as also the petitioner has accepted the order dated 6.12.2017 and has paid the amount of Rs.25,000/- as directed by this Court, though the amount is a meagre amount. Thus, considering the facts of the case at this stage, without directing any further amount to be deposited, the Petition will have to be allowed in following terms:

- (i) As the affidavit in lieu of Examination-in-chief has already been placed on record of the trial Court, the learned trial Court shall immediately proceed to adjudicate P.A.No.790 of 2011. The petitioner shall cooperate in the adjudication of the proceedings and

shall not delay the proceedings. In the event the Court is of the opinion that the petitioner is deliberately delaying the proceedings, the Court to pass such appropriate orders including imposing costs on the petitioner. The trial Court shall adjudicate the petition within a period of six months from today.

7. Petition is disposed of in above terms. No costs.

{G.S.KULKARNI, J}