

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7299 OF 2016

Sou. Kishori Vinayak Kodre

...Petitioner

Versus

Shri. Vinayak Vasantrao Kodre

...Respondent

....

Mr. Shailesh D. Chavan, Advocate for the Petitioner.

Mr. R. P. Pawar a/w. Vaibhav Gaikwad, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 13th APRIL, 2017

P.C.

1. Heard Mr. Shailesh Chavan, learned counsel for the petitioner and Mr. R. P. Pawar, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-wife has challenged the judgment and order dated 27.4.2016 below Exhibits-139, 140 and 142 as also the judgment and order dated 30.4.2016 below Exhibit-143 in H.M.P. No.94/2013 passed by the learned 2nd Jt. Civil Judge, Senior Division, Satara. By order dated 27.4.2016, the learned trial Judge allowed the applications Exhibits-139, 140 and 142

made by the respondent-husband subject to costs of Rs.500/- to be paid to the petitioner-wife. The respondent-husband filed application Exhibit-139 to produce C.D. of conversations on mobile. Application Exhibit-140 was filed seeking permission to produce on M.C.-60 cassette in which there is audio recording of the conversations. Application Exhibit-142 was filed for permission to produce DVD and pen drive in which there is C.C.T.V. recording of two incidents that took place in Sanket laboratory. The petitioner-wife has filed application Exhibit-143 for discarding the evidence adduced by the respondent vide Exhibit-56. By order dated 27.4.2016, as indicated earlier, the learned trial Judge allowed the applications Exhibit-139, 140 and 142 subject to costs of Rs.500/- to be paid to the petitioner. By order dated 30.4.2016, the learned trial Judge rejected the application made by the petitioner vide Exhibit-143.

3. In support of this Petition, Mr. Chavan reiterated the submissions that were advanced before the trial Court. He submitted that present application is belatedly moved. No explanation is given for filing applications belatedly. He also invited my attention to the provisions of Order VII Rule 14 and Order XIII Rules 1 and 3. He also relied upon the decision of

Apex Court in ***Madanlal v Shyamlal, (2002) 1 SCC 535***, wherein Apex Court has held that the documents that are not produced at appropriate stage cannot be received by the Court “unless good cause is shown”. In the present case, no good cause is shown by the respondent vide Exhibits-139, 140 and 142. The learned trial Judge was, therefore, not justified in allowing the applications.

4. As far as order dated 30.4.2016 is concerned, Mr.Chavan submitted that the respondent has not produced all the original documents and electronic instruments at the time of filing H.M. petition or at or before settlement of issues. He has produced on record, alleged copies of script of mobile phone calls which is the specific breach of right of privacy. The respondent has produced on record audio and video C.D's. of the alleged incident that took place after filing of the Petition. He, therefore, submitted that examination-in-chief filed by the respondent vide Exhibit-56 deserves to be discarded.

5. On the other hand Mr.Pawar supported the impugned orders. He relied upon Section 14 of the Family Courts Act, 1984 and submitted that wide powers are conferred on the Family

Court to receive any evidence although same may not be admissible under the Indian Evidence Act, 1872.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. A perusal of order dated 27.4.2016 shows that the respondent has specifically pleaded in paragraph-55 about the incidents dated 11.2.2013 and 14.2.2013. He has also referred to audio and video recording of the conversations which is available with him and he wants to produce it on record. In other words, this clearly shows that the respondent is not trying to lead evidence on incidents which took place after presentation of the petition. For the reasons recorded in the order dated 27.4.2016, no fault can be found with the order dated 27.4.2016.

7. As far as order below Exhibit-143 is concerned, the learned trial Judge has referred to the order passed below Exhibits-139, 140 and 142 for production of the electronic devices. For the reasons recorded in paragraphs-2 and 3 of the impugned order dated 30.4.2016, no fault can be found with that order.

8. Hence, Petition fails and the same is dismissed. Liberty is reserved to the parties to make application for expeditious disposal of the petition subject to their giving undertaking before the trial Court that they will cooperate for expeditious disposal of the petition.

9. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)