

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1440/2017
IN
WRIT PETITION NO. 3753/2017

Amruta Nilay Shah

... Applicant

V/s.

Nilay Rajendra Shah

... Respondent

Mrs. Amruta N. Shah - applicant in person.

Mr. R. V. Govilkar with Mihir R. Govilkar for the respondent

CORAM: K.K. TATED, J.

DATED : JULY 28, 2017

PC. :

1. Heard the learned counsel for the respondent and the applicant in person.

2. This application is made by the applicant wife directing the respondent husband to disclose his residential address, employer's details, his monthly salary, appointment letter, agreement/service contract, on oath. The applicant claimed following reliefs in the application :

“(i) Income Tax return of past three years.

(ii) The details of the properties purchased and owned by respondent along with agreements.

(iii) Bank Statement of the assessment years 2013 to 2015

- (iv) *Agreement copies of the rented flats (USA and Baroda)*
- (v) *Audit reports for past 3 years of Arpita Polymers at Baroda and liquor store in USA*

3. It is the case of the applicant that she has filed the petition u/s.9 of the Hindu Marriage Act, 1955 (said Act) for restitution of conjugal rights, wherein she has made an application u/s.24 of the said Act for maintenance @ Rs.4 lac pm. Said application was allowed by the Jt. Civil Judge, Senior Division, Panvel by order dated 06.08.2016.

4. The applicant party in person submits that though the order was passed by the Civil Judge, Senior Division, Panvel in August 2016, the petitioner husband has failed and neglected to comply with the said order. She submits that as per her knowledge, the entire family of the husband is residing at USA. She submits that for recovery of the maintenance charges as awarded by the trial court, she required the particulars of assets of the respondent husband, his work place etc. She submits that before the trial court, she has made application dated 21.11.2015 directing the petitioner to produce certain documents. That application was allowed by the Court by order dated 29.03.2016 directing the petitioner to produce those documents within 20 days. Said order is on page No.7 i.e. Annexure A of the civil application. She submits that in spite of that the petitioner has failed and neglected to comply with the same. Hence, the trial court, on 22.06.2016 passed order below Exhibit- 1 which reads thus:

“Defence of respondent shall stand struck off on the next date in case of the failure in the compliance of order of the court by the respondent, without any further orders.”

5. The applicant wife submits that again the trial court passed another order below Exhibit- 35 directing the petitioner husband to furnish the details regarding his present residential address and the address of the work. Said order reads thus:

“Respondent is hereby directed to furnish the details regarding his present residential address and the present address of work place within 8 days.”

6. The applicant submits that pursuant to the said order, instead of the petitioner husband, his advocate has filed pursis dated 17.02.2017 disclosing the residential address of the petitioner husband. In that pursis the advocate for the petitioner husband has stated that “as directed by this Hon'ble Court, the undersigned Advocate tried to contact the respondent, but there are no instructions from the respondent in respect of his work address.” On that pursis, the trial court passed the following order dated 17.02.2017.

“The respondent is directed to remain in court in person in order to examine under Order X of the Code of Civil Procedure, 1908 and for compliance of order on 23.02.2017.”

7. In spite of the said order, the petitioner has failed and neglected to remain present before the court. Thereafter the trial court passed another order below Exhibit- 67 on 05.04.2017. In that order the court has directed the Protection Officer under the Protection of Women from Domestic Violence Act, 2005 (DV Act) to estimate the expenses required for the applicant's medical treatment. The applicant party in person submits that though several orders are passed by the trial court against the petitioner to disclose his financial position as well as his work place, he failed and neglected to do. She submits that without all

this information, it is impossible for her to execute the maintenance order passed by the trial court. Hence, she has made the civil application in the Writ Petition, filed by the petitioner husband. She submits that in the interest of justice, this Hon'ble Court be pleased to allow the civil application directing the respondent husband to furnish all this information on solemn affirmation.

8. On the other hand, the learned counsel for the petitioner husband vehemently opposed the civil application. He submits that there is no question of allowing the present civil application directing the husband to disclose the information about his financial status, his work place etc. He submits that there is separate procedure prescribed under the Code of Criminal Procedure (Cr.PC.) for executing orders passed by the trial court. He further submits that till today the applicant has not filed any execution application for executing the said order. He further submits that there is no provision under the Cr.PC. compelling other party to disclose any information, other than the registered address. He submits that in the present proceedings, the applicant wife is demanding to disclose the financial position as well as the address of the work place along with salary certificate. Hence, there is no substance in the civil application. Same is liable to be dismissed with costs.

9. Heard both sides at length. It is to be noted that, admittedly, in the present proceedings, the trial court has passed order dated 06.08.2016 below Exhibit- 5 in HMP No.116/2014 directing the petitioner husband to pay sum of Rs.4,00,000/- p.m. by way of

maintenance to the applicant wife. As per the applicant's contention, as on today, more than Rs.1,48,00,000/- is due and payable by the petitioner husband. The applicant, in her application, contended that the petitioner does not have any immovable or movable property in his name in India and therefore, to take appropriate steps according to law, it is necessary for her to know the financial position of the petitioner as well as his present work place.

10. Prayer clause 13.1 of the civil application, which read as under, is not allowed at present, with liberty to take appropriate steps according to law.

“Prayer clause (13.1) : Make payment of arrears of INR 1,48,00,000/- as of June 2017 on account of order under challenge, as condition precedent for proceeding with Writ Petition/hearing. “

11. Hence, I am of the opinion that the applicant has made out a case for partly allowing the civil application.

12. Hence, following order is passed:

a. The petitioner Nilay Rajendra Shah is directed to disclose the information i.e. name of his employer along with his detail address, salary certificate/pay slip for last 3 years i.e. from the date of filing the petition in the trial court on 12.07.2014, appointment letter and/or agreement/service contract where he is working.

- b. Said information shall be furnished by way of an affidavit before the trial court, within four weeks from today.
- c. Civil application stands disposed off accordingly.

(K.K. TATED, J.)