

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 21899 OF 2016

Mrs. Sangeeta Shrikant Pingale Through C.A.

Mr. Sandeep Prafulla Khedekar

...Petitioner

Versus

Mr. Shrikant Shankar Pingale

...Respondent

Ms.Yogita M.Deshmukh, for the Petitioner.----
CORAM : G.S. KULKARNI, J.**DATE : 12th January,2017.**
----**ORDER:**

1. Heard the learned Counsel for the Petitioner. No notice is required to be issued to the Respondents to dispose of this petition as the Respondent has not appeared before the Trial Court when the impugned order was passed.

2. This petition is directed against an order dated 5 April 2016 passed by the learned Judge, Family Court No.5 at Mumbai. By the impugned order an application filed on behalf of the Petitioner at 'Exhibit 10' for return of original power of attorney which was annexed to the petition, being a power of attorney executed by the petitioner in favour of

her brother Mr.Sandeep Khedekar, was prayed to be returned, by keeping on record its true copy. The following was the prayer in the application:-

“(a) The Original Power of Attorney annexed to the above mentioned Petition which is part of “**Exhibit J collectively**” be kindly returned to the Constituted Attorney of the present Petitioner by keeping on record it's true copy which is already an Exhibit-A to the present Petition.”

3. The above application in question was filed on 30 January 2016. The prayer in the application was for simplicitor return of the document of power of attorney. In the normal circumstances the power of attorney was required at the time of filing of the proceedings and as and when required by the Court at any stage of the proceedings. The reason for seeking return of the said original power of attorney, as stated by the Petitioner in the application, was that, this power of attorney was required for some other purposes like while dealing with the Government Officers etc. These reasons are specifically set out in paragraph 4 of the application. The duty of the Court was simplicitor to consider this application and applying the provisions of law, pass appropriate orders. However, the learned Judge by the impugned order has rejected the said application and in doing so, in my opinion, has made absolutely unwarranted observations against the Advocate representing the

Petitioner. At the outset, it may be observed that considering the nature of the application, these observations as made by the learned Judge were most uncalled for and also are not borne out by the record as also they are disturbing.

4. It may be observed that this power of attorney was not a special power of attorney meant only for the purpose of the proceedings of the Marriage Petition No.B-52 of 2015. It can be noted that the prayers in the main petition are consequent to a decree of divorce which is passed by the Circuit Court of the 20th Judicial Circuit In & for Lee County, Florida, U.S.A. This Court pronounced a decree of divorce dated 23 June 2003, in consequence of the parties filing a 'Mediation Record of Agreement' entered between them which is 'Exhibit A' to the decree of divorce of the U.S. Court. In the petition before the Family Court at Bombay, one of the prayers namely prayer clause (b) was concerning Clause IV of the terms of the Mediation Agreement. Clause IV(B) is relevant which reads thus:-

“IV. REAL ESTATE INVESTMENTS IN INDIA

A.

B. The parties jointly own an apartment complex in Bombay, India, known as the Zenith Apartment Complex. They agree to give powers of attorney to their families to sell this complex and they agree that

they will split the proceeds of such sale. The Mother's proceeds will be distributed to her brother and Father's proceeds will be distributed to his sister for purposes of such sale, and there is already a power of attorney to facilitate this process.”

In the context of the above agreement the Petitioner was before the Family Court in the proceedings in question.

5. Learned counsel for the Petitioner has submitted that there was no legal impediment for the learned Judge of the Family Court to allow the application for return of the original power of attorney inasmuch as the said document was required outside the court for some other purposes, which are set out in paragraphs 4 and 5. These contentions were required to be accepted by the learned Judge of the Family Court considering the nature of the document. It is submitted that the Petitioner could have been put to the terms to produce the original power of attorney as and when necessary during the course of the proceedings as also a certified copy could have been retained on record of the Family Court. It is submitted that, however, without considering the provisions of law, the learned Judge proceeded to pass the impugned order.

6. A perusal of the impugned order indicates that there is much substance in what has been contended on behalf of the Petitioner. Not only the interest of justice but also rule of prudence required the learned Judge of the Family Court to return the original power of attorney, once the proceedings were instituted, by permitting the Petitioner to place on record a certified copy of the record. The learned Judge of the Family Court could have also directed the Petitioner to produce the original power of attorney as and when necessary. Considering the provisions of Section 10 of the Family Courts Act, 1984, the procedure as contemplated under the Civil Procedure Code, however, subject to the provisions of the Family Court Act, would become applicable. Thus the procedure of law which is well established and required to be followed by a Civil Court would certainly be applicable to the proceedings before the Family Court in such matters, as Section 10 of the Family Court Act would contemplate, and more certainly where a prayer is made merely to seek return of the original power of attorney as in the present case. Thus learned Counsel for the Petitioner has appropriately placed reliance on the provisions of Order 13 Rule 9 of the Code of Civil Procedure and more particularly sub-clause (a)(ii) to the Proviso under sub-rule 1, which provides that a document may be returned at any time earlier before the proceedings are disposed of, to the persons applying therefor, delivers to the proper officer

for being substituted for the original with a certified copy, if a request is made by the party to the suit and in case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of Rule 17 of Order VII, and undertakes to produce the original, if required to do so. Apart from this specific provision in law, rule of prudence and the paramount consideration namely the interest of justice was required to be borne in mind by the learned Judge of the Family Court. Thus, there was no reason for the Court to deal with unwarranted aspects as the observations in the impugned order would indicate. It is not the case that the application was filed on the same day and the order was also sought on the same day. The simple application was however kept pending for a substantial time. The observations as made in respect of the conduct of the Advocate ought not to have been made, considering the facts of the case as admittedly the application in question was made as far back on 30 January 2016. The judicial duty cast on the Court is to dispense justice and in the course of dispensation of justice, applications of the parties to be considered as per law and appropriate orders are required to be passed in consonance with the well established procedure and the legal provisions. The impugned order shows that these basic facets are completely overlooked in rejecting the application.

7. In the circumstances, the impugned order is required to be quashed and set aside. The observations as made against the learned Advocate for the Petitioner, as contained in the impugned order were wholly unwarranted and the same are expunged for all purposes. The application of the Petitioner below 'Exhibit 10' stands allowed in terms of prayer clause (a). The original power of attorney be accordingly returned to the learned Advocate for the Petitioner within two weeks from today.

8. Writ Petition allowed in the above terms. No costs.

9. A copy of this order be forwarded to the learned Principal Judge, Family Court at Bombay.

(G.S.KULKARNI, J.)