

psv

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

WRIT PETITION NO.9933 OF 2013

Mrs.Kavita Ramkirshna Dhage	..Petitioner
Vs.	
Mr.Ramkrishna Waman Dhage	..Respondent

Mr. Prashant P. More for Petitioner.
Mr. Sachin S. Padaye i/b. Mr.Girish R. Agrawal for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 19th DECEMBER, 2017

P.C.:

The petitioner challenges the order dated 8th May 2012 passed by learned Judge of the Family Court at Nasik which reads as under:-

“Application is allowed. Respondent along with child is ready for D.N.A. test provided. Applicant is ready to bear expenses of D.N.A. test of petitioner himself, Respondent and child as well as travelling expenses for all the 3 from Nashik to Hyderabad and via versa.”

2. Being aggrieved by the above order, the petitioner had filed a review application before the Family Court contending that the petitioner who was being represented by Advocate was not heard under the Court passed the above order and that the application on which the impugned order is passed be decided afresh after hearing the petitioner. This application was opposed on behalf of

the respondent-husband by filing a reply. In paragraph 3 of the reply, the respondent clearly says that the application was kept back for the petitioner's Advocate to appear, however, when it was called out, petitioner's Advocate did not remain present.

3. A perusal of the impugned order does not inspire any confidence of either an appropriate consent in writing being placed on record on behalf of the petitioner in agreeing for D.N.A. test. Further it appears to be quite clear that the Advocate for the petitioner was not heard when the impugned order came to be passed. What is more surprising is that the review application has been rejected without appreciating the basic grievance of the petitioner on technical grounds and in some what insensitive manner by the learned Judge of the Family Court. The nature of the application as made by the respondent-husband seeking a DNA test of the child who is now stated to be 15 years of age ought not to have been handled in such a casual manner.

4. Needless to observe that serious judicial sensitivity is required in dealing with such applications and a mechanical approach can never be imagined.

5. On the above conspectus and having perused the impugned order dated 8th May 2012 as also the order dated 25th February 2013, in my opinion, it is in the interest of justice that the application filed by the petitioner below Exhibit 9 is required to be denovo considered and adjudicated afresh in accordance with law. The impugned order dated 8th May 2012 and the order dated 25th

February 2013 passed on the review application are accordingly set aside.

6. The learned Judge of the Family Court dealing with the matter shall decide afresh the petitioner's application below Exhibit 9 within a period of three months from today.

7. All contentions of the parties on merits of the case are expressly kept open.

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

[G.S. KULKARNI, J.]