

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10175 OF 2017

Gavin Almeida	..	Petitioner
vs.		
Petrushka Deas & Anr.	..	Respondents

Mr. A. Das Gupta with S. Shah i/b. Jhangiani, Narula & Associates for Petitioner.

Ms Pooja Jalan with Mr. J. Dalia for Respondent No. 1.

Ms Madhuri Sharma for Respondent No. 2.

CORAM : M. S. SONAK, J.

DATE: 07 DECEMBER 2017

P.C :

1] Heard Mr. Das Gupta for the petitioner and Ms Jalan for the respondent no. 1 and Ms Sharma for respondent no. 2.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 28th July 2017 made by the Family Court No. 2, Mumbai, joining respondent no. 2 as a party to Civil Miscellaneous Application No. 181 of 2016 taken out by the petitioner to seek modification of the consent terms dated 4th April 2005 in Petition No. A-367 of 2005.

4] The respondent no. 1 had instituted Petition No. A-367 of 2005 seeking divorce and custody of the daughter Lisa. This petition was disposed of pursuant to consent terms dated 4th April 2005, in which, the respondent no. 1 was granted the custody of Lisa and the petitioner was granted certain visitation rights.

5] The petitioner, by Civil Miscellaneous Application No. 181 of 2016 has applied for modification to the consent decree dated 27th February 2006, which was made on the basis of the consent terms dated 4th April 2005. To such an application, the respondent no. 2, who is presently, the husband of the respondent no. 1, applied for impleadment / joinder. Such joinder / impleadment has been permitted by the Family Court vide impugned order dated 28th July 2017. The Family Court has reasoned that such joinder will prevent multiplicity of proceedings.

6] Mr. Das Gupta, learned counsel for the petitioner submits that in the original petition for divorce, the respondent no. 2, was obviously not a party. He submits that all that the petitioner seeks is modification of the consent decree. To the application seeking modification of the consent decree, the respondent no. 2, can neither be regarded as a necessary nor a proper party. There is no question of any multiplicity of proceedings involved and in any case, assuming that the respondent no. 2 has any independent rights qua the issues of custody and access, it is for the respondent no. 2 to establish the same in some independent proceedings.

7] Ms Jalan and Ms Sharma, learned counsel for the respondent nos. 1 and 2 defend the impugned order by pointing out that the respondent no. 2 is at least a proper party to this proceedings. They point out that Lisa has been accepted as a child of the family and the respondent no. 2, has undertaken the responsibility towards Lisa. It is pointed out that presently Lisa goes by surname of Das Gupta i.e. respondent no.2's surname. In such a situation, any modification of the consent terms is bound to affect the respondent no. 2 as well and therefore, it is only proper

that the respondent no. 2 is impleaded as a respondent in these proceedings.

8] By way of rejoinder, and in response to the particular query from the Court, Mr. Das Gupta, the learned counsel for the petitioner, on the basis of instructions from the petitioner, make a statement that the petitioner has not applied for any change to Lisa's current surname i.e. Lisa Das Gupta and further, the petitioner has no intentions to do so.

9] In the matter of this nature, the respondent no. 2, can neither be regarded as a necessary nor proper party. It is a matter concerning the petitioner and the respondent no. 1 and the consent decree in the proceedings filed by them against each other. Whether the consent decree ought to be modified or not is not an issue before me but I am satisfied that for consideration of such issue, presence of the respondent no.2 is neither necessary nor can be said to be proper. There is no question of any multiplicity of proceedings involved in the matter of this nature. If at all, the respondent no. 2, believes that he has any independent rights in the matter, the impugned order, will certainly not come in the way of his establishing or enforcing such an alleged independent rights. However, the impleadment in the present proceedings, is neither necessary nor proper. This is more so, now that the petitioner has categorically stated that he has no intentions of seeking any modification to Lisa going by the surname Das Gupta. The impugned order, suffers from jurisdiction error and in any case, the learned Family Court, has ignored settled principles in matters of the joinder of necessary or proper parties.

10] For the aforesaid reasons, the impugned order dated 28th July

2017 is set aside. There shall however be no order as to costs.

11] Nothing in this order is to be intended to reflect even remotely on the merits or demerits of the petitioner's application seeking modification to the consent decree. Such application should therefore be decided on its own merits and in accordance with law. In case, the respondent no. 1 desires to produce on record any affidavit of respondent no. 2, the respondent no. 1 will have liberty to do so. This order should not be construed as taking away of such liberty.

12] Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

13] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)