

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10862 OF 2017****IN****MISC.APPLICATION NO. 87 OF 2017****Sandeep Dilip Vakadia****..... Petitioner****VERSUS****Mrs.Bhavana Sandeep Vakadia****..... Respondent**

Ms.Susy Mathew for the Petitioner.

Ms.Rushita Jain for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 2nd NOVEMBER, 2017****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner who is husband of the respondent has impugned the order dated 19th August,2017 passed by the learned Principal Judge, Family Court, Mumbai dismissing the Civil Misc. Application No.87 of 2017 filed by the petitioner (Ex.1) *inter alia* praying for transfer of the Petition No.A-2839 of 2011 to any other court from Court Room No.3.

2. The petitioner filed a petition for seeking a divorce against the respondent in the year 2011. The oral evidence of the petitioner is completed. The respondent has already filed affidavit in lieu of examination in chief and the documents.

3. Learned counsel for the petitioner invited my attention to certain

averments made in the writ petition and more particularly to paragraph (14) which refers to another observation made by the learned Judge of the Family Court during the course of the cross examination of the petitioner. It is noticed by the learned Judge that before answering the question, the learned advocate for petitioner stood and gave a hint to the witness. Even after giving answer by the witness, the learned Judge has seen that the learned advocate of the petitioner had made gestures to the petitioner showing her displeasure for giving such answer. The learned advocate for the petitioner was accordingly warned not to repeat such things, otherwise she would face appropriate action.

4. It is averred in the petition that the petitioner's advocate thereafter told her client to answer the questions in 'yes' or 'no' and that too after his answer is recorded.

5. It is submitted by the learned counsel that the learned Judge was biased against the petitioner and was making unwarranted observations against the petitioner and his advocate. Learned counsel invited my attention to the order passed by the learned Judge of the Family Court and would submit that the petitioner would not have applied for transfer of the matter from the Court Room No.3 but the learned Judge himself granted liberty to the petitioner to apply to the learned Principal Judge of the Family Court to apply for transfer of the matter.

6. It is submitted that the learned Principal Judge therefore ought to have allowed the transfer application filed by the petitioner. She submits that the petitioner may not get justice further if the matter is

continued before the Court Room No.3. It is submitted by the learned counsel for the petitioner that in the affidavit in reply filed by the respondent, it is not averred by the respondent that the petitioner or his advocate has made any allegations against the learned Family Court Judge. She submits that the observations made by the learned Family Court Judge in various proceedings are thus incorrect.

7. Learned counsel for the respondent on the other hand would submit that the learned advocate for the petitioner was giving hint to the witness when the petitioner was in witness box during the course of cross examination. Learned trial Judge rightly noticed this behaviour of the learned advocate and had accordingly warned her. She submits that the petitioner has stopped paying any maintenance since December 2016. The parties have one daughter who is 6 years old whose school fees and other expenses are required to be incurred. She submits that the petitioner has been delaying his own proceedings for last several years. She invited my attention to the order passed by the learned Judge of the Family Court and would submit that the petitioner and his advocate created an unhealthy atmosphere which compelled the learned trial Judge to grant such liberty to the petitioner to apply before the learned Principal Judge of the Family Court for transfer of the matter. The learned judge did not refuse to hear the matter.

8. Learned counsel also invited my attention to the impugned order passed by the learned Principal Judge and would submit that the reasons recorded by the learned Principal Judge are rightly recorded and the learned Principal Judge has rightly rejected the application for transfer

of the matter from the Court Room No.3 to any other court. She submits that because of the pendency of the application for modification of the interim order which is not yet been heard for last more than one year, the respondent and her child is seriously prejudiced.

9. A perusal of the record indicates that on 4th February, 2017, the learned Judge of the Family Court in Court Room No.3 made various observations against the petitioner and his advocate that the learned advocate of the petitioner was making direct or indirect allegations against Court about favouring other side or having bias against the petitioner. The learned Judge observed that the learned advocate for the petitioner had all the while had made allegations either against the opponent's lawyer or the Court and did not conduct the matter in peaceful and healthy atmosphere. The learned advocate had made grievance against the Court from time to time. In these circumstances the learned Court recorded that he found that it would not be just and proper of his Court to proceed with the trial. He granted liberty to the petitioner to approach the Principal Judge of the Family Court, Bandra for getting his petition transferred from Court Room No.3 so as to avoid further unhealthy atmosphere in the court and also to remove apprehension from his mind.

10. A perusal of the record indicates that the learned judge has made observations against the conduct of the learned advocate for the petitioner and the petitioner during the course of the cross examination of the petitioner. The learned Judge noticed that the learned advocate for the petitioner stood up and was giving the hint to the witness. The

learned Trial Judge has warned the learned advocate not to make any gestures and not to give any hint to the petitioner when he was in witness box. The averment made in paragraph (14) indicates that it is the case of the petitioner himself that his advocate had told the petitioner during the course of the cross examination to give answer in affirmative or negative only and that also after his answer is recorded by the learned trial judge .

11. A perusal of the order passed by the learned Family Court Judge indicates that he had made observations against the petitioner and his advocate that both of them all throughout had made allegations of bias against the learned Judge and also were making various allegations against the opponent lawyer and were not conducting with the proceedings in peaceful and healthy atmosphere. In these circumstances, the learned Family Court Judge observed that it would not be just and proper of his Court to proceed with the trial. In my view, various observations made by the learned Judge of the Family Court against the petitioner and his advocate cannot be overlooked by this Court. The petitioner or her advocate did not apply for recall of any of the observations made by the learned Family Court Judge in the order passed by him from time to time. It is clear that the application for modification of the maintenance order is pending since December 2016 and is not been heard for one or the other reasons.

12. In my view it is duty of an advocate to see that the proceedings are conducted in a peaceful and healthy atmosphere and decorum shall be maintained by an advocate and his client in the court. A perusal of

the order passed by the learned trial Judge clearly indicates that the proceedings were not conducted in peaceful and healthy atmosphere and all sorts of unwarranted and irresponsible allegations were not only made against the learned advocate but also against the learned Judge.

13. A perusal of the order passed by the learned Principal Judge clearly indicates that he has rightly made various observations while rejecting the application for transfer. The application for divorce is pending since 2011. In view of the instructions issued by this court to dispose of the matters above five years expeditiously, it appears that the most of the Judge of the Family Court are busy in disposal of the old matters. Considering this fact also in my view, the learned Principal Judge of the Family Court was justified in rejecting the application for transfer of the matter from the Court Room No.3 to any other court. Matter is at advanced stage.

14. A perusal of the application for transfer made by the petitioner and more particularly paragraph (9) indicates that it is the case of the petitioner that his advocate had never made any direct or indirect allegations against the Court Room No.3 about favouring other side or against the bias. If that is the case of the petitioner, I don't find any justification for making any application for transfer of the matter from the Court Room No.3 to any other court. The matter which is pending since 2011 has to be disposed of expeditiously.

15. Insofar as the grievance of the respondent that the petitioner has not paid any maintenance inspite of the their being no stay in the

application for modification of the order of maintenance passed by the Family Court is concerned, the respondent has already filed an execution application. In these circumstances, I do not propose to pass any order for any interim maintenance at this stage.

16. In my view, the interest of justice would be met with if the Court presided over by the learned Judge in Court Room No.3 is directed to dispose of the execution application as well as the application for modification within two months from today. The entire proceedings shall be disposed of by the learned Family Court Judge within one year from today. If the petitioner does not comply with the court's order of payment of maintenance, the respondent would be at liberty to adopt appropriate proceedings for enforcement of the order passed by that Court or such proceedings permissible in law.

17. Both the parties are directed to co-operate with each other and with the Family Court Room No.3 to dispose of the matter expeditiously as directed. If any party does not co-operate with the Court Room No.3 in for disposal of the matter expeditiously, the learned Judge shall record the conduct of such party or his or her advocate in the Roznama. The writ petition is accordingly dismissed. The Trial Court is directed to proceed with the matter expeditiously and shall not grant any unnecessary adjournment to any of the parties. No order as to costs.

(R.D.DHANUKA, J.)