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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12128 OF 2016

Sushama Suresh Awati @	]	
Shirish Deshmukh	]	Petitioner
Vs.		
Mr. Shirish Mahadav Deshmukh	]	Respondent

.....
Mr. Vivek V. Salunke, Advocate for the petitioner.
Mr. Abhijeet A. Joshi, for the respondent.

.....
CORAM : R. G. KETKAR, J.

DATE : 5TH APRIL, 2017.

PC:

Heard Mr. Vivek Salunke, learned Counsel for the petitioner and Mr. Abhijeet Joshi, learned Counsel for the respondent, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 11th August, 2016 passed by the learned Judge Family Court, Pune in application below Exhibit 31 in P.A. No. 38 of 2015. By that order,

learned trial Judge allowed the application made by the respondent/husband for directing the petitioner/wife to give key of the lock of Flat No. K-8 situate at Kumar Park View Co-operative Housing Society, Bibwewadi, Kondhwa Road, Pune- 37 (For short 'suit premises').

3. In support of this petition, Mr. Salunke submitted that respondent/husband has instituted petition, inter alia, praying for dissolution of marriage by decree of divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 [For short 'Act'] and in the alternative for decree of judicial separation. The petitioner/wife has filed written statement resisting the petition. The petitioner has also set up counter claim claiming for restitution of conjugal rights. He submitted that respondent/husband has filed affidavit of examination-in-chief and he has to be cross-examined by the petitioner/wife. He submitted that the application for interim relief made by the respondent is not covered by any provision of the Act. He has taken me through the provisions of the Act and in particular Sections 23A, 24 and 25. He submitted that in the main petition filed by the respondent/husband, no prayer is made as regards the suit

property. As no final relief is claimed in respect of the suit property, he can not file application seeking interim relief in respect of the suit property. He submitted that it is settled position of law that interim relief can be passed in aid of final relief. As no final relief in respect of suit property is claimed, the learned trial Judge was not justified in allowing the application.

4. Mr. Salunke further submitted that basically Family Court has no jurisdiction to entertain the application for interim relief made by the respondent/husband. In support of this submission, he relied upon the following decisions:-

- [1] **Maharashtra Jeevan Pradhikaran through its Member Secretary & Anr. Vs. M/s. Lark Construction Pvt. Ltd., 2005 (1) ALL MR 479.**
- [2] **Mahindra and Mahindra Ltd. Vs. Dwarkanath Babaji Dalvi and another, 2006 (4) Mh. L.J. 88.**
- [3] **Tanajirao Rangrao Patil and another Vs. Kolhapur Agricultural Produce Market Committee, Kolhapur and others, 2006 (4) Mh.L.J.97.**
- [4] **Sahil Resorts Agri Fields & Farms Pvt. Ltd Vs. Suman Resorts India Ltd & Ors, 2005 (10) LJSOFT 37.**

5. Mr. Salunke further submitted that son of the parties is

suffering from left Kidney obstruction. He submitted that the petitioner has already filed application for maintenance under Section 24 of the Act. He submitted that in case, the petitioner has already claimed amount from the respondent towards medical treatment of her son, learned trial Judge may be directed to dispose of that application in two weeks. In the alternative, if the petitioner has not claimed amount for medical treatment of her son, she may be permitted to amend the application for claiming expenses towards the medical treatment.

6. On the other hand, Mr. Joshi supported the impugned order. He submitted that admittedly suit property stands in the name of the respondent/husband. He submitted that by prayer clause (a) of the main petition, respondent/husband has prayed for dissolution of marriage by decree of divorce which would implicitly include relief in respect of the suit property. He submitted that in case the Court allows the petition in terms of prayer clause (a) of the petition, necessarily the Court will have to consider where the petitioner/wife will reside after dissolution of marriage. For that purpose, some arrangement will have to be made while passing the decree. He also

invited my attention to paragraph 4 of the impugned order and submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. I have considered rival submissions of the parties. I have also perused material on record. Mr. Salunke further submitted that Family Court has no jurisdiction to entertain and try the application. It is not possible to accept this submission. Section 7 (1) (a) a/w explanation (c) reads thus:

“7. Jurisdiction.-(1) Subject to the other provisions of this Act, a Family Court shall-

- (a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and**
Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-
- (c) a suit or or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;**

The relief claimed in the application is covered by the above submission. It is, therefore, obvious that Family Court has jurisdiction to entertain and try the application made by the respondent.

8. Mr. Salunke relying on the decisions referred hereinabove submitted that the respondent has not claimed any final relief in respect of the suit property, hence no interim order can be granted. It is not possible to accept this submission as well. Prayer clause (a) of petition for divorce, in my opinion, implicitly includes relief in respect of the suit property as well. In view thereof, reliance placed by Mr. Salunke does not advance the case of petitioner. For the reasons recorded in paragraph 4 of the impugned order, no case is made out for interfering with the impugned order. Hence, petition fails and the same is dismissed.

9. If the petitioner has already included claim for medical treatment of son, the learned trial Judge is requested to dispose of the application for maintenance within two weeks from the date of production of the authenticated copy of this order. In case, the petitioner has not included claim of medical treatment of her son, she is at liberty to amend the application so as to include that claim as well and the learned trial Judge is requested to dispose of the said application within 4 weeks therefrom. Order accordingly.

[R. G. KETKAR, J.]