

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10045 OF 2014

IN

PETITION NO. A-799 OF 2014

WITH

CIVIL APPLICATION NO. 803 OF 2017

Uday Niranjana Singh] Petitioner

Vs.

Pooja Uday Singh] Respondent

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Ms. T.F. Irani, for the petitioner i/b M/s. Mulla & Mulla and Craigie Blunt & Caroe, for petitioner/applicant.

Mr. Vikram Deshmukh & Ms. Archana Uppuluri i/b A.N.B Legal, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 17TH APRIL, 2017.

P.C.

Heard Ms. Irani, learned Counsel for the petitioner and Mr. Deshmukh, learned Counsel for the respondent at length.

2. This petition takes exception to the judgment and order

dated 21st July, 2014 passed by the learned Judge, Family Court Mumbai, Bandra below Exhibit 1 in Petition No. A-799 of 2014. By that order, learned trial Judge directed the petitioner to reimburse the respondent school fees, expenses etc with effect from the current academic year.

3. In paragraph-2 of the impugned order, the learned trial Judge has noted readiness of the petitioner to pay interim maintenance and education expenses in the following terms:

2.
The respondent is also ready to pay interim maintenance and education expenses.”

4. The learned trial Judge refrained from passing any interim maintenance order as the children are admitted in a very expensive School.

5. Ms. Irani submitted that the matter was heard before this Court on 18th August, 2016 when on behalf of the respondent, preliminary objection was raised with regard to maintainability of the petition on the ground that the petitioner has instituted a review petition seeking review of the order dated 21st July, 2014.

The petitioner cannot prosecute two parallel remedies simultaneously. She, therefore, on the instructions from the petitioner, who was present in the Court, withdrew the review petition.

6. I have already extracted paragraph 2 of the impugned order wherein the learned trial Judge recorded readiness of the petitioner herein to pay interim maintenance and education expenses. In the case of **State of Maharashtra v. Ramdas Shrinivas Nayak and another**, AIR 1982 SC 1249, Apex Court has observed thus:

“The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in

error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment”.

7. In my opinion, the petitioner should not have withdrawn the review petition, rather he should have withdrawn the Writ Petition itself and pursued Review Petition. Mr. Deshmukh submitted that he raised preliminary objection about maintainability of the petition on the ground that the petitioner cannot simultaneously prosecute two parallel proceedings. He submitted that as the Review Petition was pending, Writ Petition instituted by the petitioner was not maintainable. He submitted that he was not raising objection about maintainability of the review petition subject to his right to contend that no ground for reviewing order dated 21st July, 2014 is made out.

8. In view thereof, Ms. Irani, upon taking instructions from the petitioner who is present in the Court seeks permission to withdraw the petition and pursue review petition subject to its

revival.

9. Ms. Irani upon taking instructions from the petitioner states that within two weeks from today, the petitioner will deposit Rs. 13.30 lakhs out of 19,30,000/- and in turn, the amount may be adjusted towards Ecole Mondiale World school fees for the academic year 2017-2018. She further states that she will also take out appropriate application for interim relief, pending Review Petition for not taking any coercive steps for not depositing the remaining amount of education expenses in pursuance of the impugned order, as also for not striking out defence of the petitioner.

10. Normally, I would have relegated parties to move Hon'ble Mr. Justice Sonak for modification of the order dated 18th August, 2016. Having regard to the time constraint, as also having further due regard to the fact that presently Hon'ble Mr. Justice Sonak is presiding over Court at Goa and the matter pertains to my assignment, I thought it appropriate to suitably modify the order dated 18th August, 2016.

11. In view thereof, the petition is allowed to be withdrawn and is disposed of in following terms.

- [1] Review Petition dated 28th August, 2014 filed by the petitioner seeking review of order dated 21st July, 2014 before the Family Court stands revived. Order dated 18th August, 2016 stands modified accordingly.
- [2] Petitioner shall pay Rs. 13.30 lakhs towards School fees within two weeks from today and will not seek further extension of time.
- [3] The petitioner will obtain suitable orders within two weeks from today for not taking coercive steps on account of failure of paying education expenses in terms of the impugned order by filing appropriate application.
- [4] The petitioner will also obtain suitable order for not striking out defence within two weeks from today by filing appropriate application in that regard.

- [5] All contentions of the respondents are kept open.
- [6] In view of disposal of the petition, Civil Application does not survive and is disposed of accordingly.

[R.G. KETKAR, J.]