

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2310 OF 2015

MAYURA RAKESH DESAI
VERSUS
RAKESH ASHOKRAO DESAI

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Advocate for Petitioner : Mr. Syed G R
Advocate for Respondents : Mr. P.R. Katneshwarkar

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CORAM : V. K. JADHAV, J.
DATED : 9th JANUARY, 2018

PER COURT:-

1. Being aggrieved by the order dated 13.01.2015 passed by the learned Civil Judge, Senior Division, Biloli, in H.M.P. No. 14 of 2014 the original respondent-wife has preferred this writ petition.

2. Brief facts giving rise to the present petition are as follows:-

The respondent-husband has filed H.M.P. No. 14 of 2014 for restitution of conjugal rights mainly on the ground that the present petitioner has left his company without consent. The petitioner appeared in the said petition. Before filing written statement, the matter was referred for mediation, however, nothing happened before the mediator and on the adjourned date since the petitioner remained absent, the trial court has passed "No W.S." order on 5.9.2014. Even the learned Judge of the trial court has rejected the

application filed for setting aside the order of “No W.S.”. The trial court while rejecting the application below Exh.21 has observed that since the matter is posted for judgment, in view of the law laid down by the Supreme court in the case of **Arjun Singh vs. Mohindra Kumar and others, reported in AIR 1964 SC 993** “no W.S.” order cannot be set aside.

3. Learned counsel for the petitioner submits that though in the year 2014, learned Judge has posted the matter for judgment after rejecting application Exh.21, due to interim stay granted by this court, further proceedings in H.M.P. No. 14 of 2014 are stayed. Learned counsel submits that the “No W.S.” order passed by the trial court may be set aside and the court below may be directed to accept the written statement.

4. I have also heard learned counsel for the respondent. Learned counsel for the respondent submits that in view of the law laid down by Supreme court in the case of **Arjun Singh (supra)**, there is no substance in the writ petition.

5. On perusal of order passed by the trial court, it appears that the petitioner wife has appeared in the proceeding and since the

matter was referred for mediation, she did not file written statement within time. Thereafter, learned Judge of trial court has proceeded with the matter and posted the case on 12.12.2014 for judgment. Even though on that day, the judgment could not be delivered and accordingly the matter was adjourned to 18.12.2014. On 18.12.2014 the petitioner had moved an application seeking time to file written statement, however, the said application came to be rejected. Thereafter, application Exh.21 came to be filed for setting aside the order of "No W.S.". It further appears that for near about three years though H.M.P. is posted for delivery of judgment, however, because of interim relief granted by this Court, further proceedings in the aforesaid H.M.P. are stayed. The respondent husband has filed the petition for restitution of conjugal rights on the ground of desertion and in such circumstances, written statement of wife is necessary to resolve the dispute. Thus, considering the peculiar facts of this case, I am inclined to quash and set aside the order passed by the trial court below Exh.21 with further directions to accept the written statement filed by the petitioner wife and proceed with the pending H.M.P. Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The impugned order dated 13.01.2015 passed by learned Civil

Judge, Senior Division, Biloli, below Exh.21 in H.M.P. No. 14 of 2014 is hereby quashed and set aside. The application Exh.21 is hereby allowed in terms of its prayer clauses.

- III. The parties shall appear before the trial court on 06.02.2018 and the trial court may proceed with the hearing of the said H.M.P.
- IV. Needless to say that the parties are at liberty to adduce oral and documentary evidence in support of their rival contentions.
- V. In view of the pendency of the matter since 2014, the learned Judge of the trial court is hereby directed to dispose of the H.M.P. No. 14 of 2014, as expeditiously as possible, and preferably within a period of six months from today.
- VI. Writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

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