

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7965 OF 2017

RAJENDRA S/O KANTILAL PARDESHI
VERSUS
PUSHPA W/O RAJENDRA PARDESHI AND ANOTHER

.....
Advocate for Petitioner : Mr. Hemant Surve and Mr. Kshitij Surve
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CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2018

PER COURT:-

1. Heard. Though respondent Nos. 1 and 2 are duly served, none appears for them.
2. The petitioner-husband has filed an application Exh.12 before the Family Court seeking permission to engage an advocate and the learned Judge of the Family Court, Aurangabad, by order dated 22.02.2017, has rejected the said application and also by order dated 5.5.2017 below Exh.11 closed the cross. Hence, this Writ Petition.
3. Learned counsel for petitioner-husband submits that the respondent-wife has initiated proceedings under Section 125 of the Code of Criminal Procedure seeking maintenance for herself and her minor son Rohit. The respondent-wife has applied for grant of maintenance in the proceedings initiated by her under the provisions

of Protection of Women from Domestic Violence Act, 2005 and the Court has refused to grant her interim maintenance and also final maintenance. Learned counsel submits that in view of the same, the maintenance proceedings initiated by the respondent-wife under Section 125 of Cr.P.C. is hit by the principles of constructive *res-judicata*, and therefore, the petitioner-husband has legal right to present his case before the Family Court and as such he has filed the application. However, the learned Judge of the Family Court has turned down the said application in a casual manner.

4. Learned counsel for the petitioner submits that during pendency of this writ petition, the petitioner husband did not remain present before the Family Court and as such the learned Judge of the Family Court has passed 'no cross order' against the petitioner husband. Learned counsel submits that the petitioner undertakes to remain present before the Family Court and he may be permitted to cross examine the respondent wife and her witnesses, if any. Learned counsel has placed reliance on the decisions in following two cases:-

- i) ***Smt. Sharwari w/o. Shailesh Sarpatwar vs Shailesh s/o. Mahadeorao Sarpatwar & Anr.***, reported in **2008 (2) All MR 163**;

- ii) ***Kihisorilal Govindram Bihani vs Dwarkabai Kishorilal Bihani***, reported in **1992 (2) Bom.C.R. 143**.

5. In the case of ***Smt. Sharwari w/o Shailesh Sarpatwar (supra)***, this court has considered the grounds raised by the wife in the backdrop that the respondent-husband in that case was permitted to engage counsel in the proceeding for divorce and grant of interim custody of minor child, however, the wife was refused the permission.

6. In the case of ***Kishorilal Govindram Bihani*** (supra), the Division Bench of this Court in para 21 of the judgment has made the following observations:-

“21. Undoubtedly, the situations that arise before the Family Courts are complex ones, but we have attempted to illustrate a few of the situations in which the Court ought to consider the need or the necessity for representation by an Advocate and to permit it. It would be equally useful in cases where the Court is of the view that representation by an Advocate is unnecessary, that brief reasons be recorded indicating that the overall complexion of the case and an assessment of the parties having been done that the Court concluded that such representation was unnecessary and that it would not result in prejudice.”

7. The Division Bench of this Court has observed that it would be equally useful in cases where the Court is of the view that representation by an advocate is unnecessary and that brief reasons be recorded indicating that the overall complexion of the case and an

assessment of the parties having been done, the court concluded that such representation was unnecessary and that it would not result in prejudice.

8. In the instant case, it appears from the contents of application and the say filed by the petitioner husband to the application seeking maintenance order that the relations are not denied and the husband has filed his say contesting the maintenance claimed by the respondent wife on the ground that she started residing separately on her own wish and further only to the extent of quantum. The petitioner husband has not disputed the relationship. The learned Judge of the Family Court has specifically observed in the impugned order that these being the quasi civil proceedings of maintenance which need to be decided at the earliest so that the woman who is in need of maintenance need not live a destitute life. The learned Judge of the Family Court has specifically observed that no complicated legal issues are involved in this matter. The learned Judge has also observed that involvement of the advocate, application gets delayed for no reason. However, it appears that the learned Judge of the Family Court has also considered that if the need arises the same will be considered at the appropriate stage. It thus appears that even the learned Judge has not concluded finally and if any complicated issue arises, certainly the learned Judge

would permit the parties to engage the advocate. So far as the order passed by the learned Judge of the Family Court, Aurangabad below Exh.11, the petitioner husband who is not represented by the counsel should be permitted to cross examine the applicant.

9. In view of the above, order below Exh.11 dated 05.05.2017 deserves to be quashed and set aside and the petitioner is required to be permitted to cross examine the respondent wife and her witnesses, if any. In the result, I proceed to pass the following order:-

O R D E R

- I. The writ petition is hereby partly allowed. No costs.
- II. The order dated 22.02.2017 passed by the Judge, Family Court, Aurangabad below Exh.12 in Petition E-104 of 2016 stands confirmed.
- III. The order dated 05.05.2017 passed by the Principal Judge, Family Court, Aurangabad below Exh.11 in Petition E-104 of 2016 is hereby quashed and set aside. The petitioner is permitted to cross examine the respondent wife and her witnesses, if any.
- IV. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)