

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

53 WRIT PETITION NO. 9921 OF 2017

VARSHA W/O NARAYAN WAYBHASE
VERSUS
NARAYAN S/O RAOSAHEB WAYBHASE

.....

Advocate for Petitioner : Mr. Vishnu M. Jaware
Advocate for the Respondent sole : Mr. V. B. Jagtap

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CORAM : V. K. JADHAV, J.
DATED : 5th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. This Petition is against the order passed by the Principal Judge, Family Court, Aurangabad on the Application Exhibit 37 in Hindu Marriage Petition No.A-147/2016 filed by the respondent-husband for issuance of summons to one Dr. Anand Kale with a direction to bring the case history/record of Varsha Narayan Waybhase, i.e. the petitioner herein. The learned Judge of the Family Court has allowed the said Application Exhibit 37.

3. The learned counsel for the petitioner-wife submits that the respondent-husband, though filed Hindu Marriage Petition for divorce, has failed to plead specifically that the petitioner-wife was under treatment of Dr. Anand Kale for certain period and even assuming that the evidence is not required to be pleaded, the respondent-husband has not filed any list of witnesses mentioning the name of said Dr. Anand Kale as a witness. Learned counsel submits that even assuming that such list of witnesses is not required to be filed in the proceedings before the Family Court, still, even in the Application Exhibit 37, the respondent-husband has failed to mention as to in what manner Dr. Anand Kale is concerned with the treatment of the petitioner, if any.

4. The learned counsel for the respondent, on instructions, submits that one prescription has been issued by Dr. Anand Kale in respect of the petitioner's treatment, and accordingly, the respondent-husband has filed the said Application, which is rightly allowed by the learned Judge of the Family Court.

5. On careful perusal of the contents of Application Exhibit 37, it appears that the respondent-husband has not given any details as to why the witness summons are required to be issued to Dr. Anand Kale. There is no pleading, nor the list of witnesses has been filed before the Family Court mentioning the name of Dr. Anand Kale as witness. In absence of any specific grounds raised in the Application Exhibit 37 and without filing any supporting documents on record, the witness summons cannot be issued at the whims of either of the party.

6. In view of the above, the following order is passed:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 28th June, 2017 passed below Exhibit 37 is hereby quashed and set aside.
- III. The Application Exhibit 37 is dismissed.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)