

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1382 OF 2018

Mrs.Sushma Pradip Lele

...Petitioner

Versus

Pradip Ganesh Lele

...Respondent

Mr.Rahul S. Kadam for the Petitioner.

Mr.Rajendra V. Pai a/w Mr.Akshay R. Pai, Ms.Apurva M. Bhat,
Ms.Nikita Dharamshi, Mr.S.V. Joshi i/b Mrs.Bina R. Pai for the
Respondent.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 12th MARCH 2018

P.C.

1. The petitioner approaches this Court being aggrieved by the order passed by the Judge Family Court No.4, Pune on 15th September 2017 thereby rejecting the application filed by the petitioner seeking a review of earlier order passed on 23rd June 2017. The Family Court had earlier passed an order on 23rd June 2017 on application below Exh.11 in PA No.54 of 2017 by which the respondent-husband had prayed for staying of the marriage petition No.A-54 of 2017 until the decision of Miscellaneous Civil Application No.16327 of 2017 filed under Section 24 of the Code of Civil Procedure seeking transfer of marriage petition filed by the

wife in Pune Family Court to the Family Court at Bandra, Mumbai. By order dated 23rd June 2017 the Family Court, Pune, allowed the said application with an observation that the divorce petition filed between the parties is pending before the Family Court at Bandra, Mumbai is earlier petition and Petition No.PA 54 of 2017 filed by the wife under Section 9 of the Hindu Marriage Act is a later petition filed at Pune. The Family Court, Pune observed that in order to avoid contradictory judgments of two Courts, PA No.54 of 2017 needs to be stayed in view of Section 10 of the Civil Procedure Code. The Family Court treated the application of the respondent-husband as filed under Section 10 of the Code of Civil Procedure and stayed the proceedings filed by the wife under Section 9 of the Hindu Marriage Act till the decision in the petition filed by the husband in the Family Court at Bandra, Mumbai praying for divorce. The application for review filed by the petitioner-wife came to be rejected by order dated 15th September 2017 and the earlier order passed on 23rd June 2017 has been upheld.

2. These two orders are the subject mater of the writ petition. The litigation between the parties have a long drawn history and in the earlier round of litigation the parties had approached this Court seeking transfer of proceedings via this Court

by filing two miscellaneous application. Miscellaneous Civil Application No.217 of 2017 was filed by the husband and Miscellaneous Civil Application No.23002 of 2017 was filed by the petitioner-wife. Both the Miscellaneous Civil Application sought transfer of the proceedings initiated *inter se* pending before the Family Court at Bandra, Mumbai and Family Court at Pune.

3. The learned Single Judge of this Court (Hon'ble Justice Shri.Sambre) by detailed order dated 08th December 2017, dealt with the said application and on consideration of rival submissions was pleased to dismiss the said applications. The learned Single Judge also dealt with the issue raised by the respondent-husband that the Family Court, Pune has no jurisdiction to entertain the proceedings initiated by the wife by making reference to Section 16 of the Civil Procedure Code. While dealing with the objections as regards the jurisdiction to try the proceedings at Family Court, Pune, it will be always open for the Family Court, Pune to decide the said issue on its own merits and pass consequential orders in that behalf. In the order dated 08th December 2017 observations that issue of want of territorial jurisdiction cannot affirm to be the basis for ordering transfer of the proceedings to Family Court, Pune to Family Court, Bandra by taking recourse to Section 16 of the Civil

Procedure Code and Section 10 of the Family Courts Act.

4. With the assistance of learned counsel for the parties and on consideration of the rival submissions, I perused the application that was preferred, on which the impugned order came to be passed. Both the orders i.e. the order in original and order in Review passed by the Judge Family Court, Pune, makes a reference to Section 10 and deals with only one issue as to, “whether the Family Court could have stayed the proceedings by invoking Section 10 of the Civil Procedure Code” and in detail the order deals with whether the issue involved is “substantially same”. On perusal of the order, it can be seen that the issue as regards jurisdiction of the Court at Pune in light of Section 16 of the Code of Civil Procedure which was attempted to be canvassed before me today has never been raised before the Family Court nor it is argued and therefore not even dealt with the learned Family Court.

5. The learned counsel for the respondent raises an issue in regard to the jurisdiction, which goes to the root of the matter and though the learned counsel placed reliance on the judgment of the Hon'ble Apex Court in the case of ***S.D.P. Sakhayogam V/s.***

*Kerala Atmavidya Sangham*¹ to buttress his submissions that an issue of jurisdiction can be raised in the proceedings at any stage which includes the proceedings before this Court. There is no dispute as regards to the said legal position and it is true that this Court is competent to entertain the said issue and can go into the jurisdictional aspect of the matter. However, both the parties are at *ad-idem* that the issue as regards the jurisdiction was not raised before the Family Court and therefore Family Court did not get an opportunity to deal with the issue. Since this issue goes to the root of the matter, in the interest of justice, the parties are permitted to raise the said issue. The respondent is at liberty to raise the issue about jurisdiction of the Family Court at Pune to deal with the claim of the wife in respect of a Flat, which is undisputedly situated in Mumbai and according to the respondent, the suit for partition of the movable property is to be instituted as per Section 16 of the Civil Procedure Code within the territorial limits of the Court where property is situated. According to the respondent-husband though the proceedings filed by the wife are under the caption “restitution of conjugal rights” the substantive relief claimed by the wife is for handing over the possession of flat situated at Panorama Tower, Andheri and the alternative relief being sought of partitioning the

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flat at Pramukh Height, Amboli Hill, Andheri. Though the learned counsel for the petitioner-wife would argue that the plea for partition of the flat is an alternative plea and the petition in substance is seeking relief of restitution of conjugal rights.

6. However, in any contingency, if this relief is to be considered, the respondent need to be given an opportunity to raise an issue of jurisdiction of the Court to grant such a relief. It is open for the learned Judge Family Court to deal with the said issue by taking into consideration the relief sought in the said petition and also by taking into consideration the pleadings, which are raised in the petition before the Family Court Pune.

7. The respondent is at liberty to raise the said issue and the learned Judge Family Court is directed to consider the said issue specifically about the maintainability of the proceedings before the Family Court Pune claiming a relief of partition in respect of the property, which is situated at Bombay, in the backdrop of the same, Section 16 of the Civil Procedure Code, 1908 and any other provisions and would deal with the issue of jurisdiction before he proceeds with the matter.

8. The Family Court, Pune has already stayed the proceedings pending before it in PA No.54 of 2017 till the outcome of PA No.889 of 2014 pending before the Family Court Bandra at Mumbai. It is needless to state that the Family Court would not in any manner deal with the petition pending before it and it is directed to deal with the issue of jurisdiction at the earliest and expeditiously by offering necessary opportunity to the parties. The Family Court will deal with the preliminary issue, without being influenced by its earlier orders and would be then at liberty to deal with the application filed on behalf of the respondent, in accordance with law.

(SMT.BHARATI H. DANGRE, J.)