

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION ST.NO.1570 OF 2017

Shilpika Kalra	..	Petitioner
Versus		
Manish Kalra	..	Respondent

Mr. Mihir Desai, Senior Advocate I/b. Devyani Kulkarni for petitioner
Mr. Vikram Deshmukh I/b. ANB Legal for respondent
Mrs. Shilpika Kalra party in person present

CORAM : M.S.SONAK, J.

DATE : 26th November 2018.

P.C.

Heard learned Counsel for the parties.

2] At the request of Mr. Desai, learned Senior Counsel appearing for petitioner, leave is granted to annexe typed copy of the order dated 6th October 2018, which is already challenged in this petition, by amending the petition. Order to be annexed forthwith.

3] The challenge in this petition is to the following two orders:-

(a) the order dated 19th December 2016 by which the two C.Ds. in question were ordered to be sent to the Government laboratory for verification; and

(b) the order dated 6th October 2018 by which the evidence of the petitioner was ordered to be closed;

4] Insofar as the first order is concerned, in pursuance of the same, the C.Ds. were in fact sent to the Government laboratory for verification and the laboratory has also forwarded its report to the family court.

5] From a perusal of the order, the circumstance that the same stands complied with and considering that the petition before the family court was instituted in the year 2009, it will not be proper to interfere with the impugned order dated 16th December 2016 at this stage. Rather, the petitioner can be granted liberty to raise objections to the report from the Government laboratory and further in case the main petition before the family court is ultimately decided

against the petitioner, and petitioner chooses to institute an appeal against such decision, the petitioner can always be granted liberty to challenge the impugned order along with the final order made in the petition. This will be in terms of section 105 of C.P.C. Accordingly, though the impugned order dated 19th December 2016 is not being interfered with at this stage, liberties in the aforesaid terms are hereby granted.

6] Insofar as the order dated 6th October 2018 is concerned, it is true that the petition is quite old and the petitioner despite opportunities being granted has failed to lead evidence. Nevertheless, considering harsh consequence of such an order and relying upon the assurances given on behalf of the petitioner that the petitioner's mother will come to depose in the matter on the appointed date and in general cooperate with the expeditious disposal of the petition, interest of justice requires that the impugned order dated 6th October 2018 is set aside.

7] Accordingly, the impugned order dated 6th October 2018 is hereby set aside and the petitioner is granted yet another

opportunity to lead evidence in the matter.

8] In order that the proceedings before the family court are not further delayed, both parties themselves or through their learned counsel are directed to appear before the family court on 28th November 2018 at 11.00 a.m. On that date the family court is requested to fix some date/s beyond 19th December 2018 but before 31st January 2019, within which period the examination / cross examination of petitioner's mother is to be concluded. The petitioner, who is present in court assures this court that no unnecessary adjournments will be applied for and her mother will remain present in the court on all the dates to be fixed by the family court. In case of any dire medical emergency, there is no doubt that the family court will grant some suitable accommodation. However, save and except such situation, there is no question of any further indulgence to the petitioner or her witness in the present case, particularly taking into consideration the circumstance that the matter has already been substantially delayed.

9] Learned Senior Counsel appearing for the petitioner has

stated that the affidavit in lieu of examination in chief of the petitioner's mother would be furnished to the learned Counsel for respondent latest by 15th December 2018. Learned Counsel for the respondent has also assured this Court that the cross examination will not be unnecessarily prolonged and if possible the same will be concluded in the same session when the petitioner's mother appears to depose.

10] Accordingly, rule is made absolute partly in the aforesaid terms. There shall be no orders as to costs.

11] All concerned to act on an authenticated copy of this order.

(M.S.SONAK, J.)