

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1246 OF 2018

Mrs. Deepika Abhishek Mahajan	...Petitioner
<i>Versus</i>	
Mr. Abhishek Rajkumar Mahajan	...Respondent

Mr.A.D.Deshpande, for the Petitioner.

Mr.M.G.Ashtekar, for the Respondent.

CORAM : G.S.KULKARNI, J.

DATE : 8 February 2018

P.C. :

1. Heard learned Counsel for the parties. Challenge in this petition is to the order dated 2 January 2018 passed by the Family Court No.2 at Pune. By the impugned order the family Court has rejected the pursis being Exhibit 62 filed on behalf of the petitioner whereby the petitioner prayed that the applications of the petitioner below Exhibits 46, 51, 53 and 54 be first decided and then the family Court shall proceed to permit the respondent to lead his evidence.

2. It is not in dispute that the proceedings are at a stage whereby the cross examination of the respondent-husband was completed and the petitioner-wife was to lead her evidence. However,

before this was about to be done, the petitioner moved a pursis stating that the said applications of the petitioner be decided first. The learned Judge of the family Court has observed that the applications as filed on behalf of the petitioner-wife can be decided at a later stage and recording of evidence need not be delayed in considering the said applications, in view of the fact that the applications pertain to recalling of the witness namely the respondent for further cross examination on the basis of the documents which pertain to respondent's employment. Learned Judge of the family Court has observed that the petitioner has not made any claim for any permanent alimony for herself or for permanent maintenance of the child. It is also observed that the interim application of the maintenance for herself and for child is already rejected and in the said situation, the applications below Exhibits 46, 51, 53 and 54 should not be decided at that stage and the proceedings need not be adjourned. However, in rejecting such prayer by the impugned order, the learned Judge of the family Court has recorded that as the respondent has not led any evidence, her evidence be closed and the matter be adjourned for final arguments.

3. Learned Counsel for the petitioner in assailing the impugned order has two fold grievances. The first grievance is that the family

Court ought to have decided the applications of the petitioner below Exhibits 46, 51, 53 and 54 before the petitioner could lead her evidence. It is submitted that one of the applications pertains to recalling of the witness namely the respondent for a further cross examination on the basis of certain documents which are placed on record on behalf of the respondent by an application dated 12 September 2017 (below Exhibit 49) and thus, it would have been appropriate that the witness was to be recalled. The second contention is that only for the reason that the petitioner has made such a prayer in the pursis at Exhibit 62 for deciding the said applications, the evidence of the petitioner ought not to have been closed.

4. On the other hand, learned Counsel for the respondent has supported the impugned order. It is his submission that the family Court has rightly appreciated the relevance of the applications as made by the petitioner below Exhibit 46, 51, 53 and 54 and has correctly observed that the applications can be considered at a later stage and recording of evidence need not be disturbed. He submits that looking at the background of the proceedings, the Family Court has rightly held that the evidence of the petitioner be closed.

5. Having heard the learned Counsel for the parties and having perused the documents as placed on record, I am of the opinion that the learned Judge of the family Court though was correct in coming to a conclusion that the applications of the petitioner below Exhibits 46, 51, 53 and 54 can be considered at the appropriate stage of the proceedings, however, in my opinion, the learned Judge of the family Court ought not to have held that the evidence of the petitioner would be taken as closed. Admittedly, the petitioner was yet to step into the witness box and to lead her evidence. Only because the pursis at Exhibits 62 was moved and an impression was created that the petitioner sought postponement of the evidence on the ground of that applications at Exhibits 46, 51, 53 and 54 be decided first, it was not proper for the learned Judge of the family Court to deny the petitioner an opportunity to lead evidence and be cross-examined. In the circumstances, the order to this effect is undoubtedly harsh and would also cause injustice to the petitioner.

6. Thus considering the interest of justice, the impugned order dated 2 January 2018 is required to be set aside to the extent it denies the petitioner an opportunity to lead evidence and to the extent it holds that the evidence of the petitioner is closed. Accordingly, the family Court is directed to grant an opportunity to the petitioner to lead her

evidence and be cross examined by the respondent. The parties are directed to approach the family Court in this regard on 27 February 2018.

7. Needless to observe that the petitioner shall complete her evidence and co-operate in all respects for the respondent to cross examine the petitioner, after her examination in chief is completed.

8. The above order would also not preclude the learned Judge of the family Court considering the relevance of the applications as made by the petitioner and to decide the same at the appropriate stage as expeditiously as possible. Needless to observe that the endeavour of the family Court should be to avoid procedural and substantive complications and take a call on these applications of the petitioner. All contentions of the parties in that regard are expressly kept open.

9. The petition is accordingly allowed, however, in the above terms. No costs.

(G.S.KULKARNI, J.)