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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1879 of 2018

Shri. Mangesh Govind Shelar

..Petitioner.

Vs

Smt. Sujata Mangesh Shelar

..Respondent.

Mr. Jayesh Mestry, Advocate for the petitioner.

Mr. Ravindra V. Sankpal i/by R.V. Sankpal & Associates for
the respondent.

CORAM : SMT.BHARATI H.DANGRE, J.
19th March, 2018.

P.C. :

1 The petitioner-husband has approached this Court being aggrieved by rejection of his application vide Exh.29 in M.J. Petition No. 2007 of 2013, by the learned Family Court, Mumbai, by which the Petitioner-husband expressed his intention to examine three more witnesses substituting his mother, who was initially named as a witness on his behalf. Three witnesses including one Mr Paresh C. Ashiyani, another one Senior Inspector of Police, Social Service Branch, Mumbai, and third Mr Mahesh Wagh, a handwriting expert. The said application was strongly opposed by the Respondent-wife and the Family Court No.5, Mumbai, on consideration of the claim of the parties rejected the application by the

impugned order dated 31st January 2018.

The Family Court narrates entire chronology of events and as to how the petitioner has sought adjournment by filing several applications and initially though he had cited name of his mother as witness has sought an adjournment on the said ground and the Family Court mentions that the petitioner has sought as many as eight adjournments. The Family Court was convinced that the application was nothing but an attempt to prolong the matter and adopting delay tactics since he did not intend to proceed further.

2 I have heard the learned counsel for the petitioner and also the learned counsel for the respondent. The learned counsel for the petitioner pointed out to this Court that if these witnesses are not permitted to be examined, he would be prejudiced. He states that initially he had cited his mother as a witness, however, considering her old age, she being 84 years old, she would not be able to withstand the cross-examination in the Court and, therefore, he dropped her as witness and presented the application seeking to examine the above three witnesses. He would submit that his whole case would be shattered if these witnesses are not permitted to be examined.

The learned counsel for the respondent vehemently opposed

such a request and would submit that attempt of the petitioner is only to prolong the matter.

3 On consideration of the rival claims of the parties and on examination of the case as attempted to be proved by the petitioner before the Family Court, it appears that these witnesses are of assistance to the case of the petitioner and by way of indulgence and to see that no injustice is caused to the petitioner, one last opportunity is afforded to the petitioner to examine these witnesses by keeping in mind that in any case the proceedings would not be further adjourned or postponed on the said count.

The petitioner undertakes that witness Paresh C. Ashiyani would make himself available before the Family Court without issuance of summons on the request of the petitioner and he would be examined as per the convenience of the Family Court on the date allocated. As far as two other witnesses are concerned, since one is Senior Police Inspector and another is handwriting expert, the petitioner prays that the summons be issued to them.

The learned Counsel for the petitioner has invited the attention of the Court to paragraph 5 of the impugned order passed by the Family Court. According to the learned counsel for the petitioner, the

mistake has occurred on account of inadvertence and the learned Counsel apologizes for the same. However, it is open for the petitioner to tender apology before the Family Court and the Family Court to consider the same.

4 In the interest of justice, the Family Court is directed to give an opportunity to the petitioner to examine the three witnesses cited by him. The Family Court will reschedule the entire proceedings in such a manner that the examination of these three witnesses, in any case, is over by 30th April, 2018. The Family Court is at liberty to call Shri. Paresh C. Ashiyani for cross-examination immediately and it is open for the Family Court to issue summons to other two witnesses and in any event that these witnesses be made available before 30th April, 2018. It is made clear that the petitioner, in any event, would not prolong the proceedings and the Family Court will not entertain any application for adjournment beyond the stipulated date.

5 In the result, the impugned order is quashed and set aside. The petitioner is directed to pay Rs.5000/- to the respondent within a period of ten days from today. The writ petition is disposed off.

[SMT.BHARATI H.DANGRE, J.]