

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION [ST]NO.13807 OF 2018

Chandrakant Narayan Patil	]	Petitioner
Vs.		
Seema Chandrakant Patil	]	Respondent

.....

Mr. P. V Nelson Rajan a/w Aarti Kalekar, for Petitioner.

....

CORAM : R.G. KETKAR, J.

DATE : 9th October, 2018.

P.C:

Not on board. At the request of Mr. Rajan, taken up for admission.

2. Heard Mr. Rajan, learned Counsel for the petitioner.
3. By this Petition under Article 227 of the Constitution of India, the petitioner-husband has challenged the order dated 24th April, 2018 passed by the learned Judge, Family Court, Thane below Exhibit 74 in Petition No. A. No.379 of 2011. By that order, the learned trial Judge rejected the application Exhibit 74 made by the petitioner under section 9 of the Family Courts Act, 1984 r/w Section 23 (2) of the Hindu Marriage Act, 1955 to refer to the parties to expert Marriage Counsellor for mediation and their report.
4. The petitioner herein had filed application Exhibit 74 on 7th April, 2018 for referring the parties to the expert named in paragraph 4 of the application and also expressed his willingness to bear the necessary charges. The respondent filed reply dated 17th April, 2018, *inter alia*, contending that on

12th February, 2018, she had filed evidence by way of Affidavit. The matter appeared on board on 1st March, 2018, 17th March, 2018 and 7th April, 2018. The petitioner, herein filed several applications which were dismissed with costs. She produced Gift Deed dated 8th November, 2016 executed by the petitioner in favour of her daughter when the matter is *sub judice* and dwelling house is one of the issues involved in the the proceedings filed under Protection of Women from Domestic Violence Act 2005 [for short 'D.V. Act']. The property was gifted without prior permission of the Court which speaks volume about conduct of the petitioner. The application is preferred just with a view to killing the time and obstructing speedy administration of justice without the circumstances exist of such type.

5. By the impugned order, the learned trial Judge rejected the application by observing that the application is nothing but abuse of process of law and dismissed the same by imposing costs of Rs. 3,000/-.

6. Mr. Rajan submitted that under section 9 of the Family Court Act, 1984, it is the duty of the Family Court to make efforts for settlement. Even under section 23 (3) of the Hindu Marriage Act, 1955, the Court, if parties so desire, adjourn the proceedings for a reasonable period not extending fifteen days and refer to the matter to any person named by the parties in this behalf or to any person nominated by the Court. Having regard to these provisions, the Family Court ought to have allowed the application filed by the petitioner.

7. I do not find any merit in the submissions advanced by Mr. Rajan. In paragraph 6, the learned trial Judge noted that both the parties are senior citizens. The case is pending for more than 7 to 8 years. The petitioner herein has closed his evidence. He is under cross-examination. Domestic violence proceedings are also pending between the parties. In paragraph 9, the learned

trial Judge noted that attempt for reconciliatory amicable settlement was made at the initial stage as per mandate of section 9 of the Family Courts Act, 1984, Section 23 (2) of the Hindu Marriage Act and Order-XXXII-A (3) of the Code of Civil Procedure, 1908. After considering the material on record, in paragraph 14, the learned trial Judge observed that the contents of the application are sufficient to show casual approach of the applicant. The petitioner herein has not given any offer regarding settlement. The learned Judge ultimately held that the application is nothing but abuse of process of law which is against object of the Family Court's Act, 1984 and needs to be deprecated by imposing costs. The learned Judge dismissed the application with costs of Rs. 3,000/-.

8. After considering the material on record, I do not find that the learned Judge has committed any error in rejecting the application with costs of Rs. 3,000/-. As the petitioner has filed frivolous Petition, it is also abuse of process of Court as also abuse of process of law. Hence, Petition is dismissed with costs quantified at Rs. 10,000/-. Costs of Rs.10,000/- shall be in addition to the costs of Rs. 3000/- imposed by the learned Judge. The costs be paid to the respondent within 4 weeks from today. Order accordingly.

[R.G. KETKAR, J.]