IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6519 OF 2018

Anjusha Satishchandra Kale ...Petitioner
Versus
Satishchandra Purushottam Kale ...Respondent

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Mr. Jay K. Bhatia, Advocate for the Petitioner.
Ms. Manjula Rao i/b. Hitesh P. Vyas, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 05th JULY, 2018

P.C.

1. Heard Mr. Jay Bhatia, learned counsel for the petitioner and Ms. Manjula Rao, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-wife has challenged the judgment and order dated 16.5.2018 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai below application Exhibit-302 filed by the petitioner-wife for issuance of witness summons to the concerned Income Tax Authority of ITO, 11(3)(3) Mumbai.

3. Rule. Mr. Vyas waives service on behalf of the respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. In support of this Petition, Mr. Bhatia submitted that the only ground for rejecting the application is that the High Court has directed completion of the trial on day to day basis. The learned trial Judge noted that as per the record, the petitioner had examined herself and her witnesses and closed her evidence on 8.2.2018. While the evidence of the respondent was in progress on day to day basis and that the respondent is being cross-examined by the petitioner on several dates, application made by the petitioner for calling any witness is not tenable in the eyes of law. The learned Magistrate further observed that the petitioner has been afforded every opportunity to lead her evidence in support of her case. The case record evidently shows that the petitioner has taken much time to complete her evidence.

5. Mr. Bhatia invited my attention to the documents produced by the respondent and in particular

[i] Indian Income Tax Return Verification forms for the Assessment Year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.

[ii] Audit report under Section 44AB of the Income Tax Act, 1961 in the case of a person referred to in clause (b) of sub-rule (1) of rule 6G along with annexure.

6. Mr. Bhatia also invited my attention to application Exhibit-302 made by the petitioner *inter alia* contending that the respondent has suppressed his true income and, therefore, it is vital that the

respondent's financial documents, such as, income tax returns with all the annexures, his profit and loss accounts and his balance-sheets from the time of cohabitation with the petitioner herein be brought on record. He submitted that the determination of final quantum of maintenance for the petitioner and her two minor children largely depends on the income of the respondent. Hence it is of vital importance that the financial documents of the respondent are brought on record. He submitted that the learned Magistrate was not justified in rejecting the application.

7. On the other hand Ms.Manjula Rao supported the impugned order. She invited my attention to :

[i] the order dated 21.10.2016 passed by this Court in Writ Petition No.4570/2015 as also the undertaking given by the petitioner dated 17.10.2016 to the effect that she will attend the dates of domestic violence case regularly and finish the trial in six months and abide by the trial.

[ii] the order dated 6.2.2017 passed by this Court in Contempt Petition No.34/2017. She submitted that in fact the respondent-husband was constrained to file Contempt Petition alleging breach of the order dated 21.10.2016 passed by the learned Single Judge of this Court in Writ Petition No.4570/2015 on the

ground that despite giving undertaking to the effect that the petitioner is ready to cooperate for conduct of the trial and which undertaking was accepted by this Court as recorded in paragraph-4 of the order dated 21.10.2016, the petitioner is not cooperating with the disposal of the proceedings.

[iii] the order dated 6.9.2017 passed by this Court in Criminal Application No.295/2017 in Writ Petition No.4570/2015 wherein in paragraph-7, the learned Single Judge sought explanation from the learned Magistrate as to why the proceedings under Domestic Violence Act were not disposed of within six months from 15.11.2016 as directed by this Court that too without seeking any extension.

[iv] the order dated 3.4.2018 passed by this Court in Contempt Petition (Stamp) No.25257/2017.

8. Ms. Rao submitted that during the course of cross-examination, the petitioner has given vital admissions to the effect that before instituting the D.V. proceedings, she was earning substantial income. The said fact is suppressed by the petitioner. On instructions, Ms. Rao states that the respondent will deposit Rs.65,000/- being part of arrears of maintenance for the month of June, 2018 and Rs.1,25,000/- towards the maintenance of July, 2018 in the Magistrate's

Court within two weeks from today under intimation in writing to the petitioner's Advocate.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-5 of the impugned order, the learned trial Judge has noted that this Court had directed the learned Magistrate to conduct the trial on day to day basis and conclude the same by 30.6.2018. The petitioner had examined herself and her witnesses and closed her evidence on 8.2.2018. The petitioner has made application Exhibit-302 while the respondent was under cross-examination. Ms. Rao submits that the cross-examination of the respondent is also over and the matter is kept for final argument. There is no explanation, worth the name, as to why the petitioner did not think it appropriate to apply for issuing witness summons to the officials attached to the Income Tax Department while evidence from her side was in progress.

10. I have already dealt with the assertions made in paragraph-6 of the application Exhibit-302 to the effect that determination of the final quantum of maintenance for the petitioner and her two minor children largely depends on the income and earnings of the respondent. Thus the petitioner herself came with the case that these documents are of vital importance which are required to be brought on record for

determining final quantum of the income. In such state of affairs, the petitioner should have applied for witness summons while her evidence was in progress. As noted earlier, the petitioner's evidence was over on 8.2.2018. While the respondent was under cross-examination, on 12.4.2018 application Exhibit-302 was made. Be that as it may. During the course of hearing, suggestion was given to the parties that the respondent will go on depositing maintenance @ Rs.1,25,000/- in the trial Court under intimation in writing to the learned Counsel for the petitioner till disposal of the trial and that the petitioner will not be permitted to withdraw that amount. The learned Magistrate will also decide whether the respondent has paid the arrears of maintenance as the petitioner claims that the respondent has not paid the arrears of Rs.14 Lakhs. In terms of paragraph-4 of the order dated 3.4.2018, the learned Magistrate will decide the rival claims as regards arrears of maintenance and deal with this aspect while disposing of the case finally. While disposing of the case finally, the learned Magistrate will also find out whether the delay in completing the trial is attributable either to the petitioner or to the respondent and will pass appropriate order in relation to the amount deposited by the respondent in Magistrate's Court.

11. Upon taking instructions from the petitioner, who is present in the Court, Mr. Bhatia submits that the petitioner is agreeable for adopting this course. In view thereof, the Petition is disposed of in the following terms :

[i] Impugned order dated 16.5.2018 is set aside;

[ii] Application Exhibit-302 stands allowed.

[iii] The learned Magistrate shall issue witness summons to the concerned Income Tax Authority of ITO, 11(3)(3) Mumbai within one week from receipt of the authenticated copy of this order.

[iv] The learned Magistrate will fix the suitable date for examination of the witness from the Income Tax Department.

[v] The respondent will deposit Rs.65,000/-, being part of the maintenance of June, 2018 and Rs.1,25,000/- being maintenance for the month of July, 2018 within two weeks from today in the Court of learned Magistrate under intimation in writing to the petitioner's Advocate.

[vi] The respondent will go on depositing Rs.1,25,000/- per month being the maintenance amount from August, 2018 in the Magistrate Court till the trial is over. The amount shall be deposited under intimation in writing to the petitioner's Advocate.

[vii] In terms of paragraph-4 of the order dated 3.4.2018 passed by this Court in Contempt Petition (St.) No.25257/2017, the learned Magistrate will decide the rival claims as regards arrears of maintenance.

[viii] The petitioner shall not be permitted to withdraw the amount deposited by the respondent till final disposal of the proceedings.

[ix] The learned Magistrate will also find out as to who is responsible for causing delay in the trial and will pass appropriate order in relation to the amount deposited by the respondent while disposing the case finally.

[x] If the learned Magistrate comes to the conclusion that the delay is attributable to the petitioner, the learned Magistrate will pass appropriate order in that regard while permitting the petitioner to withdraw the amount deposited by the respondent. If the learned Magistrate comes to the conclusion that the delay is not attributable to the petitioner in completion of trial, appropriate order in that regard will also be passed by the learned Magistrate.

[xi] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)