

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 8032 OF 2017

Kruti Amit Nandoskar	]	Petitioner
Vs.		
Amit Vishwanath Nandoskar	]	Respondent

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Mr. Abhijit D. Sarwate, for Petitioner.
Mr. S.S. Bijlani i/b Shine K. Mohammed, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 11TH OCTOBER, 2018.

P.C:

Heard Mr. Sarwate, learned Counsel for the petitioner and Mr. Bijlani, 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 order dated 6th May, 2017 passed by the learned Principal Judge, Family Court, Pune below Exhibit 55 in P.A No.69 of 2012. By that order, the learned trial Judge rejected the application made by the petitioner under Order-XI, Rule-15 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for issuing direction against respondent to produce the documents in support of contentions raised in paragraph 41 of the written statement.

3. In support of this Petition, Mr. Sarwate submitted that in paragraph 22 of the Petition instituted by the petitioner herein for divorce on the ground of cruelty under section 13(1) (i-a) of the Hindu Marriage Act, 1955 (for short 'Act'), she asserted that the respondent hacked the e-mail

account of the petitioner. He invited my attention to paragraph 41 of the written statement filed by the respondent. In paragraph 41, the respondent contended that in or about January, 2011 from the social networking site on Internet and from certain e-mails, he learnt that the petitioner was in relation with Mr. Jayesh Bhoir, her colleague/senior at work place and not a family friend as has been portrayed by the petitioner. He invited my attention to the reply filed by the respondent opposing application Exhibit 55 filed by the petitioner. The respondent opposed the application mainly on the ground that;

[1] the application under Order-XI, Rule-15 ought to have been made before settlement of issues. The issues were settled on 30th January, 2013. The application is filed on 19th January, 2017 and is therefore, belatedly made.

[2] application is not in conformity with Form No.7 in Appendix-C.

4. Mr. Sarawate submitted that the learned trial Judge rejected the application mainly on the ground that application under Order-XI, Rule-15 has to be made before settlement of issues. The Petition for divorce is pending since 2012 and issues are framed long back. The Petition is pending for leading evidence by the petitioner since last many dates. The learned trial judge also observed that the notice to produce document to the other side has to be in conformity with Form No.7 in Appendix-C and the application is not in Form No.7 in Appendix-C. The learned trial Judge observed that if the respondent fails to produce the documents relied on by him then he would fail. At the stage of filing Affidavit of evidence, the petitioner cannot call upon the respondent to produce the documents referred by him in the written statement. Mr. Sarwate submitted that the learned trial Judge failed to appreciate that the application under Order-XI, Rule-15 can be made even after settlement of issues. The word 'shall' is not mandatory. In the case of **Salem Advocates Bar Association Vs. Union of India, (2005) 6 SCC, 344**, the Apex Court has

interpreted the word 'shall' as 'may'. He further submitted that in case the said application is rejected and the respondent fails to produce the documents, no adverse inference can be drawn against the respondent. However, if the application is allowed and despite that the respondent fails to produce the documents as ordered by the Court, adverse inference can be drawn. He, therefore, submitted that the Petition requires consideration. On the other hand, Mr. Bijlani supported the impugned order.

5. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, in paragraph 22, the petitioner has alleged the respondent has hacked the e-mail account of the petitioner. The respondent has denied those assertions in paragraph 41 of the written statement. The respondent further contended that in or about January, 2011 from the social networking site on Internet and from certain e-mails, he learnt that the petitioner was in relation with Mr. Jayesh Bhoir, her colleague/senior at work place and not a family friend as has been portrayed by the petitioner. Even, the respondent has denied the allegations made by the petitioner as regards hacking of her e-mail account and has made further assertions referred hereianbove. It is in that context, the learned trial Judge has observed that if the respondent fails to substantiate the contention raised as regards he has acquired knowledge from the social networking site on Internet and e-mail, he would fail.

6. In view thereof and for the reasons recorded by the learned trial Judge in the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]