

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8156 OF 2017

Mr. Arun Bhoja Kotian

...Petitioner

Versus

Mrs. Anita Arun Kotian & Anr.

...Respondents

Mr.Vishwajeet Kapse a/w Mrs.Ashwini A. Purav for the Petitioner.

Ms.Maheshwari Dave for the Respondents.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 16th MARCH 2018

P.C.

1. The present petition filed by the husband poses a challenge to the order dated 15th June 2017, passed by the Judge, Family Court No.2, Mumbai below Exh.17 by which the wife had claimed a restraint order against the respondent from entering into a Flat No.602, Building No.29, Sanskruti CHSL, Thakur Complex, Kandivali (East), Mumbai. By the said order the claim of the wife that the respondent-husband be directed to vacate the flat has been rejected.

2. On hearing the respective learned counsels, in presence of the parties, who are present during the course of the hearing,

what is seen is that both the parties have filed proceedings for divorce and have made up their mind not to stay with each other any more. There is one child aged about 11 years born out of the wedlock. Dispute revolves around a flat, which was a subject matter of the impugned order. The claim of the Petitioner-husband is that he has contributed 93% towards the purchase of the flat and whereas this statement is seriously contested by the respondent. Though the learned counsel for the parties took me through the bank entries showing the credit and debit entries in their respective accounts, this Court is not competent to enter into these details and since, this issue will have to be decided, by adducing evidence. The order passed by Family Court dated 15th June 2017 is not implemented and it is informed that the Petitioner-husband is residing in the said house. Though the respondent-wife expressed her willingness to come and stay in same flat, which is one bed room flat, she is permitted to do so at her own risk. Since looking to nature of the allegations which are leveled by the parties against each other in their respective divorce petition would only make their life uncomfortable. Parties be are advised to take necessary steps as being necessary for complying with the order dated 15th June 2017.

3. Both the parties agree that the proceedings need to be heard finally, since, impugned order is in the form of interim injunction. The parties are ready with their evidence and the statement of accounts, which would be required to be gone into by the Family Court to finally decide the said issue. In the peculiar facts and circumstances, the Family Court, Mumbai, to expedite the proceedings in Petition No.2929 of 2015 and decide the same within a period of six months. It is made clear that both the parties to cooperate with the Judge, Family Court, in expeditious disposal of the said proceeding, since, it is at the instance of these two parties that this Court is inclined to grant precedence to the said matter though it appears that application is filed in the year 2015, and the order which is impugned is passed on 15th June 2017.

4. However, at this juncture, it is necessary to make a mention of the statements made by the learned counsel for the Petitioner about the maintenance of the child. The learned counsel for the Respondent would submit that she had already moved an application before the Family Court, seeking maintenance of the child. It is the contention of the learned counsel for the Petitioner that though the application is filed long back on 19/12/2016, it has

not been seriously pressed, since, wife is earning that may be one of the reason. However, in spite of passing order on 15th June 2017 she is staying with her mother from May, 2012 and upto 2015 before filing the divorce petition, the petitioner is taking care of the child, the Petitioner cannot run away from his responsibility of sharing an amount towards maintaining the child. In these peculiar facts and circumstances, the Family Court is directed to take up the application filed by the respondent-wife claiming maintenance of the child and let this application be decided expeditiously and some interim orders be passed after hearing both the parties within a period of two months from today.

5. With the aforesaid directions the Writ Petition No.8156 of 2017 is disposed off.

6. This Court makes it clear that it has not expressed any opinion on the rival contentions of the respective parties and all the respective contentions of the parties are kept open and intact, to be raised before the Family Court, Mumbai.

(SMT.BHARATI H. DANGRE, J.)