

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7376 OF 2018

Jatin Kantilal Karani

...Petitioner

Versus

Rishita Jatin Karani

...Respondent

....

Mr. Hitesh P. Vyas, Advocate a/w. Parul K. Vedak, Advocate for the Petitioner.

Mr. Gautam Ankhad, Advocate a/w. Kaustav Talukdar, Mr. Bharatkumar Jain, Ms. Yashvi Shah i/b. Hariani & Co. for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 4th OCTOBER, 2018

P.C.

1. Heard Mr.Hitesh P. Vyas, learned counsel for the petitioner and Mr.Gautam Ankhad, learned counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 5.7.2018 passed by the learned Judge, Family Court No.4, Mumbai below Exhibit-70 in Petition No.D-42/2016. By that order, the learned trial Judge rejected the application made by the petitioner under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the Petition.
3. Rule. Mr. Ankhad waives service for 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. It is not necessary to set out in detail the facts giving rise to filing of the present Petition. Suffice it to refer to the application dated 25.7.2016 made by the petitioner at Exhibit-32 for seeking interim access of minor children 'Ishaan' and 'Vihaan'. By order dated 9.10.2017, the learned trial Judge partly allowed that application and issued certain directions. Aggrieved by that order, the respondent-wife instituted Writ Petition No.11552/2017. By order dated 20.10.2017, the learned Vacation Judge (Coram: Sandeep K. Shinde, J.) modified clause-3, and in view thereof clauses 4 and 5 appropriately, of the operative part of the order dated 9.10.2017.

5. It has come on record that on 28.9.2017, the petitioner has filed affidavit of evidence and thus the trial has commenced. The petitioner filed application for depositing the passport in the Court. He also filed application on 28.9.2017 for verification of C.D.. On 9.11.2017, he filed present application at Exhibit-70 for amending the Petition.

6. By the impugned order, the learned trial Judge has rejected the application. During the course of hearing, I made query to Mr.Ankhad as to whether the learned trial Judge has considered the fact

that the petitioner has filed application on 25.7.2016 for access and the same was pending till 9.10.2017. The learned trial Judge did not consider the order dated 20.10.2017 passed by the learned Vacation Judge of this Court in Writ Petition No.11552/2017. The petitioner was bonafide prosecuting that application and present application is filed on 9.11.2017. It was, therefore, suggested to Mr. Ankhad that as the learned trial Judge did not consider filing of the application by the petitioner for access and outcome of that application only on 20.10.2017 when the learned Single Judge has modified the trial Court's order dated 9.10.2017, whether the respondent is agreeable for setting aside the impugned order and restoration of application Exhibit-70 so that said application can be considered afresh in the light of various orders passed by this Court as also the Apex Court.

7. On instructions from the respondent, Mr. Ankhad submits that by consent the impugned order may be set aside. The trial Court may be directed to dispose of the application Exhibit-70 in a time bound manner.

8. In view thereof, by consent of parties, the impugned order is set aside. Application dated 9.11.2017 at Exhibit-70 is restored to the file of the learned trial Judge. The parties agree that they will appear before the learned trial Judge on the next date of hearing i.e. on

8.10.2018 and for that purpose, no fresh notice be issued to them. The learned trial Judge is requested to decide said application within two weeks from the date of appearance of the parties in the light of the orders passed from time to time by this Court as also by the Apex Court. All contentions of the parties on merits are expressly kept open. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

Digitally signed
by Pradipkumar
Prakashrao
Deshmane
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