

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.9479 OF 2018

Vikas Vinod Talwar	]	Petitioner
Vs.		
Janvi Talwar @ Jenvie Peter Williams	]	Respondent

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Ms. T.F. Irani, for Petitioner.

Ms. Purvi Shah a/w Mr. Ashok Yadav, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 28th SEPTEMBER, 2018.

P.C:

Heard Ms. Irani, learned Counsel for the petitioner and Ms. Shah, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 2nd July, 2018 below Exhibit-103 as also the order dated 7th August, 2018 below Exhibit-104 passed by the learned Judge, Family Court No.5, Mumbai in Civil M.A. No.171 of 2015. By order dated 2nd July, 2018, the learned Judge rejected application Exhibit-103 made by the petitioner for adjournment of the matter and fixing the matter on 20th July, 2018 for further cross-examination. By order dated 7th August, 2018, the learned Judge rejected the application made by the petitioner for review of the order dated 2nd July, 2018.

3. Rule. Ms. Shah waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. The matter was heard on 6th September, 2018. In that order, submission of Ms. Shah that the petitioner has filed Pursis closing evidence and thereafter the respondent has filed affidavit of examination-in-chief was noted. Ms. Irani submitted that the the evidence closure pursis was filed under protest. She assured that she will produce copy of the pursis on the next date of hearing. Accordingly, Ms. Irani has produced pursis dated 13th August, 2018 at Exhibit 111. Ms. Irani submitted that closure evidence pursis at Exhibit 111 was filed for closing evidence of the petitioner without prejudice to his rights and reserving his rights to file appeal.

5. Ms. Shah submitted that the petitioner filed application on 5th April, 2018 seeking permission to conduct cross through Video conferencing. That application was allowed on 7th June, 2018. The petitioner thereafter filed application Exhibit 88 for review of the order dated 7th June, 2018. However, no order was passed as the petitioner remained present for cross-examination on 21st June, 2018. She submitted that having regard to the conduct of the petitioner, no case is made out for interfering with the impugned order. She submitted that in case the Court is inclined to interfere with the impugned orders, exemplary costs may be awarded to the respondent.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. By order dated 2nd July, 2018, the learned Judge, rejected the application Exhibit-103 for adjournment of the matter and fixing the same on 20th July, 2018 for further cross-examination. The learned Judge closed evidence of the petitioner on the basis of the pursis filed at Exhibit 111. A perusal of that pursis shows that the petitioner has closed his evidence without prejudice to his rights and reserving his right to file appeal.

7. In view thereof, in my opinion, ends of justice will be served by setting aside the impugned orders. Ms. Irani submits that next date of hearing before the Family Court is 1st October, 2018. On behalf of the petitioner, she undertakes that the petitioner will remain present for facing cross-examination on 1st October, 2018 and on the dates so fixed by the learned Judge, Family Court and will not seek adjournment. Undertaking given by Ms. Irani on behalf of the petitioner is accepted.

8. In view thereof, impugned orders passed below Exhibit-103 and Exhibit-104 are set aside. No cross order passed against the petitioner is also set aside subject to the petitioner making himself available before the Family Court on 1st October, 2018 and on another dates so fixed by the learned Judge, Family Court for facing cross-examination. It is made clear that in case the petitioner does not attend the proceedings on the dates so fixed by the learned Judge for completion of cross-examination, impugned orders will stand revive without further reference of the Court. As the respondent has filed Affidavit of examination-in-chief, liberty is reserved to the respondent to file additional affidavit of examination-in-chief after completion of evidence of the petitioner, if so advised. Rule is made absolute in the abovesaid terms with no order as to costs.

[R.G. KETKAR, J.]