

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.13333 OF 2017**

Revati Jitendra Patil .. Petitioner
Versus
Jitendra Patil .. Respondent

...

Mr.Mandar Limaye, Advocate for the petitioner.

Mr.Jitendra Patil, respondent in person present.

CORAM: BHARATI H. DANGRE, J

DATED : 19th MARCH 2018

P.C:-

1 The petitioner wife has approached this Court being aggrieved by the order dated 11th October 2017 passed by the Judge,Family Court,Thane below Exhibit-47, 48 and 49. The petitioner is aggrieved by rejection of her application below Exhibit-47.

 The matrimonial dispute between the parties i.e. petitioner and respondent husband came to be settled before the Maha Lok Adalat by drawing consent terms between the parties which were to be signed on 18th September 2011. The consent terms came to be filed in Petition No.A-14 of 2010 instituted by

the husband for divorce. Amongst the 10(ten) Terms which were signed by the parties for settling the matter, Term no.5, 6, 7, 9 and 10 are relevant for decision of the controversy. The said terms read thus :

“5. The respondent agrees and undertakes to pay Rs.5,00,000/- (Rs.Five Lacs only) to the petitioner within 30 days by Demand Draft (or cash) drawn in the name of the petitioner.

6. The petitioner agrees and undertakes to avail the children for access by mutually settling the day and time as far as possible as per the order of access passed by the Hon'ble Court.

7. The respondent undertakes to pay all the necessary education expenses of the son and the daughter in future i.e. for taking admission in the colleges and tuition classes.

9. On compliance of the above three conditions, the petitioner undertakes and abides to withdraw within twenty days thereafter, all the criminal complaints and other proceedings she has taken up in any other Court or Forum and these terms may be placed before such Forum and Court, if she fails to withdraw by way of her consent for withdrawal.

10. Custody of the children shall remain with the petitioner.

Pursuant to the said consent terms, the Principal Judge, Family Court, Thane, delivered a judgment on 1st March

2012, thereby dissolving the marriage between the parties by mutual consent and the consent terms at Exhibit-114 (which came to be filed before the Maha Lok Adalat) were held to be a part of the decree. The decree was accordingly drawn on 5th May 2012, which comprised of all the 10 consent terms, including the Item no.7.

2 The petitioner wife approached the Family Court by filing Exhibit-47 praying for expediting the execution with regard to recovery of educational expenses. The learned counsel for the petitioner vehemently relied on clause no.7 and submitted that the educational expenses were consented to be arranged for, and in fact, there is a clear defiance of the said terms and conditions resulting into inconvenience to the children in pursuing their education. It is categorically stated that the arrears of education expenses of the children which were pending on the date of application are amounting to Rs 9,43, 235/-, and in fact, in the application it was categorically stated that even if this amount is directly paid to the educational institutions, she did not have any objection. The said application came up for consideration and by the impugned order dated 11th December 2017, the said application came to be rejected with a one line observation made

by the Judge, Family Court in paragraph no.9 of the impugned order. Paragraph no.9 reads thus :

“9. The new controversy is regarding education expenses of children. The decree nowhere states about the educational expenses. No new right can be considered in such proceedings. In such circumstances, in my opinion, following order will be sufficient to decide controversy between parties”

3 It is surprising as to on what basis the Judge, Family Court, made such an observation and refers it as “new controversy”. The Judge, Family Court had failed to take into consideration condition no.7 by which the respondent undertook to pay all the necessary expenses of the son and daughter in future with regards to the admission in the colleges and tuition classes.

4 When the matter is being heard, it was informed that the respondent intends to appear in person, and he is permitted to do so. It is the specific case of the respondent that the interpretation of clause no.7 is not a true and correct interpretation of the intention of the parties, and in fact, what was agreed was that he would pay the fees at the time of admission and accordingly he has been paying so. He invited the attention of this Court to a reply filed by him in Darkhast No.2 of 2013. In the

said reply, the respondent has placed on record his interpretation of condition no.7 and according to him, condition no.7 was an indication that the consent terms were restricted only towards paying the educational expenses while taking admission in the college/tuition classes i.e. at the time of passing out of the education from the school. The reply further sets out that nowhere in the consent terms, it is stated that the educational expenses for the children for every year, is to be borne by the judgment debtor and it is limited and restricted till taking admission in college and tuition classes. Further, a categorical statement is also made that an amount of Rs.5 lakhs has been paid to the decree holder for education of the children. During course of hearing of the respondent, he attempts to place the same interpretation before this Court which he had set out in the reply and according to him, he had paid an amount of Rs.Five lakhs in the settlement terms which was in fact towards the educational expenses of the children. He would further argue that he has paid the initial amount while seeking admission in the educational courses and that is what clause no.7 reads.

5 Perusal of clause no.7 in the consent terms which is a part of the judgment and reduced into a decree, no doubt casts a

liability on the respondent to pay “all the necessary education expenses”. The interpretation sought to be put by the respondent of the words i.e. to mean that is is restricted only for taking admission in the colleges and tuition classes meaning thereby that at the stage of admission, he is required to arrange for the fees, appears to be totally impracticable. It is known that when a child seeks admission in a junior college for 11th Std and when he passes 11th Std and intends to join 12th Std, the College requires a fresh admission to be taken in Class 12th Std. The same is the case where a student is admitted to a professional course, and here it is informed that children in the present case, are both the children of the petitioner have been admitted in the professional course for Architecture. If the interpretation of the respondent is accepted, then one time taking admission in the first year course of Architecture would serve the purpose and no fees are required to be paid till he enters the final year which is the fifth year of the said course. However, the same is not the position possible and every year of professional course is considered as a separate year and it requires a re-admission every year. In fact, there are certain institutions where semester wise pattern is followed and on clearing first semester, when a student enters into a next semester, it contemplates a fresh admission with payment of fees.

The interpretation of the respondent is totally incorrect specifically when both children are prosecuting their professional course in Architecture. His stand that once he had admitted them in first year and this is what he undertook by clause 7, he has abiding by the said undertaking is completely an erroneous approach. What he has undertaken by the consent terms was to cater to the educational need of the children and to pay all their educational expenses not restricting only to the first year admission to a course, but with an intention that his children are able to complete their education and he would also bear the expenses for their tuition classes. At the most, the said clause may put a restriction on other expenses like the books, conveyance expenses which possibly are not covered, but in any contingency the admission fee and the fees towards the tuition classes is what clause 7 specifically mentions.

In such circumstances, the stand of the respondent appears to be completely erroneous and the order passed by the Judge, Family Court which terms this issue as a “new controversy” is also not sustainable. Had the Judge, Family Court gone through the terms and conditions they were explicitly mentioned in the

consent terms, he would not have recorded such a finding.

6 The stand of the respondent that an amount of Rs.Five lakhs mentioned in clause (5) of the consent terms was towards educational expenses of the children, is also misconceived. Respondent had agreed to pay an amount of Rs.Five lakhs to the petitioner within a period of 30 days drawn in the name of the petitioner. It was very clearly intended that this amount of Rs.Five lakhs, in any case, was not towards the expenses of the children.

In such circumstances, the impugned order dated 11th October 2017 deserves to be quashed and set aside and is so set aside. The Judge Family Court is directed to reconsider the applications preferred by the petitioner wife claiming the benefits flowing from clause no.7 of the consent terms, subsequently merging into a judgment.

Let the applications be disposed of within a period of three months from the date of the order.

8 Writ Petition is disposed of accordingly.

(BHARATI H. DANGRE, J)