

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

WRIT PETITION NO.13852 OF 2017

Mr.Sandeep Dilip Vakadia ... Petitioner

Vs.

Mrs. Bhavana Sandeep Vakadia and anr. ... Respondents

Ms.Susy Mathew for the Petitioner.

Ms.Rushita Jain for Respondent No.1.

CORAM : SMT. BHARATI H.DANGRE, J.

DATE : MARCH 13, 2018.

P.C.:

. Through the present Writ Petition, the Petition assails the proceedings of application pending in the Family Court Room No.3 at Bandra, Mumbai, by which the application for modification of the interim order of maintenance came to be rejected. Today the learned counsel Ms.Susy Mathew for the Petitioner has filed an application on record and by the said application, it is prayed that the order passed by the Family court Judge on 16th January 2018, be set aside. The learned counsel for Petitioner expresses her anguish over delay in the proceedings and according to the learned counsel for the Petitioner the proceedings for divorce are instituted by the husband long back

in 2011 and inspite of lapse of 7 years, the proceedings are still pending. This court by order dated 2nd November 2017, had issued directions to decide the matter expeditiously and the directions were issued to both the parties to co-operate with each other so that the matter could be disposed off. It was also ordered that if any of the party attempts to prolong the matter, a note may be taken of the conduct of the party in the roznama.

In light of the said order, the Judge, Family Court expressed that for expeditious disposal of the matter, Court Commissioner can be appointed so that the evidence can be completed expeditiously. The application was moved by the Petitioner on 16th January 2018, inviting the attention of the court to the fact that he had complied with the orders granting the interim maintenance and it is not possible for him to bear the expenses of Court Commissioner. The application came to be heard and the learned Judge of the Family Court directed the parties to suggest the name of the Advocate for appointment as Court Commissioner on or before next date. Directions are also issued to the Court Commissioner to complete the Respondent's cross-examination as early as possible. The Petitioner was directed to pay Court

Commissioner's charges of Rs.3,000/- per sitting.

It is this order which hurts the Petitioner, since he had expressed the grievance that he is not in a position to bear the expenses of the Court Commissioner and this is what precisely the Family Court has ordered to pay Rs.3,000/- per hearing.

The learned counsel for the Respondents do not dispute that the matter before the Family Court is at fag end and after he passed an order on 2nd November 2017 to take up the matter and dispose it off, in terms of the directions of this court. However, the Family Court was placed in situation, where was to deal with other time bound matters in terms of direction issued by the High Court and in such circumstances, the Family Court was compelled to consider the appointment of the Court Commissioner for expeditious disposal of the matter, so to abide by the directions of the Hon'ble High Court. The learned counsel for the Respondents states that they are only one stage away from finality of the proceedings and the cross-examination is fixed on 16th March 2018, and on this cross-examination being completed, the matter can be posted for arguments and closed finally.

In such circumstances, the order passed by the Family Court

appointing the Court Commissioner, particularly in the light of the grievance made by the Petitioner about he being directed to bear the cost or expenses of the Court Commissioner cannot sustain. It is requested that the Family Court would take out some time and decide Petition No.A-2839 of 2011 expeditiously and since the cross-examination is already fixed on 16th March 2018, the Judge, Family Court is directed to proceed with the cross-examination and complete the same in any case before 23rd March 2018. The court would list the matter for arguments in the week commencing from 26th March 2018, and parties would conclude the arguments by 13th April 2018. The Family Court is directed to finally dispose off the matter within the next 15 days. In any contingency, the said matter should be disposed off by the Family Court by 13th April 2018. It is made clear that the parties would co-operate with the Family Court and any adjournment application would be dealt with sternly and would be subjected to payment of cost of Rs.25,000/- to the other side. With this directions, the Writ Petition stands disposed off.

2. The learned counsel for Respondents makes a statement that the Petition No.A-2839 of 2011 filed by the husband seeking

divorce is clubbed alongwith the proceedings for grant of maintenance filed by the wife and the evidence is being lead together. In view of this fact, the proceedings for grant of final maintenance should also be disposed off by the Family Court within the period mentioned above.

Since the present Writ Petition is filed being aggrieved by the order of interim maintenance, in view of the aforesaid directions issued by the Family Court for disposal of the proceedings for grant of final maintenance, nothing survives in the Writ Petition. Writ Petition is disposed off.

(SMT. BHARATI H. DANGRE,J.)

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