

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 2202 OF 2018**

Mrs. Shivalika Harish Patil] Petitioner

Vs.

Mr. Harish Vijay Patil & Anr.] Respondents

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Mr. Manoj Sharad Mhambrey, for petitioner.

Ms. Madhuri Sharma, for respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 25TH APRIL, 2018.

P.C.

Not on board. At the request of Mr. Mhambrey, taken up for admission.

2. Heard Mr. Mhambrey, learned Counsel for the petitioner and Ms. Sharma, learned Counsel for respondent No.1 at length.

3. On the oral application of Mr. Mhambrey, leave to delete respondent No.2 is granted. Amendment shall be carried out forthwith.

4. Rule. Ms. Sharma waives service on behalf of respondent No.1. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

5. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 2nd February, 2017 passed by the learned Judge, Family Court, Bandra below Exhibit 13 in M.J. Petition No.393 of 2016. By that order, the learned trial Judge rejected the application made by the petitioner for inspection of documents under Order-XI, Rule-18 of the Code of Civil Procedure, 1908 (for short 'C.P.C').

6. Mr. Mhambrey submitted that the respondent/husband has instituted the Petition, inter alia, alleging that the petitioner herein is having adulterous relationship with respondent No.2. He has referred to and relied on several documents such as photographs, videos, audio recordings etc in support of these allegations. The petitioner, therefore, addressed a letter dated 25th May, 2016 calling upon the respondent's Advocate to grant inspection of documents, photographs, video, Audio recordings referred to and relied on by him in the Petition. By e-mail dated 25th June, 2017 sent by the Advocate appearing for the respondent, he declined to furnish the documents on the ground that the parties are undergoing counseling session with the Court counsellor. He assured that the documents relied on in the matter will be served at appropriate stage.

7. By the impugned order, the learned trial Judge rejected the application on the ground that the respondent has produced the documents on record. The impugned order reads thus;

“Petitioner has produced documents on record. Hence, the application stand disposed of”.

8 A mere glance at the impugned order shows that it is a cryptic order without specifying which documents are produced by the petitioner on record. A vague statement is made that the petitioner has produced documents

on record. It is also not clarified whether the documents produced by the petitioners are/were sought by the petitioner herein in application Exhibit 13. In short, the impugned order clearly reflects non application of mind on the part of the learned trial Judge. On this ground, impugned order cannot be sustained and as such is liable to be set aside, thereby, directing the trial Court to decide application Exhibit 13 afresh. The learned trial Judge will specifically record which documents though sought in the application at Exhibit 13 are produced or not.

9. Learned Counsel for the parties submit that next date of hearing before the learned trial Judge is 5th June, 2018. The learned trial Judge is, therefore, requested to decide application Exhibit 13 afresh within four weeks from 5th June, 2018. All contentions of the parties are expressly kept open. Rule is made absolute with no order as to costs.

[R.G. KETKAR, J.]