

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 2110 OF 2018

Mrs. Shivalika Harish Patil] Petitioner

Vs.

Mr. Harish Vijay Patil] Respondent

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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 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 learned Counsel for the parties, Rule is made returnable forthwith and the 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 said 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 rejected to furnish the documents on the ground that the parties are undergoing counseling session with the Court counsellor. He assures 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 documents on record. The impugned order reads thus;

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

8. In support of this Petition, Mr. Mhambre submitted that after the impugned order was passed, the petitioner has filed written statement as also Counter Petition. He submitted that the learned trial Judge without hearing

the petitioner passed the order directing the petitioner herein to produce documents as prayed for by the respondent in application Exhibit 21. He further submitted that the petitioner has neither referred to nor relied on documents sought by the first respondent in paragraphs 5 and 7 in application at Exhibit 21. He, therefore, submitted that the impugned order may be set aside.

9. On the other hand, Ms. Sharma has invited my attention to Order-XI, Rule-12 of the C.P.C. She submitted that though at the time of passing the impugned order, the petitioner did not file written statement, as on today, the petitioner has filed written statement as also counter petition. She submitted that application made by the petitioner is referable to Order-XI, Rule-12 of the C.P.C. She, therefore, submitted that the petitioner be directed to file affidavit placing on record which documents in paragraphs 5 and 7 are in her custody and which documents are not in her custody.

10. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is no doubt true that at the time of passing the impugned order, the petitioner has neither filed written statement nor counter petition. As on today, it is not in dispute that the petitioner has filed written statement and also has filed counter Petition. Order-XI, Rule-12 reads thus;

Order-XI:Discovery and Inspection:

Rule 12. Application for discovery of documents-

Any party may, without filing any affidavit, apply to the court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that

stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

Provided that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs”.

11. A perusal of the impugned order shows that the trial Judge has passed the cryptic order without hearing the petitioner. In view thereof, impugned order is required to be set aside, thereby, restoring application Exhibit 21 for deciding afresh. The petitioner shall file application placing on record which documents referred in paragraphs 5 and 7 of the application Exhibit 21 are in her possession and which documents are not in her possession. The learned trial Judge will decide that application keeping in mind Order-XI, Rule-12 of the C.P.C as also Section 14 of the Family Courts Act, 1984. Hence, the following order.

- [1] The impugned order is set aside.
- [2] Application Exhibit 21 is restored to the file of learned trial Judge.
- [3] The petitioner shall file reply and serve copy in advance on the other side before next date of hearing. Learned Counsel for the parties submit that next date of hearing before the learned trial Judge is 5th June, 2018.
- [4] The learned trial Judge is, therefore, requested to dispose of application Exhibit 21 within four weeks from 5th June, 2018.
- [5] Rule is made absolute in the aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]