

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14168 OF 2018

Meghna Subir Choudhury ...Petitioner

Versus

Anil Kumar Siwal ...Respondent

Mr. A. D. Aswani, for the Petitioner.

Mrs. Tuba Taiseen Qureshi, a/w Rajender Singh Saluja, for the Respondent.

CORAM: M. S. SONAK, J

DATED: 18th December, 2018

PC:-

1. Heard the learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent and request of the learned Counsel for the parties.
3. The challenge in this petition is to the order dated 11th September, 2018, by which the learned Family Court was pleased to recall “No Written Statement order” and permit the respondent – husband to file written statement subject to cost of Rs.2,500/- payable on or before the next date.
4. The impugned order, in its entirety reads as follows:

“In the interest of justice application is allowed subject to cost of Rs.2,500/- payable to other side on today or before next date”

5. From the aforesaid, it is quite clear the impugned order is bereft to any reason whatsoever. This is not the manner in which the application for recall of No W.S. order can be dealt with or decided. Therefore, the learned Counsel for the petitioner is right that the impugned order warrants interference.

6. The setting aside of the impugned order, will only entail a remand to once again consider whether there was sufficient cause for recall of No W.S. order. This in turn will entail further delay.

7. Therefore, upon perusing the application made by the respondent – husband for recall of No W.S. order, this Court suggested to the learned Counsel for the parties whether the respondent could be permitted to file Written Statement subject to payment of costs of Rs.10,000/-. The learned Counsel for the parties agreed that such an order will be in the interest of justice.

8. Therefore, by consent the impugned order is not interfered with but only modified so as to enhance the costs from Rs.2,500/- to Rs.10,000/-.

9. The learned Counsel for the respondent states that the costs of Rs.2,500/- have already been deposited before the learned Family Court and further costs of Rs.7,500/- will be paid by the respondent to the petitioner on or before next date.

10. Accordingly, the parties are directed to appear before the Family Court on 9th January, 2019 at 11.00 am. and produce authenticated copy of this order. On or before this date, respondent to pay additional costs of Rs.7,500/- to the

petitioner. If this amount is not paid, then this petition shall be deemed to have been allowed with costs assessed at Rs.10,000/-. The amount of costs may be either paid directly to the petitioner or deposit before the Family Court. If the amounts are deposited before the Family Court, the petitioner is permitted to withdraw the same unconditionally.

11. Rule is disposed of in the aforesaid terms.

12. All concerned to act on the basis of authenticated copy of this order.

[M. S. SONAK J.]