

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14511 OF 2018
WITH
CIVIL APPLICATION NO.2648 OF 2018

Alka Purohit	...Petitioner
vs.	
Bindu Devdutt Purohit	...Respondent
Mr. Kishor Maru, for the Petitioner	
Mr. M.S. Bhandari, for the Respondent	

CORAM : M. S. SONAK, J.

DATE : DECEMBER 21, 2018

P.C.

- . Heard learned counsel for the parties.
2. The rule is made returnable forthwith with the consent and the request of the learned counsel for the parties.
3. The challenge in this Petition is to the order dated 29th September, 2017 and 18th December, 2017 by which the learned Family Court at Bandra has directed the Petitioner (wife) to remain present in the Court as pre-condition for consideration of her application for rejection of Plaint under Order VII Rule 11 of CPC.
4. The Petitioner in the present case, is presently staying at Tal.Kukshi, Dist. Dhar, Madhya Pradesh along with 3 children. The Respondent-husband has instituted the Petition No. D-34 of

2017 seeking for custody of the children and other relevant considerations. It is the case of the Petitioner that this Petition is required to be rejected by applying the principles of Order VII Rule 11 of CPC. Since, the application under Order VII Rule 11 of CPC is to be decided on the basis of legal principles, the presence of the Petitioner or the children, is really not necessary therefore, the impugned orders are required to be set aside and are hereby set aside.

5. From the perusal of the impugned orders, it appears that the Family Court, quite correctly was exploring the possibility of some settlement between the parties and that is probably for that reason the Family Court made order requiring the presence of the Petitioner and the children. There is nothing wrong in the approach of the Family Court and in fact the Family Court should strive to bring amicable settlement between the parties. However, the presence of the Petitioner and the children could not have been made pre-condition for deciding the application under Order VII Rule 11 of CPC.

6. That apart, the parties, without prejudice to their rights and contentions, have today agreed to some arrangement by which the Respondent can have access with his 3 children in Mumbai.

The reason for such access is necessary in Mumbai is because it may not be possible for Respondent's mother to easily travel to Madhya Pradesh.

7. The learned counsel for the parties have handed in the agreed terms which are taken on record and marked "X" for the purpose of identification. The terms are based upon the express telephonic instructions given by the Petitioner Alka Purohit to her advocate Mr. Kishor Maru who has signed the same, on behalf of the Petitioner.

8. At the request of the learned counsel for the parties, there shall be order in terms of the agreed terms.

9. The parties to abide by the agreed terms to ensure that the access between 29th December, 2018 to 1st January, 2019 passed without any hitch.

10. Further the Family Court is directed to dispose of the Petitioner's application under Order VII Rule 11 of CPC as expeditiously as possible and in any case within two months from the date of filing of the authenticated copy of this order. The application to be decided on its own merits and in accordance with law. Nothing contend in this order may intervene the Family Court in deciding such application. All contention of all the parties are

left open.

11. Though, the main Petition is disposed of by setting aside the impugned order, place this matter for compliance of the aforesaid terms on 15th January, 2019 on the supplementary board.

1. Civil Application is disposed of on the agreed terms between the parties as aforesaid.

(M. S. SONAK, J.)