

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO. 138 OF 2018

IN

MISC. CIVIL APPLN. ST. NO. 18357 OF 2017

IN

WRIT PETITION NO. 125 OF 2016(D)

(SAU. CHAITALI NARESH GONGADE...VS.. NARESH SHRIKRISHNA GHONGADE.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S.Shingane, Advocate for Applicant/Petitioner.
Shri A.M.Sudame, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : MARCH 26, 2018.

Heard.

2. The non-applicant has filed petition under Section 12(1)(d) of the Hindu Marriage Act, 1955 praying for declaration that the marriage solemnized between the non-applicant and the applicant on 10th November, 2011 is null and void and that the non-applicant is not biological father of the child born to the applicant.

3. As the proceedings progressed, the applicant had filed application (Exh.55) praying that the petition filed by the non-applicant be dismissed as it was not filed within one year from the date of the marriage. This application was dismissed by the order dated 10th June, 2014.

4. Another application (Exh.109) was filed by the non-applicant praying that the defence of the present

applicant be struck off as she defied the orders passed by the trial Court passed below Exh. 29 and Exh.52 by which she was directed to undergo DNA Test. The learned trial Judge passed an order on this application (Exh.109) on 27th August, 2015 recording that the present applicant was willing to undergo DNA test and therefore, there was no need to strike off her defence. In this order it was recorded that the defence of the applicant would be struck off if she fails to co-operate and to undergo the DNA test.

5. The applicant had filed Writ Petition No.125 of 2016 challenging the orders passed on the application (Exh.55) and on the application (Exh.109). The writ petition was disposed by order dated 4th April, 2017. This Court recorded that the applicant had given up challenge to the order passed below application (Exh.55). This Court further recorded the submission made on behalf of the non-applicant that the defence of the applicant was not struck off and it would be struck off only if she fails to undergo DNA test. A submission was again made before this Court on behalf of the applicant that she is willing to undergo DNA test. Referring the relevant facts, the writ petition was disposed as withdrawn.

6. Now, the applicant has filed Miscellaneous Civil Application seeking review of the order passed by this Court on 4th April, 2017. The submission on behalf of the applicant is that the advocate who represented her was not instructed to withdraw the challenge to the order passed by the Court on application (Exh.55). It is further submitted on behalf of the applicant that she had not

instructed her advocate who represented her in the writ petition to make statement on her behalf that she was willing to undergo DNA test.

There is delay of about 110 days in filing the Miscellaneous Civil Application and therefore, this civil application is filed.

7. Though the application is opposed urging that the applicant has not been able to establish that she was prevented from sufficient cause from filing the miscellaneous civil application within the prescribed period of limitation, accepting the explanation given by the applicant and considering the nature of the controversy, delay of 110 days in filing the miscellaneous civil application is condoned.

The civil application is allowed accordingly.

MISC.CIVIL APPLN.ST. NO. 18357/2017

8. As far as prayer made on behalf of the applicant for review of the order dated 4th July, 2017 and restoring the writ petition is concerned, the learned advocate for the non-applicant has submitted that the applicant has not approached the Court with clean hands and throughout there is attempt on her part to mislead the Court. The learned advocate for the non-applicant has pointed out para No.7 of the order passed by the trial Court on the application (Exh.109) in which it is recorded that the applicant had shown willingness to undergo DNA test and her willingness is also reflected in the reply filed by her before the trial Court.

9. In my view, the order passed on 4th April, 2017 is not required to be reviewed and the writ petition is not required to be restored on the specious plea that the advocate who represented the applicant was not instructed to make submissions as recorded in the order.

The miscellaneous civil application is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE

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