

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1484 OF 2018

Kusum Jalindar Shingade	...Petitioner
vs.	
Jalinder Sopan Shingade	...Respondent

Mr. M.B. Jadhav a/w. V.R. Gargade, for the Petitioner
Mr. Datta Mane, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

JUDGMENT:

. Heard Mr. Jadhav, learned counsel for the Petitioner and Mr. Mane, learned counsel for the Respondent.

2. Rule. Rule made returnable forthwith with consent of and at the request of learned counsel for the parties.

3. The challenge in this Petition is to the orders dated 16th September, 2017 and 20th November, 2017 made below Exhibits 94 and 102 respectively by the learned trial Judge declining the Petitioner's leave to examine two additional witnesses, on the ground that the Petitioner had already closed her evidence.

4. In this case, the Petitioner-wife has instituted suit seeking maintenance against Respondent – husband. Learned counsel for the Petitioner points out that though there were orders for payment of the maintenance, the same were not complied with by the Respondent and as a result, the defence of husband has already struck of.

5. Learned trial Judge in the impugned orders has completely missed the significant aspect and instead observed that it will be highly unjust towards the Defendant who has been defending this case since last five years. Since, the defence of the Defendant has already been struck of, there is no question of any prejudice to the Defendant. There is no question of any injustice involved particularly when the Respondent has failed to even obey the orders made by the trial Court for payment of interim maintenance.

6. That apart upon application, the Petitioner had merely sought for leave to examine the police officer and the medical officer as witnesses in respect of her case. Mr. Mane submits that these witnesses were not sought in the list of witnesses. This quite

hardly be a reason for denying in the peculiar facts and circumstances of the present case. Mr. Jadhav, learned counsel for the Petitioner points out that the Petitioner is illiterate lady making all efforts to secure some maintenance for herself. The learned trial Judge is required to take this aspect into consideration.

7. Mr. Mane refers to the judgment in ***Sanjay Sham Bagade and Anr. vs. Ramesh Hari Madan and Ors., 2014 (5) Mh.L.J.*** This was the decision in the context of Order 16 Rule 1-A of Code of Civil Procedure. That was a case where summons was issued to witnesses without the application and stating reason as to why the names of the witnesses were not made part of the list of witnesses filed in the Court. The said discharge was in the context of facts in the said case. Here, the defence of the Defendant has already struck off. The Petitioner, claims to be illiterate and in any case, is claiming for maintenance which has been denied to her despite of interim order in her favour.

8. Taking into consideration all these circumstances, the impugned orders deserves to be set aside and Petitioner's application (Exhibit 94 and 102) deserves to be allowed and they

are accordingly allowed.

9. Rule is made absolute in the aforesaid terms.

10. There shall be no order as to costs.

11. Learned trial Judge to issue necessary summonses to the witnesses, if the Petitioner so desires and thereafter to conclude the suit as expeditiously as possible and in any case within four months from today.

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

(M. S. SONAK, J.)

(This is a corrected order as per the speaking to minutes order dated 18th April, 2019)