

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1825 OF 2019

Sheetal Aniruddha Dalvi

...Petitioner

Versus

Aniruddha Deepak Dalvi

...Respondent

....

Mr. M. Moses, Advocate for the Petitioner.

Mr. A.V. Kale, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 04th APRIL, 2019

P.C.

1. Heard Mr. M. Moses, learned counsel for the petitioner and Mr.A.V. Kale, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-wife has challenged the order dated 8.1.2019 passed by the learned Judge, Family Court No.2, Mumbai below Exhibit-39 in Petition No.A-67/2015. By that order, the learned trial Judge directed the petitioner herein to deposit amount of Rs.6,50,000/- which she had withdrawn from the Court and further restrained her from using that money. The learned trial Judge also instructed the concerned bank of the petitioner not to disburse the amount of Rs.6,50,000/- which she deposited in her bank account, if any. The learned trial Judge rejected the consent terms dated 19.4.2018 for non-compliance of clause-5 of the consent terms at Exhibit-35.

3. Rule. Mr. Kale waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. This Petition was heard on 7.2.2019 when Mr. Moses, on instructions from the petitioner, stated that the petitioner has withdrawn all the complaints filed by her against her mother-in-law. He further stated that if the Court directs the petitioner to deposit the amount withdrawn by her, she will deposit that amount in the Family Court. Statements made, on instructions, by Mr. Moses were recorded.

5. The respondent has filed affidavit-in-reply dated 7.2.2019 opposing this petition. The grievance of the respondent-husband is that the petitioner has not complied clauses -5, 6 and 8 of the consent terms dated 19.4.2018 filed by the parties before the Family Court, Bandra. Clauses-5, 6 and 8 read thus :

- “5. In view of this settlement, both Petitioner and his mother and Respondent hereby agrees to withdraw all complaints/allegation made each other before various government/semi-government authorities, if any, against the Petitioner and Respondent and also their family members.
6. In view of this settlement, the Respondent hereby agrees to withdraw proceedings initiated against Petitioner's mother in her office/working place and same also the petitioner and his mother Agrees proceedings initiated to withdraw the complaints/allegations/N.C. filed at Police Station against the family member of the Respondent and her family members and brother and Aunt of the

respondent.

8. The Respondent can withdraw the amount deposited in this Hon'ble Court only after quashing the 498(A) before Hon'ble Bombay High Court and withdraw all pending cases/ complaints/ proceedings against the Petitioner and his mother and after divorce.”

6. Clause-5, extracted hereinabove, required the respondent herein and his mother and the petitioner herein to withdraw all complaints/allegations made against each other before various Government/Semi-Government authorities, if any, against the parties and also their family members. Mr. Moses submitted that the petitioner had withdrawn the complaints made against mother of the respondent i.e. her mother-in-law. Mr. Kale confirms that said complaint was withdrawn on 6.2.2019. He, however, submitted that the mother of the respondent was due to attain superannuation on 31.1.2019. The petitioner, however, did not deliberately withdraw the complaint before her attaining superannuation.

7. Clause-6, extracted hereinabove, required the petitioner herein to withdraw the proceedings initiated against the respondent's mother in her office / working place. The respondent and his mother also agreed to withdraw the complaints/allegations/NC filed at police station against the family members of the petitioner herein as also her brother and aunty. Mr. Moses submitted that the respondent has not withdrawn the complaints at Exhibit-K (pages 39 to 42). As against this,

Mr. Kale, on instructions from the respondent who is present in the Court today, stated that the respondent has withdrawn this complaint. In any case the respondent will not pursue this complaint. Mr. Kale also assures that the respondent will not pursue the N.C. complaint No.708/2018 dated 12.6.2018 against the petitioner's Advocate. On instructions, he states that the respondent will not pursue that N.C. Complaint. Statements made by Mr. Kale, on instructions, are recorded.

8. The learned Counsel for the parties state that the next date of hearing before the trial Court is 15.4.2019. They assure that the parties will appear before the trial Court on that date and for that purpose no notice be issued to them. The learned trial Judge will ensure that the compliance of the consent terms dated 19.4.2018 is made by both sides and after ascertaining their wishes will proceed to dispose of the Marriage Petition. Mr. Kale also states that the respondent is desirous of obtaining mutual consent in terms of Section 13-B of the Hindu Marriage Act, 1955 (for short, 'Act'). Mr. Moses also states that the petitioner is also desirous of obtaining divorce by mutual consent in terms of Section 13-B of the Act.

9. Mr. Kale submitted that as the petitioner has filed various proceedings with a view to harassing the respondent and his family members, liberty may be reserved to adopt appropriate proceedings for recovery of the compensation / damages on account of the harassment

by the petitioner.

10. In view thereof, the petition is disposed of in the following terms :

- i. As the petitioner has complied clauses-5, 6 and 8 of the consent terms dated 19.4.2018, the impugned order dated 8.1.2019 passed by the learned trial Judge below Exhibit-39 in Petition No.A-67/2015 is set aside.
- ii. The parties shall appear before the trial Court on 15.4.2019 and for that purpose no fresh notice be issued to them.
- iii. After ensuring compliance of the consent terms, the learned trial Judge will ascertain the wishes of the parties and will proceed to dispose of the marriage petition.
- iv. Liberty is reserved to the respondent to adopt appropriate proceedings for recovery of compensation / damages on account of the harassment by the petitioner.
- v. All contentions of the parties in that regard are expressly kept open.
- vi. Rule is made absolute in aforesaid terms with no order as to costs.

11. All concerned parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)