

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3718 OF 2017

Romi Manoj Pandit	]	Petitioner
Vs.		
Manoj Mannalal Pandit	]	Respondent

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Mr. Y.S. Bhate i/b Shashikant D. Chandak, for Petitioner.
Mr. Manoj Mannalal Pandit, respondent in person.

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CORAM : R.G. KETKAR, J.

DATE : 10TH JANUARY, 2019.

P.C.

Heard Mr. Bhate, learned Counsel for the petitioner and Mr. Pandit, respondent in person at length.

2. This Petition takes exception to the order dated 21st November, 2016 passed by the learned Judge, Family Court No.2, Mumbai below Exhibit 13 in Petition No. A-1184 of 2016 as also the order dated 23rd December, 2016 passed by the learned trial Judge below Exhibit 18. By order dated 21st November, 2016 below Exhibit 13, the learned trial Judge allowed the application filed by the respondent herein and issued injunction restraining the petitioner from entering into matrimonial home i.e Flat No.19/A/603, Shivalaya Co-operative Housing Society Ltd, Shivdham Complex, Dindoshi, Malad (East), Mumbai 400 097 without following due process of law.

3. The petitioner filed application Exhibit 18 for setting aside the order dated 21st November, 2016 passed below Exhibit 13. By order dated 23rd

December, 2016, the learned trial Judge rejected that application. It is against these orders, the petitioner/wife had instituted the present Petition.

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

5. In support of this Petition, Mr. Bhate submitted that the learned trial Judge allowed application Exhibit 13 mainly on the ground that the petitioner has instituted Petition No.597 of 2016 for restitution of conjugal rights. In that proceedings, she has disclosed her address of New Alipore, Kolkata. The learned trial Judge was of the view that as her proceeding for restitution of conjugal rights is pending in that Court, it would not be proper to allow her to enter into the matrimonial home.

6. The learned trial Judge was further of the view that the respondent herein has instituted proceeding for divorce on the ground of cruelty. He has made allegations against the wife. If wife is not restrained, there will be further allegations against each other. As the petitioner herself admitted her present place of residence as New Alipore, Kolkatta, she cannot be allowed to enter into matrimonial home without due process of law.

7. Mr. Bhate submitted that the learned trial Judge failed to appreciate that admittedly the matrimonial home is jointly owned by the parties. He submitted that it is settled principle of law that injunction cannot be issued against the co-owner. The learned trial Judge has failed to consider this aspect. He, therefore, submitted that the impugned order deserves to be set aside.

8. On the other hand, Mr. Pandit supported the impugned orders. He submitted that the petitioner is guilty of perjury as she has made false statement on oath. That apart, the petitioner did not file reply to the application Exhibit 13. He submitted that after service of application Exhibit 13 on the petitioner, her Advocate made endorsement to the effect that the petitioner does not want to file reply to the application. Mr. Bhate, upon instructions from the petitioner, who is present in the Court, states that he will file reply to Exhibit 13.

9. Mr. Pandit relied on the decision of the Calcutta High Court dated 18th July, 2008 in **Sri Subhash Chanra Das Chowdhury Vs. Sandhya Das Chowdhury, First Appeal No.96 of 2000**, where it is observed thus;

“However, we, in this matrimonial proceeding for divorce, cannot approve the action of the wife of forcefully entering the house of the husband when suit for divorce had already been filed against her on the ground of cruelty”.

He has also invited my attention to the order dated 4th September, 2017 passed by the learned trial Judge below Exhibit 31 filed by the petitioner and directed the respondent to pay amount of Rs.15,000/- per month towards interim maintenance and Rs.10,000/- towards rent to the respondent from the date of filing of the application i.e from 15th June, 2017 till disposal of the main Petition. He submits that he is complying this order. He submitted that as he is paying Rs.10,000/- per month towards rent to the petitioner, no case is made out for interfering with the impugned orders.

10. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Mr. Pandit fairly states that the fact that the matrimonial home is jointly owned by the parties is not in dispute. A perusal of the impugned order shows that the

learned trial Judge has not considered this aspect at all. On one hand, the petitioner contends that being a co-owner, no injunction can be issued against her. On the other, the respondent relying on the decision of the Calcutta High Court in **Sri Subhash Chanra Das Chowdhury** (supra), contends that in matrimonial proceedings, Court can issue injunction against co-owner. This aspect is not dealt with in the impugned order. That apart, a perusal of the impugned order also shows that the petitioner did not file any reply. The learned trial Judge should have decided application Exhibit 13 only upon ensuring that reply is filed to this application.

11. In view thereof, the impugned order dated 21st November, 2016 passed below Exhibit 13 deserves to be set aside and accordingly is set aside. Resultantly, the order dated 23rd December, 2016 passed below Exhibit 18 also is set aside. Application Exhibit 13 is restored to the file of the learned trial Judge. The petitioner shall file reply to Exhibit 13 within two weeks from today and serve copy during this period on the other side. The learned trial Judge will decide application Exhibit 13 afresh and deal with all contentions advanced by the parties. In the event of learned trial Judge rejecting of the application Exhibit 13 filed by the respondent, the learned trial Judge will modify the order dated 4th September, 2017 to the extent of directing the respondent to pay Rs.10,000/- per month towards rent. In case, the application Exhibit 13 is allowed, it will not be necessary to modify the order dated 4th September, 2017. The learned trial Judge is requested to decide application Exhibit 13 within 4 weeks from today. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]