

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7494 OF 2019

Badal Ramchandra Singh .. Petitioner

vs.

Bhawna Singh and Anr. .. Respondents

Mr.Akshay S. Malviya with Mr.Kailash Bang for the petitioner

Mr.Vinod D. Gangwal for the respondent nos.1

**CORAM : K. K. TATED, J
DATE : JULY 16, 2019**

P.C.:

. Heard.

2 Though Respondent nos.2 is duly served, no one appeared on behalf of him when the matter was called out.

3 The learned counsel for the Petitioner across the bar made a statement that by this Writ Petition, petitioner is seeking several reliefs from this court, but he received instruction from

his client, to press only prayer clause (a) i.e. early hearing of Marriage Petition No.260 of 2018 filed by the Petitioner, which is pending before Civil Judge, Senior Division, Thane.

4 The learned counsel for the Petitioner husband submits that in the present proceedings, Petitioner filed Hindu Marriage Petition No.260 of 2018 under section 13 (1)(i) of the Hindu Marriage Act 1955, for divorce.

5 The learned counsel for the Petitioner submits that, the main grounds for divorce are narrated in clause nos.12 to 27 of the Marriage Petition. He submits that, when there was delay on the part of Respondent no.1 wife to file her written statement, Respondent preferred Application for condonation of delay. He submits that immediately on that Application, Petitioner has given his no objection, so that matter can be decided immediately. He submits that inspite of that Trial Court failed to pass any order on that Application. Therefore, Petitioner preferred Writ Petition (ST) No.10257 of 2019. He submits that in that matter, this court by order dated 26.06.2019 directed Trial Court to decide Respondent's Application immediately. He submits that since the matter is pending in Trial Court since 2018 and allegations are made by the Petitioner under section 13(1)(i) of the Hindu Marriage Act, 1955, he received instruction from his client that at present, they are not pressing any other prayers, except early hearing in the Writ Petition. He further submits that even as per section 21B of the Hindu Marriage Act, 1955, petition is required to be decided as early as possible, but in any case,

within six months from the date of service on other side. In support of this contention, he relies on following judgments:

- a. Neelam Mann vs. Charanjit Singh Maan*¹
- b. Vipul Khandelwal vs. Nikita Khandelwal*²
- c. Girdhari Lal vs. Smt.Anita @ Kamli and Anr.*³

6 On the basis of these submissions, the learned counsel for the Petitioner submits that in the interest of Justice this Hon'ble Court be pleased to direct Trial Court to decide Hindu Marriage Petition as early as possible on its own merits.

7 On the other hand, the learned counsel for the Respondent wife vehemently opposed the present Writ Petition. He further submits that there is no question of any order directing Trial Court to decide Marriage Petition as early as possible.

8 The learned counsel for the respondent no.1 wife submits that in the present proceedings, Respondent wife already filed Misc. Application No.323 of 2019 for taking action against the Petitioner under section 193, 196, 199, 200 and 205 of the Indian Penal Code read with section 340 of the Criminal Procedure Code. He submits that the said Application was filed by the wife on 10.02. 2019. He submits that unless and until Criminal Application filed by Respondent wife is decided, there is no question of deciding Petitioner's Application for divorce. In

1 2006(13) SCC 281

2 MANU/RH/1069/2018

3 MANU/RH/0681/2011

support of this contention, he relies on following judgments:

a. *M.S.Sheriff vs. State of Maharashtra*⁴. Paragraph 17 and 18 of the said judgment reads thus:

"17. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment."

"18. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it

⁴ AIR 1954 SC 397

is undesirable to let things slide till memories have grown too dim to trust. This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just.

For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

b. Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. ⁵ *Paragraph 24 sub paragraph 15 of the said judgment reads thus:*

"(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only

⁵ 2005(4) SCC 370

relevant consideration here is the likelihood of embarrassment."

c. Bharat Petroleum Corporation Ltd. vs. Mumbai Shramik Sangha and Ors. ⁶*Para 2 reads thus:*

"2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness.

At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."

d. Union of India vs. Harish V. Milani,⁷ *Paragraph 4 and 7 reads thus:*

"4. Learned counsel for respondent has, in support of his submission relied upon the judgment of Allahabad High Court, in the case of Syed Nazim Husain v. The Additional Principal Judge Family Court and Anr. in Writ Petition No. (M/S) of 2002, wherein also similar point was raised as to whether the application under Section 340 C.P.C., has to be decided first before adjudicating the proceeding in which the said

⁶ 2001(14) SCC 448

⁷ MANU/MH/0891/2018

application was filed. By its order, Allahabad High Court has directed the trial Court to dispose of the application moved by petitioner under Section 340 C.P.C., before proceeding further in accordance with law."

"7. In my considered opinion, having regard to the above said legal position spelt out by learned counsel for respondent, it would be just and proper to hear C.A. No. 2939 of 2017 filed by respondent under Section 340 C.P.C. before deciding the Writ Petition."

9 The learned counsel for the Respondent no.1 submits that unless and until Application filed by Respondent wife under section 340 of the Criminal Procedure Code read with section 195 of the Indian Penal Code is decided, there is no question of directing Trial Court to decide Petitioner's Marriage Petition on the urgent basis.

10 The learned counsel for the Respondent wife further submits that in the present proceedings, Petitioner obtained orders of custody of child by misrepresentation. He submits that Respondent No.1 already challenged the said orders before this court. The said Writ Petition is pending for hearing on its own merits. Unless and until that Petition is decided, there is no question of deciding Marriage Petition filed by Petitioner as early as possible on its own merits. On the basis of these submissions,

the learned counsel for the Respondent wife submits that said Writ Petition is required to be dismissed with costs.

11 Heard both the sides at length.

12 It is to be noted that in the present proceedings, though Petitioner husband made several prayers, at the time of argument, the learned counsel for the Petitioner after taking instruction from his client, who is present in the court made a statement that he is pressing only prayer clause (a) which is for early final hearing of Marriage Petition filed by him. It is to be noted that Petitioner filed said Divorce Petition under section 13(1)(i) of the Hindu Marriage Act, 1955 for divorce on the ground of adultery. In Marriage Petition itself, he placed on record several documents including photographs along with certificate as required under section 65(b) of the Evidence Act before the Trial Court. Bare reading of grounds nos.12 to 27 of the Marriage Petition shows that, it requires urgent hearing. It is to be noted that though there was delay on the part of Respondent wife to file her written statement, Petitioner immediately gave his no objection so that matter can be decided as early as possible.

13 Apart from that, this court placed this matter in Chamber for settlement. After hearing both the sides, this court found that it is not possible to settle the matter out of court.

14 In any case, as per section 21B of the Hindu Marriage Act and the authorities relied by the petitioner as stated

hereinabove, I am of the opinion that Petitioner has made out a case for early hearing of Divorce Petition filed by him before the Trial Court. It is to be noted that the authorities cited by the Respondent as stated hereinabove, held that that the Criminal matters filed by the parties, is required to be decided as early as possible.

15 In the present proceedings, though the Marriage Petition was filed by the Petitioner in the year 2018, Respondent wife filed Misc. Application No.323 of 2019 before the Civil Judge, Senior Division, Thane on 10.02.2019 with following prayers. Paragraph 12 of the Application :

"1) That this Hon'ble Court be pleased to appoint any officer of the court and give direction for the investigation by independent agency and the concerned police officer.

2) This Hon'ble Court be pleased to make reference of Contempt of Court U/s 15(2) of Contempt of Court Act.

3) Pass such other and further reliefs as this Hon'ble court deems fit and proper in the interest of justice, equality and good conscience."

16 Considering these facts and the law declared by the Apex

Court as referred hereinabove, I am of the opinion that Marriage Petition of Petitioner as well as Application filed by wife is required to be decided as early as possible by the Trial Court. Hence, following order is passed:

- a. The learned Civil Judge, Senior Division, Thane is directed to decide Marriage Petition No.260 of 2018 filed by Petitioner husband under section 13(1)(i) of the Hindu Marriage Act for dissolution of marriage and also other Misc. Application No.323 of 2019 filed by Respondent wife for taking action against the Petitioner, as early as possible, but in any case on or before 31.03.2020.
- b. It is made clear that Trial Court should not entertain unnecessary adjournments on the part of both the parties.
- c. Trial Court to decide both the matters on its own merits without influencing the fact that Petitioner as well as Respondent filed proceeding before this court.
- d. Writ Petition stands disposed of accordingly.
- e. No order as to costs.

Parties to act on authenticated copy of this order.

(K.K.TATED, J.)