

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7267 OF 2019

Ms. Shilpika Kalra

.... Petitioner

Versus

Mr. Manish Kalra

..Respondent

Ms. Shilpika Kalra – Petitioner, in person
Mr. Vikram Deshmukh, Ms. Shreni Shetty, Mr. Navankur Pathak
I/b. ANB Legal.

CORAM : K. K. TATED, J.

DATE : 11th JULY, 2019

P.C.

Heard Mrs. Shilpika Kalra, party-in-person and Advocate
for the respondent.

2. By this Writ Petition under Article 226 and 227 of the
Constitution of India, petitioner party-in-person challenges the orders
dated 16th March, 2019, dated 1st April, 2019 (below Exh.1 and
Exh.209) and order dated 10th May, 2019 (below Exh.234) in M. J.
Petition No.1691/2009 passed by family Court Bandra, Mumbai.

3. Party in person submit that, her mother's evidence is remained to be completed and hence she filed application for allowing her to continue her evidence. That application Exh. 211 was rejected by family Court by order dated 16th March, 2019.

4. Party in person submit that the Trial Court passed order on 1st April 2019 (Below Exh.1) and closed the matter for final arguments and directed both the parties to argue the matter. She submits that thereafter, she filed one more application (below Exh.209) and prayed to recall the witness for cross-examination. That application was dismissed by the Family Court by order dated 1st April, 2019. She further submits that the Trial Court by order dated 10th May, 2019 (below Exh.234) rejected her application for adjournment with cost of Rs.1,000/-. Hence, she has filed present Writ Petition.

5. Petitioner party in person submits that in the interest of justice, this Court be pleased to set-aside these orders passed by the Family Court and allow the petitioner to complete the evidence of her mother and also allow the applicant to cross-examine expert witness and submit report on CD-1 and CD-2. She submits that, unless and until this permission is granted to the petitioner, it is difficult for her to justify her case before the Family Court.

6. On the other hand, Mr. Vikram Deshmukh, counsel for respondent-husband vehemently opposed the present petition. He filed affidavit in reply dated 9th July, 2019 alongwith orders passed by Family Court as well as this Court in several matters between the parties. The learned counsel for the respondent submits that, this Court in Writ Petition (Stamp) No.15501/2009 filed by petitioner, by order dated 17th May, 2019 directed parties to appear before the Family Court in MJ. Petition No.1691 of 2009 and argue the matter on its own merits. In support of his contention learned Counsel for the respondent relies on operative part of the said order, which reads thus-

“(i) The learned Judge, Family Court, is directed not to proceed with MJ Petition No.A-1691 of 2009 on 20th May, 2019.

(ii) The said matter be listed before the learned Judge, Family Court on 28th May, 2019. On that day, the Petitioner – original Respondent shall advance the final arguments. The Petitioner – original Respondent may tender written submissions on or before that day but not thereafter.

(iii) It is hereby made clear that the Petitioner shall not file any application, interlocutory or otherwise, to seek any other relief including any adjournment, on any count.

(iv) If the Petitioner – original Respondent fails to advance the arguments on 28th May, 2019, for whatever reason, the learned Judge, Family Court shall proceed to decide the petition in accordance with law, forthwith.”

7. The learned counsel for the respondent submits that, when the matter was on board before Family Court on 28th May, 2019 the Family Court recorded appearance of both sides and matter was posted for judgment. He relies on following portion of said order, which reads thus -

“Today, matter is kept for Final Arguments, as per the order of the Hon'ble High Court, Respondent was supposed to file written notes of arguments or advance oral arguments. Respondent has failed to file written notes of arguments or advance oral arguments... In the morning, Respondent again opened up the topic of settlement... This Court gave sufficient time to work it out.. the entire first session.. the Respondent failed to proceed in either way. In the second session @ 4:15 pm, Respondent and Ld. Adv. Appeared. Ld. Adv. For Respondent casually responded that he's on vacation. Court has asked Respondent and lawyer about arguments. Respondent has submitted to file oral arguments. By then the Court was busy with other official assigned work and therefore it was not possible to allow oral arguments at the end of day. Again Respondent appeared and submitted that

she has written arguments and she needs to prepare the index. Court directed her to file written arguments. Again at 5:30 pm, Respondent appeared saying she wants 1 day time to think over settlement. She failed to file written arguments. During full day, Respondent has neither proceeded nor settle the matter. Respondent shows she has killed the time and not obeyed the Hon'ble High Court Order. In-spite of sufficient time being given to her... Therefore, matter is closed for judgment without the Respondent's arguments and posted on 3rd June, 2019. Order is dictated in the presence of Petitioner and his advocate and the Respondent."

8. Learned counsel for the respondent submits that, thereafter the matter was on board of Family Court on 3rd June, 2019. That time after hearing both sides, Family Court recorded that both sides agreed to settle the matter for lumpsum amount of Rs.2.60 crores and the matter was referred to the Marriage Counsellor Mr. Tompe to prepare the consent terms. Thereafter again matter was referred to the Court at 5.15 p.m. on the same date. At that time petitioner shown her unwillingness to execute the consent terms. He submits that petitioner again moved before this Court on 13th June, 2019 in Writ Petition (Stamp) No.11501/2019. That time the petitioner made a statement before this Court and same is recorded by the Court that she will cooperate with the Family Court and will not seek unwarranted

adjournments. Para No.5 of the said order reads thus -

“5. In view of this, it would not be fair to pass final judgment. Hence, the Family Court No.3 before whom the M.J. Petition No.1691/2009 is pending shall adjourn the matter as far as possible to 05.07.2019. In the meantime, the Family Court to accept the oral and written arguments of the petitioner. The petitioner undertakes to co-operate with the Court and will not seek unwarranted adjournments.”

9. Learned counsel for the respondent submits that thereafter the matter appeared before the Family Court on 28th June, 2019. That time on the request of the petitioner matter was adjourned for final argument on 1st July, 2019. He submits that when the matter was on board before Family Court on 1st July, 2019, the petitioner without arguing in the matter, applied for adjournment stating that she has filed Writ Petition No.7267/2019 before this Court and same is pending for hearing and final disposal of its on merits. He submits that thereafter matter appeared on board on 5th July, 2019 before the Trial Court and the Trial Court recorded that, *“in view of the order passed below Exh.252, the wife was to finish her remaining arguments, but she is absent when called repeatedly. It is her conduct to leave the Court room every time. Hence her right of the remaining final arguments is*

forefeited.” Then, the matter was posted for judgment on 10th July, 2019.

10. Learned counsel for respondent submits that when the matter was on board before the Trial Court for judgment on 10th July, 2019 the petitioner party in person mentioned this matter before this Court and applied for date. He submits that orders passed by the Trial Court from time to time specifically shows that petitioner on the one or other ground making application for adjournment, though the matter was kept for judgment. He submits that, now the next date for judgment is 30th July, 2019. He submits that once matter is posted for judgment, there is no question for entertaining the present Writ Petition filed by the petitioner. He submits that in this case, several opportunities were given to the petitioner. But she failed to complete her argument and evidence, on one and/or other ground. He submits that the petitioner wants to postpone the matter on the one and/or other ground. Therefore, this Hon'ble Court be pleased to dismiss the present Writ Petition and allow the Family Court to decide the matter on its own merits, which is kept for judgment.

11. The learned counsel for the respondent submit that for prolonging the litigation, petitioner filed Civil Miscellaneous

Application dated 24th June, 2019 before the Family Court for transfer the matter to other Court. He submits that the grounds made by the petitioner are imaginary. He relies on para No.6 and 8 of the said application, which reads thus –

“(6) The Ld. Judge called me in his chamber & threatened me to settle the matter within half an hour on the terms of the present Respondent i.e. original Petitioner's Advocates else he will withdraw my Pursis and will pronounce the judgment. The Ld. Court was compelling me to sign the terms in absence of any lawyer for me.

(8) The conduct of HHJ Shri. M.M. Adwant itself was sufficient to demonstrate that he was deciding the matter without giving a reasonable & fair opportunity of being heard to the present Petitioner.”

12. I heard both sides. It is to be noted that issue involved in the present Writ Petition is of the divorce petition filed by the respondent which is pending for hearing and final disposal on its own merits since 2009. Bare reading of order passed by this Court dated 17th May, 2019 in the present Writ Petition shows that petitioner want to prolong the final disposal of the matter on one or the other ground. Apart from that orders passed by the Trial Court from time to time, as recorded herein-above clearly shows that though the several

opportunities were given to the petitioner to complete her argument and submit written submission, she failed to do so. Therefore, I do not found any reason to entertain the present Writ Petition. Hence the following order -

- (a) Writ Petition stands rejected.
- (b) Family Court at Bandra, Mumbai can proceed to decide the M.J. Petition No.A-1691/2009 on its own merits.
- (c) Petitioner to pay costs of Rs.250/- to the respondent.
- (d) At this stage petitioner party in person seeks the stay. Same is vehemently opposed by the Advocate for the respondent. Considering earlier order, passed by this Court as well as family Court from time to time, and as the matter is posted for judgment, I do not find any reason to allow the oral prayer. Hence, same is rejected.

[K. K. TATED, J.]