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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7776 OF 2017

Priyanka Janardhan Patil

... **Petitioner.**

Versus

Janardhan Reghnath Patil

... **Respondent.**

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Mr. Ganesh Gole, Advocate for Petitioner.

Mr. Rajesh Datar, Advocate for the Respondent.

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CORAM : A. S. GADKARI, J.

DATE : 29th NOVEMBER, 2019

P. C. :

1. By the present petition, under Article 227 of the Constitution of India, the petitioner – wife has impugned Order dated 18th March 2017 passed below Exhibit 19 in Petition No. A-1289 of 2015, by the learned Judge, Family Court No.6, Mumbai, thereby allowing the said application filed by the respondent – husband and directing the parties to give appropriate samples before the Forensic Lab at Kalina, Mumbai for conducting the DNA test.

2. Heard Mr. Gole, learned counsel for the petitioner at length and Mr. Datar, learned counsel for the respondent. Perused the entire record annexed to the petition.

3. The record indicates that, the petitioner has filed Marriage Petition No. A-1289 of 2015 in the Family Court at Mumbai under Section

13(1)(ia) of the Hindu Marriage Act, 1955 for divorce against the respondent. After receipt of summons the respondent has filled written statement on 16th October 2015. In the written statement the respondent has raised prima facie doubt about paternity of their child which has begotten out of the marital relations between the parties herein. Necessary pleadings to that effect have been incorporated in paragraph No.6 of the written statement. It is the contention of the respondent – husband that, the marriage between the parties was solemnized on 05th February 2014 and consummated on 9th February 2014 for the first time. That, on 27th June 2014 a pregnancy test was conducted at Fatal Care Centre, Singapore wherein it was revealed that the baby in the mother's womb was about 21 weeks old and it is the reason which created strong suspicion in the mind of the respondent about the pregnancy which had already began prior to the date of marriage.

4. The respondent, thereafter, filed application below Exhibit-19 for appointment of Court Commissioner to conduct DNA test of the child at any recognized Medical Institute or any Government Hospital. The petitioner filed reply to the said application and vehemently opposed it.

The Trial Court by its Order dated 18th March 2017 has allowed the said application, thereby appointing, Forensic Laboratory at Kalina Mumbai as a Court Commissioner for collecting the samples for conducting the DNA test. The parties herein are directed to give appropriate samples to the said laboratory on or before the next date fixed by the Trial Court.

5. Mr. Gole, learned counsel for the petitioner submitted that, after the petitioner filed the aforestated marriage petition for divorce and sought interim maintenance from the respondent, as an by way of an afterthought the respondent filed the said application and took a spacious plea as mentioned herein and more particularly pleaded in para No.6 of the written statement. He further submitted that, the application filed by the respondent for conducting DNA test of the said child, so also collecting the necessary samples of the petitioner, is with a view to shrug off the responsibility being biological father of the said child and also to avoid interim maintenance to be paid to the petitioner-wife. He submitted that, directing the petitioner to undergo the said DNA test would amount to raising doubt about the paternity of the child. He submitted that, after the marriage, the respondent and petitioner cohabited together and the respondent was having access to the petitioner. That, during their stay as husband and wife, the marriage was consummated and the said child has begotten out of the said wedlock. He further submitted that, therefore the petitioner need not be directed to undergo the said DNA test, as per Order passed by the Trial Court. He therefore prayed that impugned Order be set aside by allowing the present petition.

6. Per contra, Mr. Datar, learned counsel for the respondent, vehemently opposed the petition and submitted that the petitioner without using any harsh or derogatory language has pin pointed his specific case in para 6 of his written statement. He submitted that, it is the contention of the

respondent that, the marriage was performed on 5th February 2014 and it was consummated firstly on 9th February 2014. That when the pregnancy test was conducted on 27th April 2014 at Fatal Care Centre, Singapore, it was revealed that, the baby in the mother's womb was of about 21 weeks, i.e. about 5 months old. That the marriage firstly consummated on 09th February 2014 and on 27th June 2014 the child in the mother's womb was about 21 weeks i.e. during the period of four and half months of marriage the child in womb was more than 5 months old and therefore, it is necessary, to ascertain the paternity of the said child. He submitted that DNA test is the most advanced scientific test and concerned laboratory can give a report as to whether the petitioner is the biological father of the said child or not. He therefore prayed that, the present petition may be dismissed.

7. The aforestated chronology of events have been pleaded by the respondent in his written statement, so also in his application filed below Exhibit – 19 before the Trial Court and repetition of the same is hereby avoided for the sake of brevity.

8. As noted earlier, there is a strong suspicion in the mind of the respondent-husband about the paternity of the child which has been from the wedlock of the petitioner and therefore the respondent had filed the aforestated application below Exhibit 19 for conducting DNA test of the child and the parties herein. By now, it is well settled position of law that, the result of a genuine DNA test is said to be scientifically accurate. That, due to advanced scientific technology, conducting of DNA test would certainly throw

light on the paternity of the child, which the respondent is seriously disputing and/or having serious doubt about it. The respondent can not be foisted with paternity of child, if it is prove by a scientific method that he is not the biological father of the said child, though, he was having access to the petitioner at the relevant time. Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of *Shri Banarasi Dass Vs. Mrs. Teeku Dutta and Anr.* reported in (2005) 4 SCC 449 and *Dipanwita Roy Vs. Ronobroto Roy* reported in (2015) 1 SCC 365.

9. In view of the above and after perusing entire record, this Court is of the considered view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order.

10. The Petition being dehors of merits, is accordingly dismissed.

(A. S. GADKARI, J.)