

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10787 OF 2018

Sham Ramdas Sawant	...	Petitioner
Vs.		
Sushma Sham Sawant	...	Respondent

Mr. M. B. Kale i/b. Mr. P. J. Pardeshi for Petitioner.
Mr. Manish P. Gitay for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 23, 2019

P.C. :

Not on Board. At the request of Mr. Kale, taken up in the production Board.

2. Heard Mr. Kale, learned Counsel for the petitioner and Mr. Gitay, learned Counsel for the respondent at length.

3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 18.07.2018 passed by the learned District Judge-1, Khed-Rajgurunagar below exhibit-48 in Civil Miscellaneous application No.9 of 2017. The petitioner has also sought removal of statement dated 06.06.2018 of daughter Sanskruti from the record of Civil Miscellaneous Appeal No.9 of 2017, which is marked as exhibit-53.

4. By order dated 18.07.2018, the learned trial Judge rejected the application exhibit-48 made by the petitioner for marking documents produced along with list at exhibit-40 and also for his re-examination. Rule. Mr. Gitay waives service for the respondent. 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.

5. The respondent filed Petition being Marriage Petition No.1105 of 2016 in September 2016 for divorce. The petitioner instituted Petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (for short 'Act') in December 2016. The petitioner filed application being Civil Miscellaneous Application No.9 of 2017 under the provisions of Guardians and Wards Act, 1890 for custody of his children. The petitioner had filed affidavit of evidence on 20.06.2017. In paragraph 34, he referred to the list containing documents and requested for marking them as exhibits and admitting them in evidence. On the same date i.e. 20.06.2017, petitioner filed list of documents at exhibit-40 containing as many as 17 documents. The petitioner filed affidavit under Section 65-B of the Indian Evidence Act, 1872 (for short 'Evidence Act'). Petitioner's cross-examination was over on 01.01.2018. Petitioner's evidence was over on 01.01.2018. On 14.02.2018, petitioner filed application exhibit-48 for marking documents as exhibits and reading them in evidence and also for his re-examination. On 01.06.2018, respondent handed over custody of child Devansh to the petitioner. On 06.06.2018, daughter Sanskruti was interviewed by the learned trial Judge and that is marked as exhibit-43. The application filed by the petitioner on 14.02.2018 at exhibit-48 is rejected by the impugned order dated 18.07.2018. It is against this order, petitioner has instituted the present Petition.

6. In support of this Petition, Mr. Kale submitted that it is not in dispute that along with the affidavit of examination-in-chief dated 20.06.2017, petitioner had filed list of documents at exhibit-40. In paragraph 34, he specifically requested the learned trial Judge to mark these documents as exhibits and also admit them in evidence. The learned trial Judge however, did not mark these documents as exhibits.

He further submitted that behind the back of the petitioner, the learned trial Judge interviewed daughter Sanskruti on 06.06.2018. He, therefore, submitted that the impugned order deserves to be set aside thereby marking documents produced alongwith the list at exhibit-40 and admitting them in evidence and the statement of daughter Sanskruti recorded on 06.06.2018 also deserves to be removed from the proceedings.

7. On the other hand, Mr. Gitay supported the impugned order. He submitted that petitioner has also filed affidavit under Section 65-B of the Evidence Act on 11.10.2017. Along with that affidavit, though he has filed certificate issued by Sona, Audio Video Craft, he has not examined the person, who is in charge of the electronic device in terms of Section 65-B of the Evidence Act. He further submitted that even after closure of cross-examination on 01.01.2018, petitioner did not pray for his re-examination. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the record shows that petitioner has filed affidavit of examination-in-chief on 20.06.2017. Along with that affidavit, he has also filed list of documents at exhibit-40 on 20.06.2017 containing as many as 17 documents. In paragraph 34 of the examination-in-chief, he prayed for marking the documents as exhibits and admitting them in evidence. The petitioner also filed affidavit dated 11.10.2017 as required by Section 65-B of the Evidence Act and again prayed for marking those documents as exhibits. The petitioner was cross-examined on 01.01.2018. In view thereof, in my opinion, the learned trial Judge should have marked the documents produced by the petitioner at exhibit-40 and admitted them in evidence. That apart, along with the

affidavit dated 11.10.2017 filed by the petitioner under Section 65-B, the petitioner has produced the certificate. Mr. Gitay submitted that petitioner did not examine the person having lawful control over the use of electronic device.

9. Section 65-B(1) of the Evidence Act reads thus,

“65B. Admissibility of electronic records.-

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.”

10. A perusal of the above provision shows that the information contained in an electronic record, which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer is deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. Thus, subject to fulfilling the conditions stipulated in Section 65-B, the document so generated is admissible in proceedings without any further proof or production of the original. In view thereof, I do not find any merit in the submission of Mr. Gitay that petitioner should have examined the person in control of the electronic device. At the same time, the prayer made by the petitioner for his re-examination and for removal of statement of daughter Sanskruti recorded on

06.06.2018 cannot be acceded to. Hence, Petition is disposed of in the following terms:

- a. The learned trial Judge shall mark the documents produced by the petitioner along with the list at exhibit-40 and these documents shall be read in evidence;
- b. The prayer made by the petitioner for his re-examination and for removal of the statement of daughter Sanskruti recorded on 06.06.2018 is rejected;
- c. The learned trial Judge is requested to dispose of the proceedings as expeditiously as possible and preferably within 6 months from the production of the authenticated copy of this order;
- d. All contentions of the parties on merits are expressly kept open;
- e. Rule is partly made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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