

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12789 OF 2019**

Shri. Kalyan Raghunath Shete Petitioner

Vs.

Sou. Geeta Kalyan Shete Respondent

Mr. Akshay A. Kulkarni for Petitioner

Coram : NITIN W. SAMBRE, J.

Date : 20th December 2019

P.C.:

1. In a Petition A-98/2019, the present petitioner-original non-applicant/husband moved an application filing same to be under Section 44 of Evidence Act read with 2(C) of the Contempt of Courts Act for initiating action against the respondent-wife. The said application Exhibit 39 is based on pleadings that the respondent-wife has made incorrect statement before the Court while applying for the order of grant of maintenance.

2. The learned Family Court, by impugned order dated 13th September, 2019 has framed an issue based on the pleadings of the

present petition and further directed that same be decided alongwith the main petition. As such feeling aggrieved, this petition.

3. The submissions are, in the proceedings under Domestic Violence Act already findings are recorded that the respondent has an independent source of income and that being so, the learned Family Court ought to have proceeded to decide the application at Exhibit 39 against the respondent. A support is drawn from the judgment in the matter of S.P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs and others, reported in A.I.R. 1994 Supreme Court page 853, particularly paragraph 7 so as to draw support for the aforesaid contentions.

4. If the contentions canvassed are appreciated, it is premature at this stage to say that the Family Court is not considering the contentions of the petitioner. Rather the Family Court in the wake of pleadings in the application Exhibit 39, has proceeded to frame an additional issue at Exhibit 32 on the conduct of the respondent as to whether the respondent has made any incorrect/false statement on oath and thereby committed contempt of Court.

5.. Unless such issue is decided, either way, this Court need not to go into the contentions of the petitioner that the Family Court should have immediately proceeded with deciding the application particularly issue framed at Exhibit 32. The order of framing of additional issue rather takes care of the contentions raised by the petitioner.

6. In the aforesaid background, no case for interference is made out. Petition fails. Dismissed.

(NITIN W. SAMBRE, J.)