

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1182 OF 2018

Karan Ramniklal Waya

...Petitioner

Versus

Khushboo Karan Waya

...Respondent

....

Mr. M.K. Dubey, a/w. Veenu Dubey and Anil Dubey, Advocate for the Petitioner.

Ms. Sanobar Nanavati, a/w. Ms. Sanaya Dadachanji, Ms. Aparna Pujar and Ms. Zil Shah i/b. Manilal Kher Ambalal & Co., Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 14th MARCH, 2019

P.C.

1. Heard Mr. M.K. Dubey, learned counsel for the petitioner and Ms. Sanobar Nanavati, learned counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner – Karan Ramniklal Waya, hereinafter referred to as 'Karan', has challenged the order dated 10.10.2017 passed by the learned Principal Judge, Family Court, Mumbai below Exhibit-7 (Interim Application No.265/2014) in Petition No.A.2256/2014. By that order, the learned trial Judge partly allowed the application Exhibit-7 made by the respondent- Khushboo Karan Waya, hereinafter referred to as 'Khushboo', and directed Karan to pay Rs.1 Lakh per month to her

towards interim maintenance from the date of the order till disposal of the petition. Karan is further directed to pay rent of Rs.30,000/- per month and pay maximum of Rs.2 Lakhs towards deposit subject to Khushboo filing rent receipt and leave and licence agreement. The issue of return of jewellery was ordered to be decided along with the main petition.

3. The marriage between the parties was solemnized on 14.5.2007. It is the case of Karan that Khushboo stayed in Bahrain only for a period of six months during the period of 11.4.2008 to 6.1.2011. For rest of the period, Khushboo stayed with her parents in Mumbai. On 7.1.2011, Khushboo returned to India with return ticket and 235 grams of gold jewellery of Karan's sister-in-law for attending the marriage of her adopted brother and to see her ailing grandmother. Till 2013, Khushboo did not return. Karan came to India on couple of occasions to take Khushboo back. She, however, refused to join the matrimonial home on the ground that Karan must obtain permanent Visa for her parents. Karan, obviously, could not oblige this demand.

4. On 23.9.2013, Khushboo issued legal notice leveling false allegations. Karan gave reply on 5.11.2013. On 28.8.2014, Khushboo filed petition for divorce. Karan filed written statement and also set up counter claim for restitution of conjugal rights and for returning 235 grams gold jewellery which is worth approximately Rs.7 Lakhs.

5. On 4.7.2015, Khushboo filed First Information Report No.334/2015 under Section 498-A read with Section 34 Indian Penal Code, 1860. On 28.10.2015, Karan obtained anticipatory bail. On 26.5.2016, Khushboo filed proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act') solely with a view to harassing Karan. Before the Family Court as also before the Sessions Court, attempts were made for reconciliation. On 3.10.2016, the Division Bench of this Court (Coram: A.S. Oka & A.A. Sayed, JJ.) in Criminal Writ Petition No.1049/2016 granted ad-interim order directing that charge-sheet shall not be filed against Karan and others till next date. On 13.10.2016, the Division Bench of this Court (Coram: A.S. Oka & A.A. Sayed, JJ.) in Criminal Writ Petition No.3599/2016 granted ad-interim order directing that charge-sheet shall not be filed against Karan till next date.

6. In support of this petition, Mr. Dubey has taken me through application Exhibit-7 filed by Khushboo and in particular paragraphs-12 and 13 thereof and reply filed by Karan to said application and in particular paragraphs-9 to 11. He has also invited my attention to the rejoinder filed by Khushboo. Mr. Dubey has also taken me through the affidavit-in-rejoinder filed by Karan in November, 2018 and in particular the documents annexed along with the rejoinder. He submitted that the registration form of Vikram Jewellery, Bahrain Partnership Company is

owned by his brother Vikram and father Ramniklal Chhaganlal. Karan is neither owner of the business nor Partner in the firm. The Partners of the said firm are Ramniklal Chhaganlal (father of Karan) and Vikram Ramniklal Chhaganlal (brother of Karan). He submitted that the Work Visa details annexed with the affidavit of rejoinder shows that Karan is working and is drawing salary of Bahraini Dinar 250 per month. His salary as of 2018 is increased from 250 B.D. per month to 290 B.D. per month.

7. Insofar as the allegation of Khushboo that Karan is owner of Ramesh Jewellery Company is concerned, Mr. Dubey invited my attention to the Article of Association of Ramesh Jewellery Company. Ramesh Jewellery Company is the Partnership Firm consisting of Bahraini National Majeed Husain Ali Shams and Ramniklal Chhaganlal (father of Karan). He submitted that unless Bahraini National is joined as a Partner, no business can be carried out by outsiders. Thus, the claim made by Khushboo that Karan is owner of Ramesh Jewellery Company is totally false and incorrect. This is also reinforced by the information furnished by the Directorate of Commerce and Company Affairs, State of Bahrain, Ministry of Commerce, which shows that Majeed Hussain Ali Shams and Ramniklal Chhaganlal (father of Karan) are Partners of Ramesh Jewellery. In short, Mr. Dubey submitted that Karan has no connection in any capacity whatsoever with Ramesh Jewellery.

8. Mr. Dubey has invited my attention to Khushboo's rejoinder affidavit to Karan's reply dated 28.1.2015 and in particular paragraph-12 thereof. In paragraph-12, Khushboo denied that Karan is an employee with M/s. Vikram Jewellery. Vikram Jewellery is in Karan's brother name and it is a family run business of real pearl and diamond jewellery in Bahrain and Muscat. Karan has suppressed that he is also owner of M/s. Ramesh Jewellery. He has invited my attention to the advertisement issued by Ramesh Jewellery which does not show that Karan is in any way concerned with said establishment.

9. Mr. Dubey has also invited my attention to the letter dated 21.7.2017 addressed by the Advocate on behalf of Khushboo. In this communication, reference was made to the letter dated 8.6.2017. Along with that letter unaffirmed copy of the affidavit of Khushboo was enclosed. It was stated that Khushboo did not file affidavit and will not rely upon the same in the captioned proceedings as she has secured another job and has opted to work and learn for better future prospects.

10. Mr. Dubey has also invited my attention to the Living Working Conditions in Bahrain and in particular clause-21 which provides that the wage level for expatriate workers has remained depressed over the years despite increase in cost of living. Whereas Government of Bahrain has fixed minimum wage for Bahraini nationals at BD 200/- per month recently, there is no minimum wage law as yet for expatriate

workers.

11. Mr. Dubey submitted that having regard to the fact that income of Karan is 250 B.D. per month, which is equivalent to Indian Rs.40,000/- per month, the maintenance awarded by the learned trial Judge is excessive, exorbitant and oppressive. It is impossible to pay maintenance @ Rs. 1 Lakh per month.

12. On the other hand, Ms. Nanavati supported the impugned order. She has taken me through (i) the pages of Facebook (pg. 95 to 97) and (ii) LinkedIn profile of Karan (pg. 116). Ms. Nanavati has also invited my attention to the written statement and counter claim of Karan and in particular paragraphs-21 and 25 thereof. In paragraph-21, Karan asserted that only when his brother's wife got pregnant in mid February, 2010, Khushboo started to tell Karan that they too should plan a family now. In paragraph-25, however, Karan contended that Khushboo never wanted to cohabit with Karan and it is Khushboo who has walked out of marriage and has never put in efforts to make their relation work. She submitted that the contentions raised in paragraph-25 are contradictory to the contentions raised in paragraph-21 of the written statement & counter claim of Karan.

13. Ms. Nanavati has also invited my attention to the application made by Khushboo for production of documents by Karan and in particular paragraph-8 thereof. In paragraph-8, Khushboo called upon

Karan to produce bank account statements in India and abroad of Karan (including ICICI Bank A/c. No.0889501001103) from the year 2007 onwards. She has taken me through the statement of account of ICICI Bank. She submitted that Karan claims to be employee in M/s. Vikram Jewellery and is drawing salary of 250 B.D. per month. On 9.11.2014, for the first time, 250 B.D. were deposited in cash. On 3.12.2014, 250 B.D. were deposited. On 14.1.2015, 250 B.D. were deposited by way of SET and thereafter on 7.4.2015 by way of cash 250 B.D. were deposited. Lastly, on 5.8.2015, 250 B.D. were deposited. She submitted that for the month of February, 2015 and March, 2015, 250 B.D. were not deposited. Again after depositing 250 B.D. in April, 2015 250 B.D. were not deposited in June, 2015 and July, 2015. That apart, there is no withdrawal of any amount from this account.

14. Ms. Nanavati submitted that having regard to the Facebook pages as also LinkedIn profile of Karan, it is inconceivable that Karan is drawing salary of 250 B.D. and is working as an employee. She submitted that Karan's case that while returning India, Khushboo came with 235 grams of gold jewellery cannot be accepted as the sister-in-law of Karan is residing in Villa whereas Karan claimed to be residing in Flat No.101, 332 Road, Al Quadisiyah area, Manama on lease agreement along with Khushboo. She submitted that as Karan has not approached this Court with clean hands and did not disclose his real income, no case

is made out for interfering with the impugned order.

15. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, Karan has come with the case that he is working with Vikram Jewellery and is drawing salary of Rs. 250 B.D. per month which is increased to 290 B.D. per month in the year 2018. He is also residing in Flat No.101, 332 Road, Al Quadisiyah area, Manama on lease agreement basis. He is not owner of Ramesh Jewellery.

16. A perusal of the LinkedIn (pg. 116) shows that Karan is described as owner of Ramesh Jewellers, Bahrain. He is also shown as owner of Ramesh Jewellers at Muscat. As far as the Facebook pages are concerned, the relevant entries are thus :

Karan Ramniklal

The countdown has begun.....8hrs London....10hrs Dallas nd then finally 2hrs to the city tht never sleeps....it's Vegas baby....at Dilmun Lounge

Karan Ramniklal

..at Niagra Falls Blvd, Buffalo, USA

Karan Ramniklal

..at Hollywood Boulevard.

Karan Ramniklal

My 1st Indoor sky diving experience.....best thing in the world....I miss vegas

Karan Ramniklal

1 of Bestsnightclub in the world – at Paradise, Navada.

17. It is, therefore, *prima facie* not possible to accept the case made out by Karan that he is working as an employee in Vikram Jewellery and is drawing a salary of 290 B.D. per month. The learned trial Judge has considered this aspect in paragraph-4 of the impugned order. In paragraph-5, the learned trial Judge referred to the claim made by Khushboo that Karan is the owner of M/s. Ramesh Jewellery. After considering the Facebook profile of Karan, the learned trial Judge observed that many photographs on his Facebook page shows that he travelled Las Vegas, Nevada, United Arab Emirates, Abudhabi exhibition, Niagra Falls, Buffalo, USA etc.. The learned trial Judge, therefore, disbelieved the certificate issued by Vikram Jewellery that he is working on a meager salary of Rs.40,000/- per month in a foreign country when he can earn much more from jewellery designing in India.

18. In view of the material on record as also for the reasons recorded in paragraph-5 of the impugned order, I do not find that any case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)