

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

916 WRIT PETITION NO.8175 OF 2020

SUPRIYA AMAR PATIL
VERSUS
AMAR RAMRAO PATIL

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Advocate for Petitioner : Mr. N. R. Thorat, h/f Mr. Kadlag Girish B.
Advocate for Respondent : Mr. Shririshna U Chaudhari.

CORAM : MANGESH S. PATIL, J.
DATE : 11.12.2020.

PER COURT :

In a matrimonial dispute for divorce under the Hindu Marriage Act between the parties, the Family Court is recording the evidence on behalf of the petitioner-wife. By way of application (Exhibit 141) dated 26.11.2020 the petitioner sought witness summons to one Dr. Sonali Deshpande with a request to ask her to bring a record of the Ghati Hospital in respect of the petitioner dated 30.06.2016. By the impugned order the application is rejected and the order is under challenge in this Writ Petition.

2. Suffice for a purpose to observe that the issue before the Family Court physical condition of the petitioner to enable consummation of marriage.

3. Admittedly the petitioner has examined as many as three doctors who were then working at Ghati Hospital namely Dr. Shaikh Juveriya Tanzeer Shaikh, Dr. Sonali Deshpande and Dr. Varsha Deshmukh. By the present application (Exhibit 141), the petitioner again sought for a witness summons to Dr. Sonali Deshpande on the ground that Dr. Varsha Deshmukh whose name appears as Unit Head on the Short Case Record of Ghati Hospital dated 30.07.2016 stated in her testimony that she was already

transferred to another place on 26.07.2016. It is therefore prayed that Dr. Sonali Dehpande be recalled.

4. As the record shows, Dr. Sonali Dehpande was already called as a witness and was duly examined in respect of the record of Ghati Hospital regarding clinical examination of the petitioner as well as on the basis of the M.R.I. report. Pertinently, in her deposition Dr. Sonali Deshpande specifically stated about having herself examined the petitioner clinically and also after going through the M.R.I. report having formed an opinion which she has described in scientific terms in her examination in chief. It is important to note that in fact, the learned advocate for the petitioner was not present when the testimony of Dr. Sonali Deshpande was recorded as can be seen from the paragraph No. 2 of the testimony where the learned Judge specifically noted this fact. The fact remains that Dr. Sonali Deshpande is the expert witness who has already stepped into the witness box and has testified about medical condition of the petitioner touching the matter in controversy.

5. It is necessary to take into account the manner in which the matter is being conducted on behalf of the petitioner before the Family Court. She has been before this Court twice before the present proceeding. At earlier point of time, the petitioner filed a Writ Petition with her request to examine Dr. Shaikh Juveriya Tanzeer Shaikh. This Court had allowed the petition and by way of last chance allowed to call the witness. Again, the petitioner was before this Court when her request to examine Dr. Varsha Deshmukh was turned down. This Court had allowed that request as well. Accordingly Dr. Varsha Deshukh has also testified.

6. It is in the backdrop of such state of affairs that the conduct of the petitioner needs to be looked upon. She has been remiss in prosecuting her case before the Family Court for whatever reason.

7. Be that as it may, when the petitioner has already examined Dr.

Sonali Deshpande who has had an occasion to examine the petitioner clinically and had formed an opinion based on M.R.I. report and has vouched about her medical condition in scientific terms, there is no reason why now the petitioner be allowed to recall the witness. If the petitioner was already having the document in her custody in respect of her Short Case Record of Ghati Hospital of the year 2016 which was prior to the date Dr. Sonali Deshpande stepped into the witness box, no plausible reason is forthcoming as to why at the time of her examination even this record of the year 2016 was not got proved.

8. Whatever may be the reason, considering all the aforementioned facts and circumstances, I do not find the impugned order rejecting the application of the petitioner (Exhibit 141) to be illegal.

9. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

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