

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1688 OF 2021

Mrs. Jayashree Chandrashekhar
Pawar @ Jayashree Gunvant Khairnar .. Petitioner
Versus
Chandrashekhar P. Pawar .. Respondent

...

Mr. Kamlesh P. Mali for the petitioner.
Mr. Kuldeep U. Nikam for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 27th OCTOBER 2021.

P.C:-

1 My attention is invited to an error in the order dated 20/10/2021 wherein the date of rejection of the application is mentioned as 10/2/2019. It stand corrected to 10/2/2020.

2 Petition is filed by a wife who is a respondent in Marriage Petition No. 180 of 2012 pending in the Court of Civil Judge, Sr. Division, Vasai filed by the respondent husband, seeking dissolution of marriage.

3 The present petition is filed, being aggrieved by the order passed by the learned Civil Judge, Sr. Division, Vasai on 10th

Tilak

February 2020 on an application filed by the petitioner below Exhibit-197, praying for staying of the proceedings on account of the ill-health of the petitioner and by stating that there is no certainty as to when she would recover from the ailment and would be in a position to attend the Court proceedings for recording her evidence. On the last date of hearing i.e. 20th October 2021, I have passed the following order :-

“1. Learned counsel for the petitioner, in the wake of the rejection of her application on 10/02/2020 for deferring the proceedings in the Divorce Petition, shall take instructions whether her evidence can be recorded through the Court Commissioner, since she is residing at Dhule and also on the ground that she is not in a position to stand in the witness box on account of the multiple surgeries, which she undergone.

2. To enable the counsel to take necessary instructions, re-notify for 27/10/2021”.

4 Today, counsel for the petitioner fairly state that the petitioner is not averse to the appointment of Commissioner for recording of evidence provided the evidence is recorded at her residence in Dhule. He is also slightly wary of the health condition of the petitioner and his only submission is to the effect that the Court Commissioner should be little flexible with the timings, as well as the duration for which the petitioner would be required to be examined.

5 Considering the precarious health position of the petitioner, I deem it fit that the Civil Judge, Sr. Division, Dhule shall appoint a Commissioner for recording of evidence of the petitioner and the learned counsel for the petitioner and the counsel for the respondent State that they would arrive at a consensus about the name of the person to be appointed as Commissioner, who, shall be then deputed for the purpose of recording of evidence of the petitioner. The evidence preferably shall be recorded on day-to-day basis and if not, except for some exceptional reason, it is not possible on account of ill-health of the petitioner for her to sustain the pressure of the evidence on day-to-day basis, request can be made to the Commissioner to defer it for a shorter date as the time may permit. However, it is made clear that in any case, attempt shall be made to conclude within a period of six weeks from the date of appointment of the Commissioner.

6 Since it is informed that the next date of hearing fixed by the learned Judge is 13th November 2021, the respective counsel submit that on the said date of hearing, they shall put an appearance and suggest the name of the Court Commissioner by consent, who shall then carry out the directions issued by this Court as above and record the evidence of the petitioner in the matter indicated above.

7 With the aforesaid direction, Writ Petition is disposed off.

8 Parties shall keep in mind that the petition is pending before the Court more than 9 years and they will make every endeavour to conclude the said proceedings at the earliest.

SMT. BHARATI DANGRE, J