

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11856 OF 2019
ALONG WITH
INTERIM APPLICATION NO. 1 OF 2019**

Mrs. Deepti Das	Petitioner
Vs.	
Mr. Avinash Krishnamurthy	 Respondent

Mr. Hemal Ganatra, for the Petitioner.
Mr. Rushabh Sheth i/b Mr. Pratik Amin, for Respondent.
Mr. P. P. Pujari, AGP for State.
Mrs. Deepti Das – Petitioner present.

CORAM : M. S. KARNIK, J.

DATE : 02nd FEBRUARY, 2021

P.C. :

. This Petition is filed under Article 227 of the Constitution of India challenging the order dated 03/09/2019 & order dated 03/10/2019 passed below Exhibit 12 which are annexed at page Nos. 12 & 14 of this Petition. The Petitioner- wife who is the Respondent in the Petition filed by the husband before the Family Court, Pune made an Application at Exhibit 12 praying for setting aside an ex parte order dated 03/09/2019. The Family Court, Pune rejected the Application. The Family Court observed

that even after the exparte order dated 03/09/2019, the Respondent failed to come along with her written statement and she has simply filed present application for setting aside the exparte order. Accordingly, Family Court was of the opinion that no purpose would be served by simply setting aside the exparte order and again to adjourn the matter for filing written statement by the Respondent.

2. My attention is invited to the application Exhibit 12. In paragraph 2 it is stated that the Petitioner was suffering from back and stomach ache and hence, it was not possible for her to travel five hours from Andheri East to Family Court at Pune. She has further stated that her absence is not intentional. The Respondent – husband opposed the Application.

3. Learned Counsel for Respondent vehemently opposed the Petition. In his submission, there is no perversity with the order passed by the Family Court. He submitted that sufficient time was granted by Family Court to the Petitioner to file written statement. Even on the date of the application for setting aside the exparte order, the Petitioner did not attempt to file written statement. He submitted that these are dilatory tactics adopted

and therefore no indulgence be shown to the Petitioner.

4. I have heard learned Counsel for the parties. I find that an order on the application for setting aside the exparte order is passed primarily on the ground that even on the date when the application was made for setting aside exparte order, the Petitioner made no attempt to present written statement. Though the explanation that the Petitioner was not keeping well is not supported by any medical certificate and it is only for the first time before this Court an attempt was made to furnish the medical certificate supporting the reason that the Petitioner is not well, in the interest of justice, it is necessary to give one opportunity to the Petitioner to defend the Petition before the Family Court by permitting her to file the written statement.

5. Learned Counsel for the Petitioner has submitted an undertaking dated 02/02/2021 duly signed by the Petitioner. The relevant portion paragraphs 5, 6, 7 reads thus:

“5. I say that vide the present undertaking I hereby undertake to remain physically present on all occasions before the Family Court at Bandra Mumbai whenever the Respondent’s Restitution Petition (being Petition No. A-245/2020) will be listed and I will not try to delay the hearing of the said Petition.

6. I hereby also undertake that I will co-operate during the hearing of the said Petition. I say that I have my Written Statement ready today and I undertake to file the same on record of the Family Court Mumbai tomorrow that is 3rd February 2021 which is the next date of hearing.

7. I hereby also undertake to pay costs which this Hon'ble Court imposes today while deciding the captioned matter."

6. I have interacted with the Petitioner who is present in the Court and she says that she will abide by the undertaking.

7. In this view of the matter and with a view to give opportunity to the Petitioner in the interest of justice, having regard to the undertaking filed and a categoric statement made therein that she undertakes to file written statement on record of the Family Court, the present Petition deserves to be allowed.

8. The Petition is allowed in terms of prayer clause (a) subject to the Petitioner filing written statement within a period of one week from today and subject to payment of cost of Rs.1,000/- to the Kirtikar Law Library within one week from today.

9. Needless to mention that all contentions on merits

are kept open. Petition is disposed of.

10. In view of disposal of the Petition, noting survives for consideration in the Interim Application. The same is also disposed of.

(M.S.KARNIK, J.)

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Urmila P. Ingle
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