

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 CRIMINAL WRIT PETITION NO.705 OF 2022

PRAVIN BANSIDHARRAO IKHE
VERSUS
POOJA W/O PRAVIN IKHE PATIL AND ANOTHER
...

Advocate for Petitioner : Mr S.B. Solanke
Advocate for Respondents: Mr S.M. Gaikwad (Absent)

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 19th SEPTEMBER, 2022

PER COURT :

1. Mr S.B. Solanke, learned counsel for the petitioner seeks leave to place on record certified copy of the affidavit of assets and liabilities of the present petitioner produced before the Family Court at Osmanabad. Leave granted.

2. The certified copy of the affidavit is taken on record and marked 'X' for identification.

3. The petitioner is challenging the order passed by the Family Court, Osmanabad in Petition No. E-04/2021 dated 20.04.2022 which reads thus -

Issue witness summons as prayed

Sd/-
20.04.2022

4. Heard Mr S.B. Solanke, learned counsel for the petitioner.
5. None present for respondent Nos. 1 and 2 when the petition is called out.
6. It appears from the record that this Court was pleased to issue notice for final disposal to respondent Nos. 1 and 2 vide order dated 5th August, 2022. In response to the notice for final disposal, Mr S.M. Gaikwad, learned counsel appeared in this petition on 5th September, 2022 and made submissions before this Court that he has instructions to appear on behalf of respondent Nos. 1 and 2 and sought time to file VP and reply affidavit. Accordingly, time was granted and petition came to be adjourned and listed today. However, respondent Nos. 1 and 2 and their advocate remained absent when the petition is called out.
7. The petition is taken up for final hearing in view of service of notice for final disposal as per order dated 5th August, 2022.
8. Mr Solanke, learned counsel for the petitioner invited my attention to the application filed by the wife/respondent No.1 which is at page No. 76. He submitted that the application is completely silent whether the present petitioner is serving with the same company or he is partner or Director of the said company. He invited my attention to the order passed by this Court dated 22nd June, 2022 and submitted that the petitioner has complied with the order passed by this Court by submitting income tax returns of last three years as well as affidavit before the Family Court Judge, Osmanabad. He, therefore, submitted that the order

impugned is liable to be quashed and set aside. The Family Court Judge can very well decide the petition.

9. Having regard to the submissions of Mr Solanke, learned counsel for the petitioner, I have gone through the earlier order passed by this Court dated 22nd June, 2022 whereby this Court was pleased to issue directions to the petitioner to produce the income tax returns of last three years before the Family Court and also file affidavit about his assets and liabilities.

10. The copy of same is produced today by Mr Solanke, learned counsel for the petitioner and marked 'X' for identification.

11. It is, therefore, clear that sufficient material is produced by the petitioner before the Family Court Judge to decide the petition on its own merits. Now, there is no need to issue witness summons to the witness namely, Mr Sunil H. Kocheta. Moreover, the order of issuance of witness summons passed by the learned Judge, Family Court is without application of judicial mind and without giving any opportunity of hearing to the other side. It is against the principles of natural justice. As such, the impugned order is liable to be quashed and set aside.

ORDER

- (I) The Criminal Writ Petition stands allowed in terms of prayer clause (C).
- (II) No order as to costs.
- (III) The Criminal Writ Petition is accordingly disposed of.

- (IV) The proceedings pending before the Family Court vide Petition No.E-04 of 2021 is hereby expedited and the Judge, Family Court, Osmanabad is requested to decide the same at the earliest.

[SHRIKANT D. KULKARNI, J.]

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