

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1583 OF 2019

Mrs. Rashmi Harjit Ahluwalia ..Petitioner

V/s.

Mr. Harjit Ahluwalia ..Respondent

Mr. Naqvi Anwar Hasan for the Petitioner.

Mr. Hrishikesh Amembal for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 11 AUGUST 2022

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Date: 2022.09.12
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P.C.

. Rule. Rule made returnable forthwith. The learned counsel for the Respondent waives service. Heard finally by consent of parties.

2. The parties are husband and wife. The Respondent-husband has filed MA Petition No. 2089 of 2013 against the Petitioner-wife for dissolution of their marriage on the ground of cruelty which is pending before the Family Court at Bandra, Mumbai. It appears that the Respondent filed his affidavit-in-lieu of Examination-in-chief on 17.03.2017 and Respondent was cross-examined on behalf of the Petitioner.

3. It appears that the Respondent examined his sister-in-law as his second witness and she has also been cross-examined on behalf of the Petitioner.

4. The Petitioner filed application Exh. 68 on 15.01.2019 for recalling the Respondent (PW-1) for further cross-examination on the ground that earlier certain important aspects have been left out in the cross-examination. The Family Court by an order dated 15.01.2019 has rejected the said application *inter alia* on the ground that it is an attempt to prolong the disposal of the petition. Subsequent to this, the evidence of Respondent also came to be closed by order dated 15.01.2019.

5. On 19.11.2018, the Petitioner filed an application for transfer of the petition under Section 24 of the CPC on the ground that the Petitioner has lost faith in the presiding officer and had apprehension that she will not get a fair trial at the hands of the concerned Presiding Officer. That application which was registered as Transfer Petition No. 171 of 2018 has been rejected by the learned Principal Judge of the Family Court on 09.01.2019.

6. By this petition, the Petitioner is challenging the said order dated 09.01.2019 refusing to transfer the petition and also the orders dated 15.01.2019 by which the recall of PW-1 has been disallowed and the evidence of the petitioner, is closed.

7. I have heard the learned counsel for the parties. Perused record.

8. It transpired during the course of the hearing that since after filing of the petition the concerned Presiding Officer has already been transferred and therefore, the learned counsel for the Petitioner submits that prayer clause (a) does not survive and the Petitioner is no longer seeking transfer of the petition. Insofar as the prayer clause (b) is concerned, the learned counsel for the Petitioner states that the Petitioner is also not pressing for recall of PW-1 for further cross-examination. The statement so made is accepted. Thus, the only challenge which survives is to the order dated 15.01.2019, thereby closing the evidence of the Petitioner.

9. I have carefully considered the rival submissions. Perused the impugned order passed. It is true that the petition is of the year 2013 and is still part heard before the Family Court. However, only in order to give a fair chance to the Petitioner to contest the petition on merits, I find that the impugned order dated 15.01.2019 below Exh.1 can be set aside permitting the Petitioner to lead her evidence. It is trite that normally, the Court would prefer decisions on merits than on technicality. Thus, notwithstanding the fact that the Petitioner could have shown greater diligence/expedition in the matter of conduction of the

marriage petition, only in order to give her a fair chance, I am inclined to grant her permission to lead her evidence.

10. The learned counsel for the Petitioner on instructions states that the Petitioner shall examine herself along with one more witness. He submits that the Petitioner shall file her affidavit in lieu of Chief Examination on the next date i.e. on 01.10.2022 without fail and would lead the evidence of her witness immediately after conclusion of her cross-examination.

11. In such circumstances, the following order is passed:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order dated 15.01.2019 below Exh. 1 is hereby set aside.
- (iii) The Petitioner is permitted to lead her evidence as aforesaid before the Family Court. The parties shall not seek any unnecessary adjournments in the matter.
- (iv) The Family Court shall proceed to hear and decide the petition as expeditiously as possible and preferably within a period of four months from the receipt hereof.

The parties to co-operate for the time bound disposal of the petition.

- (v) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.