

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11012 OF 2023

Nikita Amit Agrawal and another Petitioners

Versus

Amit Rameshkumar Agrawal Respondent

.....

Mr. Satyajit S. Bora, Advocate (appointed) for the Petitioners

Mr. Vishwajeet R. Jain, Advocate for the Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 05th September, 2023

ORDER :

1. This petition challenges the order passed by learned Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-1 in Special Civil Suit No.146 of 2017. A direction is sought to the Trial Court to adjudicate the issue of past, present and future educational expenses of petitioner No.2 expeditiously. A direction is also sought to the respondent to make payment. Further, a prayer is made that petitioner No.1 may be granted one month's time for making applications for admission of petitioner No.2 to overseas Universities for undergraduate degree.

2. Heard the learned advocate appointed on behalf of the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto, and the impugned order.

3. Suit is filed under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, seeking maintenance and educational expenses for petitioner No.2.

4. Suit is expedited by the order of this Court. On 24/04/2023, six months extension is granted to decide the suit.

5. On 30/08/2021, petitioner No.1 filed affidavit in lieu of examination-in-chief. Her request for virtual hearing was allowed on 11/07/2023, and the matter was posted for cross-examination of petitioner No.1. It appears that, though petitioner No.1 remained present on subsequent dates through virtual mode, she filed adjournment applications on various grounds. Application filed by petitioner No.1 to postpone hearing of the suit is rejected by the Trial Court on 24/08/2023, and the evidence of petitioner No.1 is closed. By order passed below Exhibit-183, suit is posted for evidence of respondent on 04/09/2023. On that date, respondent has filed evidence affidavit.

6. Conduct of petitioner No.1, seeking adjournment on the ground that unless and until respondent deposits all arrears and pays educations expenses, she is not inclined to appear for cross-examination, is not proper. The Trial Court

has rightly held that the said request shall be considered at the time of final decision of the suit.

7. Learned advocate for the respondent submits that all arrears of maintenance are already deposited. This Court, therefore, cautions petitioner No.1 not to adopt such approach in future to delay and protract the matter.

8. Contention of petitioner No.1 that petitioner No.1 be granted one month's time since she is in the process of preferring applications to overseas Universities for admission of petitioner No.2 to undergraduate courses in the peculiar facts, deserves to be accepted.

9. By the impugned order, the evidence of petitioner No.1 is closed as she repeatedly sought adjournments. With a view to give petitioner No.1 fair opportunity to contest the matter on merits, the said order is liable to be quashed and set aside.

10. In the result, the writ petition is allowed with following directions.

11. Impugned order passed below Exhibit-1, thereby closing the evidence of petitioner is hereby quashed and set aside.

12. Petitioner No.1 shall appear before the Trial Court, personally or by virtual mode on 05/10/2023 and make herself available for cross-examination by the respondent/defendant. Thereafter, matter shall be proceeded and concluded by the Trial Court within two months from that date.

13. It is made clear that if petitioner No.1 fails to make herself available for cross-examination on 05/10/2023 without sufficient cause, the same will disentitle her for any equitable relief.

14. Time to decide Special Civil Suit No.146 of 2017 is further extended up to 30/11/2023.

15. Fees of learned advocate Mr. Satyajit Bora is quantified at Rs.7,500/-. He graciously requests that the same may be paid to the High Court Bar Library at Aurangabad.

16. The High Court Legal Services, Sub Committee, Aurangabad to pay Rs.7,500/- towards fees of learned advocate Mr. Satyajit Bora, to High Court Bar Library at Aurangabad within a period of four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane