

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.3937 OF 2023**

Anita Raj Ajmera	]	
Adult Indian Inhabitant	]	
Nee: Miss Anita Rajkumar Sharma	]	
Age: 40 years, Occupation: Housewife	]	
Presently residing at: 801, Vastu Bldg,	]	
52, Pali Hill, Bandra, West,	]	
Mumbai 400 050.	]	Petitioner
Vs.		
Raj Ramesh Ajmera	]	
Adult Indian Inhabitant	]	
with an American Passport	]	
Age: 45 years, Occupation: Business	]	
Permanently residing at: 172, Jolly	]	
Maker Apts, III, Cuffe Parade,	]	
Mumbai 400 005.	]	
Presently residing at: 702, Bhadrlok	]	
Bldg, Old Padra Rd. Vadodara.	]	Respondent

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Ms. Taubon F. Irani, for Petitioner.

Mr. R.T. Lalwani a/w Sarah Kapadia, Anoushka Ajoy Thangkhiew i/
b Vesta Legal, for Respondent.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 26th APRIL, 2023.
PRONOUNCED ON : 3rd MAY, 2023.**

ORDER:

1. Heard.

2. Rule.

3. Learned Counsel for the respondent waives service.
4. By consent, returnable forthwith and taken up for hearing and final disposal.
5. Supervisory jurisdiction under Article 227 of the Constitution of India is sought to be invoked by the petitioner-wife assailing an order passed by the Family Court on an application in D. No.58 of 2017 on 10th March, 2023, which reads thus;

"In view of Order passed on Exhibit - 9 in
Petition A-126 of 2013, Application is rejected".

Sd/-

10.03.2023

6. This is a prolix and verbose petition in the sense, it is tediously lengthy dwelling on trivial details, containing unnecessary facts which are not at all germane for deciding the petition *qua* the impugned one line order.

7. Shorne of unnecessary details, a few facts are as follows.

8. Petitioner and respondent got married on 15th December, 2005. They are blessed with two sons. Elder son Ruhaan was born

on 2nd October, 2008 and younger son Ayaan was born on 22nd February, 2013.

9. Somewhere in March, 2006, the respondent shifted to Vadodara temporarily till his business is settled. The petitioner, too, accompanied him. In June, 2015, the petitioner left matrimonial home with two minor sons and returned to Mumbai to her natal home due to the alleged discord and cruelty inflicted upon her by the respondent.

10. On 18th May, 2017, the respondent filed a Petition bearing D-58 of 2017 for custody of minor sons. On 22nd June, 2017, a petition bearing No. C-42 of 2017 came to be filed by the petitioner seeking maintenance for herself and minor children. A written statement has already been filed in the said petition by the respondent. The petitioner has also filed written statement in the custody petition bearing No. D-58 of 2017 along with counter claim seeking divorce and other reliefs on 19th December, 2018.

11. On 6th September, 2022, an order came to be passed by the Family Court in respondent's Petition bearing No. D-58 of 2017,

inter alia, directing the respondent to renew passports of both minor sons and deposit the same in the Family Court.

12. The respondent challenged the said order by way of a writ petition in this Court bearing No.12640 of 2022. While upholding the order of the Family Court, this Court directed the Family Court to hear the pending applications expeditiously within four weeks.

13. The petitioner filed a divorce petition against the respondent on 13th January, 2023 bearing A-126 of 2023 before Family Court at Bandra. She moved an application seeking clubbing of Petition bearing No.126 of 2023 along with D-58 of 2017 and C-42 of 2017. The learned Judge, Family Court rejected her application which order has been impugned in the present petition.

14. I heard Ms. Irani, learned Counsel for the petitioner at a considerable length. She vehemently argued and tried to impress upon me as to how the learned Judge, Family Court committed patent illegality while passing the impugned order which is without proper application of mind to overall facts and circumstances of the case by ignoring settled position of law.

15. Learned Counsel for the petitioner would argue that it is a fundamental principle of law that the Court should be independent, impartial, free of any bias, affection or ill will and justice should not only be done, but should undoubtedly and manifestly seen to be done. According to her, order is against the laws of equity, good conscience and principles of natural justice as it came to be passed in immense haste without assigning any reason. According to Ms. Irani, the learned Judge ought to have clubbed all the matters in order to avoid duplicity of proceedings, contradictory judgments and also to save the valuable judicial time.

16. On the other hand, Mr. Lalwani, learned Counsel for the respondent while countering the arguments of the learned Counsel for the petitioner invited my attention to an order passed in the writ petition No.12640 of 2022 dated 16th November, 2022 directing time bound disposal of custody petition bearing No. D-58 of 2017 *qua* the minor children filed by the respondent and Maintenance Petition bearing No. C-42 of 2017 filed by the petitioner-wife expeditiously within one year from 21st November, 2022.

17. According to Mr. Lalwani, this is nothing but an attempt to protract the custody petition under the garb of clubbing the divorce petition filed by the petitioner on 13th January, 2023. He has also drawn my attention to the fact that the petitioner is not entitled for invoking discretionary and equitable jurisdiction of this Court as she has not tendered order of the Family Court dated 17th February, 2023 passed below "Exhibit 9" rejecting her application. Learned Counsel for the respondent has also denied all the allegations levelled by the petitioner against the respondent-husband.

18. An application was moved by the petitioner-wife in Petition No. D-58 of 2017 before the Family Court, Bandra praying therein to club Petition No.C-42 of 2017, Petition No.D-58 of 2017 along with Petition No. A-126 of 2023 by contending that all pending disputes between the parties would be disposed of expeditiously saving judicial time as there would be common evidence. However, by the impugned one line order, the learned Judge rejected her application in view of an order already passed below "Exhibit 9" in Petition No. A-126 of 2023. The petitioner ought to have tendered copy of the order passed below "Exhibit 9" in her petition No. A-126 of 2023 when the impugned order specifically indicated that in

view of the order passed below "Exhibit 9" in her Petition No. A-126 of 202, her application came to be rejected. Rather, copy of the said order was tendered by Mr. Lalwani, learned Counsel for the respondent who is right in submitting that the petitioner has suppressed this material fact and, therefore, cannot claim discretionary relief as she has not come with clean hands.

19. Coming to the order passed below "Exhibit 9" in Petition No. A-126 of 2023 dated 17th February, 2023, wherein the learned Judge has rightly rejected the application by assigning cogent, legal and proper reasons. Paragraph 8 and 9 of the said order are extracted below;

"8. Thus, from perusal of order of Hon'ble High Court, it is clear that being old pendency, the Hon'ble High Court has directed to expedite hearing of both the cases i.e D-58 of 2017 and C-42 of 2017. It is also worthwhile to mention that the wife had filed counter claim in petition No. D-58 of 2017, but it is pertinent to note that she has not opted her claim of divorce in her "C" petition. Considering the merit of that particular application for counter claim at Exh.38, this Court rejected the application at Exh.38 on merit on 08.12.2022. It is contention of the petitioner that at the time of

rejecting the said application, the counter claim was pending when the matter was before Hon'ble High Court regarding one of the order assessed by the respondent husband. But it is pertinent to note that Hon'ble High Court, more specifically, by order dated 16.11.2022 in writ petition no.12640 of 2022, specifically directed to decide the custody petition and maintenance petition expeditiously, considering the age of minor children and in the interest of justice there directions were given. But it is also pertinent to note that the present petitioner, that means the respondent, at that time she was well aware about the fact that counter claim was pending before the Court and said fact is not mentioned before the Hon'ble High Court by the present petitioner. Therefore, there is no specific directions regarding the expedite hearing of any other case filed thereafter.

9. Admittedly, the petition No. D-58 of 2017 and C-42 of 2017 are pending since last 6 years i.e these are the petitions more than 5 years old and as per action plan of Hon'ble High Court, the said petition needs to be decide expeditiously. The present case is not on stage of hearing. Moreover, on previous date the counselling was completed and matter is pending for filing written statement as on today. In this premises, the said case can not be said to be riped for final hearing. Moreover, the issues are not framed till the date. In addition to that the scope of custody petition and scope of maintenance petition is different than that of the scope of the divorce

petition under section 13 (1) (ia) of the Hindu Marriage Act, under which present petition is filed by the petitioner. Therefore, this court is of opinion that if at all the present case is clubbed with the old matters, then the old matter is unnecessary dragged and kept lingering under the pretext of various different petitions and various frivolous applications moved by either of the parties in every petition. In this premise, this Court is of considered opinion that in view of the directions of Hon'ble High Court to achieve the goal of minimize old pendency it will be just and proper to decide the petition no. D-58 of 2017 and petition no. C-47 of 2017 filed by husband and wife respectively expeditiously as per directions of Hon'ble High Court and the divorce petition filed by wife bearing no.A-126/2023 filed on 13.01.2023, needs to be decided on its own merit when it will reach the stage of hearing. At this juncture, the said petition is not ready for hearing. Therefore, it will not be fruitful to all the matters. Moreover, it will create hurdle in the smooth hearing of previous old matters. Therefore, the present application devoid on merit and deserves to be dismissed. Hence, following order is pass:

ORDER

1. Application Exh. 09 is rejected.
2. No order as to costs".

20. The learned Judge in the aforesaid order has rightly observed that clubbing old matters which have already been directed to be

disposed of expeditiously along with latest divorce petition filed by the petitioner would unnecessarily drag even the time bound old matters. The learned Judge has also referred to the directions passed by this Court in writ petition No.12640 of 2022.

21. Even before the arguments of the learned Counsel for the parties are concluded, Mr. Lalwani put forth a proposal by placing on record draft consent term. A copy of which has been tendered to the learned Counsel for the petitioner. Sufficient time was granted to the learned Counsel for the petitioner to consider the same in view of her anxiety for disposal of all the pending petitions. However, on the next date, the learned Counsel for the petitioner, on instructions, turned down the proposal without assigning any cogent and justifiable reason. The draft consent terms are reproduced below;

"1. The petitioner and Respondent's marriage was solemnized on 15th December, 2005 as per Hindu Rites and ceremonies. The Petitioner has filed a Petition bearing reference number A - 126 of 2023 before the Hon'ble Family Court, Mumbai. The Petitioner and Respondent herein, agree to convert the said Petition to a Petition for divorce by Mutual Consent under section 13B of the Hindu Marriage Act 1955 and therefore, a decree of divorce be granted accordingly.

2. With regards to the other two Petitions filed between the parties bearing number D-58 of 2017 and C-42 of 2017 pending before the Hon'ble Family Court, Mumbai. It is agreed and understood between the parties that the issues in those two proceedings shall remain open for the Hon'ble Family Court to decide on merit, in line with the time frame vide order dated 16th November 2022 passed by this Hon'ble Court".

22. If both the petitioner and the respondent seek divorce then there should have been no reason for the petitioner-wife not to convert her petition No. A-126 of 2023 into petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955. The Petitions bearing No. D-58 of 2017 and C-42 of 2017 would have proceeded further on merits in line with the time frame fixed by this Court vide an order dated 16th November, 2022 passed in writ petition No.12640 of 2022.

23. It does not require any special verdict as to who is intending to thwart expeditious disposal of pending petitions before the Family Court, despite specific directions which came to be issued in the aforesaid writ petition by this Court. Paragraphs 7, 8 and 9 of the order passed in the said writ petition read thus;

"7. The main apprehension of Mr. Lalwani is that the passport facility may be misused by removing the children from the jurisdiction of the Family Court. The Family Court has taken adequate care to ensure that the passports are not misused. Further, the application has been made by the respondent-wife for traveling abroad which obviously will be decided by the Family Court after obtaining suitable response from the petitioner-husband. In the interest of justice, I request the Family Court to decide the pending applications for interim maintenance and interim access as expeditiously as possible and preferably within a period of four (4) months from today.

8. Further, considering that the age of the minor children are now 14 years and 9 years, in the interest of justice, the Family Court is directed to decide the Custody Petition No. D-58 of 2017 as expeditiously as possible and preferably within a period of one (1) year from November 21, 2022 when the parties are directed to appear so as to enable the Family Court to fix further schedule of the hearing. It is also necessary to direct the Family Court to decide the Maintenance Petition No.C-42 of 2017 filed by the respondent-wife along with the Custody Petition.

9. Mr. Lalwani assures that the petitioner-husband will co-operate in view of the adequate safeguards provided for renewal of the passports".

24. I am afraid, the argument of Ms. Irani is required to be accepted with a pinch of salt, for, petitioner cannot be permitted to subterfuge in light of the facts and attending circumstances stated hereinabove. The powers of this Court under Article 227 of the Constitution of India are discretionary and are required to be exercised very sparingly on equitable principles. The supervisory jurisdiction can be exercised to keep the Courts and Tribunals subordinate to the High Court "within the bounds of their Authority". There are catena of decisions of the Hon'ble Supreme Court to this end. This Court in exercise of its supervisory jurisdiction cannot convert itself into a Court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

25. A well-known decision of the Hon'ble Supreme Court in the case of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, (2010) 8 Supreme Court Cases 329** elaborates the powers of the High Court under Article 226 and 227 of the Constitution and when such powers can be exercised.

26. Corollary of the aforesaid discussion is that, the order impugned does not warrant interference under Article 227 of the Constitution of India. Nevertheless, it was expected of the learned Judge of the Family Court to assign reasons before rejecting the application by passing a one line order.

27. Having regard to the aforesaid discussion, the petition deserves to be dismissed but not without saddling some costs upon the petitioner. The petitioner shall deposit costs of Rs.25,000/- with the High Court Legal Services Authority within six weeks from today. Petition is dismissed. Rule is discharged.

28. List the petition for compliance on **19th June, 2023**.

[PRITHVIRAJ K. CHAVAN, J.]