



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12609 OF 2023

Aarti Harsh Khandewal @ Aarti Agarwal
& Anr.

..... Petitioners

Vs.

Harsh Gopal Khandelwal

..... Respondent

Mr. Vishal Thaker a/w. Ms. Anjali Trivedi and Ms. Priti Oza i/b V.
Thakers' Advocates for the Petitioners.

Mr. Harsh Gopal Khandelwal, Respondent-in-person.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30th OCTOBER 2023.

P. C.

1. The challenge in the Petition is to the order dated 27/9/2023 rejecting the Petitioner's Application filed under Exhibit 94 directing the parties to proceed with the matter without seeking further adjournments. At this stage, one thing to be noted is that the Petition before the Family Court has been made time bound by this Court *vide* order of July 2023 and the Family Court is directed to dispose of Petition within a period of 9 months from July 2023.

2. Mr. Thaker learned counsel appearing for Petitioners submits that the Petitioners had moved an Application below

Exhibits Nos.75, 76 and 77 calling for documents from the Commissioner of Income tax, Administrative Incharge of Standard Chartered Bank, Deutsche Bank under Order 16 Rule 6 of the CPC. He would state that without adjudicating those Applications seeking production of documents, trial Court has directed the cross examination of the Petitioner to proceed reserving the orders on those Applications. He would further submit that those documents are necessary for the purpose of corroborating the evidence of the Petitioner. He would further urge that the trial Court while rejecting the Applications has erroneously observed that the documents are sought to be called for by using the court machinery.

3. *Per contra* Mr. Khandelwal, who appears in person submits that the entire attempt is to delay the proceedings. He would further submit that the documents which are called upon are from Standard Chartered Bank, Deutsche Bank based on hearsay information and that the same has no bearing on the facts of the present case. He would submit that trial Court is bound to follow the order passed by this Court and decide the same in a time bound

manner. According to him, these Applications are nothing but an attempt to delay the proceedings and the Application being frivolous has been rightly rejected by the trial Court.

4. Considered the submissions and perused the record.

5. The impugned order directs the Petitioners to proceed with the matter without seeking further adjournment. This order came to be passed on Application filed by Petitioner seeking that the Applications for production of documents be adjudicated first before proceeding with the evidence of the Petitioners.

6. The Applications in question have been filed under the provisions of Order 16 Rule 6 of C.P.C., which deals with the summons to produce documents. As the provision indicates the issuance of summons is only for production of documents. In order to prove the contents of the documents, it will be necessary for witness to be examined from whose custody the document has been sought to be produced. In the present case, admittedly the affidavit of evidence has been filed and the matter is posted for cross examination. Application for production of documents can be

adjudicated subsequently inasmuch as while leading their evidence the Petitioners for obvious reasons cannot prove the contents of those documents of which she is neither an author nor will it be produced from her custody. The only issue, according to the learned counsel which would come in his way is the observation of the trial Court as regards the calling of the documents by using the court machinery. The trial Court while dismissing Application under Exhibit 94 has held that the Petitioner is trying to collect evidence by using court machinery.

7. Considering the provisions of Order 16 Rule 6 of C.P.C. the Petitioner is well within her right to seek issuance of summons to produce the document. The summons cannot be refused to be issued on the ground that it is for the parties to produce their evidence and that the Court cannot be called upon to issue summons to produce documents. I find considerable force in the contention of learned Counsel for the Petitioners that holding the same would amount to rendering the provisions of Order 16 Rule 6 of C.P.C. redundant. As indicated above, the Petitioner is well within her right to seek issuance of summons to a third party to produce documents, which are stated to be in the

possession and custody of third parties. At the same time, the pendency of those Applications cannot be a ground to refuse to step into the witness box for the purpose of cross examination by insisting that the Application for summons to produce documents be decided first.

8. Having regard to the above discussion, the impugned order to the extent that it directs the parties to proceed with the matter does not deserve any interference. However the finding of the trial Court that the Applications seeking issuance of summons to produce document is an attempt to collect evidence by using court machinery is unsustainable.

9. Considering that the Application for production of documents has not been rejected by the trial Court, it would be in interest of justice that the observations as regards Petitioner trying to collect evidence by using court machinery under the guise of Applications Exhibits 75 to 77 is only quashed.

10. Petitioner is directed to make herself available for cross

examination on the next date of hearing. Learned counsel for Petitioners submits that on the next date of hearing the Petitioner would be available for cross examination.

11. Writ petition is dismissed in above terms.

SHARMILA U. DESHMUKH, J.