

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3947 OF 2023

Vijayshree Ganesh Ingle__ Vs. __ Nishant Arvind Kale

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.A.M.Tirukh, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 27/06/2023

1] Heard Mr. Tirukh, learned counsel for the petitioner.

2] The petition challenges the order below Exh. 46 whereby the application filed by the present petitioner to strike out the defence of the respondent-husband has been rejected (pg.21).

3] It is contended that the respondent has adopted a delaying tactic and therefore considering his conduct, there was necessity to strike out his defence.

4] The learned trial Court in the impugned order has found that the application filed by the respondent to consider his objection to Exh.20 affidavit did not amount to a willful delay, as liberty

was granted by this Court while dismissing his writ petition earlier in point of time, to raise them at a later stage and therefore, when the matter was fixed for final argument, since the application was filed reiterating those objections, it was held not amounting to a willful delay and application was rejected. It is thereafter that an application for striking out of the defence of the respondent has been filed by the petitioner on 4.3.2022, which has been dismissed on 4.5.2023, which is challenged herein. It is thus apparent that consequent to the dismissal of the application of the respondent, the entire time thereafter from 4.3.2022 till date has been spent on account of Exh.46 filed by the petitioner, which is nearly a period of one year and four months and therefore, the delay being sought to be attributed to the respondent prima facie does not appear to be correct. That apart, when the learned trial Court in the impugned order records that the application below Exh. 125 filed by the respondent was on account of the liberty granted by this Court in Writ Petition No.3744/2022, that would indicate that there is no violation of any order on behalf of the respondent, considering which even on merits, I am not inclined to interfere in the impugned order. The petition is dismissed.

5] Needless to say that the learned trial Court shall comply with the direction as contained in the order passed in Writ Petition No. 3744/2022 of deciding the application at the earliest.

JUDGE

Rvjalit