

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11078 OF 2023

Saurabh Ramchandra Nilpankar

...Petitioner.

Versus

Nishigandha Saurabh Nilpankar Alias

Nishigandha Sadashiv Yadav

...Respondent.

Mr. Rohit D. Joshi for the Petitioner.

Mr. Swaroop M. Karade for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 15th April, 2024.

P. C. :

1. Heard.

2. By this petition the challenge is to the order dated 8th April 2021 passed by the Trial Court rejecting the Petitioner's Review Application seeking review of the order dated 8th November 2019 by which the Petitioner has been directed to return the articles of the Respondent-wife.

3. Learned counsel appearing for the Petitioner would

submit that in the divorce petition it was his specific contention that at the time of leaving the matrimonial house the Respondent -wife had left with her father and uncle along with all her clothes and belongings in two bags and never returned back to the Petitioner. He would contend that despite the specific pleadings in the petition, in the written statement apart from the general denial the said contention has not been dealt with. He would further submit that to the application dated 11th February 2019 seeking return of articles such as educational certificates, bank documents, laptop, mobile etc. there was a reply filed stating that the articles which are mentioned in the Application are with the Respondent as she had taken the same while leaving matrimonial house. Pointing out to the order he would submit that the Trial Court has passed a direction to return the articles by declining to consider the say of the Petitioner as the same was not supported by any affidavit.

4. *Per contra*, learned counsel appearing for Respondent-wife would submit that it is specifically pleaded that at the time of leaving the matrimonial house the Respondent-wife had left only for a period of 15 days as such it is not possible that she had left with all her belongings. He would further submit that all her belongings were left at the matrimonial house and therefore during the pendency of

the proceedings the application came to be filed for taking back the educational certificate etc which were lying in the matrimonial house. He submits that the reply was filed without any supporting affidavit which was necessary as it was sought to be contended that the Respondent-wife had left the matrimonial house along with all her belongings.

5. Considered the submissions and perused the record.

6. The application which was moved by the Respondent-wife below Exhibit 24 sought return of the articles contending that suddenly the Respondent was sent to her parents' house only with her wearing apparel. The said contention is contrary to her own pleading in the counterclaim that her relatives were called to the matrimonial house and thereafter she was sent for a period of 15 days to her parents' house. The Trial Court has allowed the application on the solitary ground that the denial is not sufficient unless supported by affidavit and as such directed to return the articles. As the Application sought return of articles considering that the issue was disputed by the Petitioner-husband, it was incumbent upon the Trial Court to record valid reasons for passing the direction of return of the articles. The Trial Court by a very cryptic order has passed direction to

return the articles only for the reason that the Application is not supported by affidavit. No statutory provision has been demonstrated to this Court that the reply had to be supported by affidavit. It needs to be noted that the reply to the said Application was in fact signed by the Petitioner himself and not by his advocate. As such the requirement for filing of affidavit in respect of facts being within personal knowledge is clearly satisfied in the present case.

7. As there was dispute whether Respondent-wife had left the matrimonial house along with her belongings or not, the same would require evidence to be led. The Trial Court by way of interim Application could not have decided the Application for return of articles and pass direction in the manner as has been done. The findings of the Trial Court are therefore clearly unsustainable. Consequently, the order dated 8th April 2021 as well as the order dated 8th November 2019 are hereby quashed and set aside

8. Resultantly, the Application below Exhibit 24 is dismissed. Needless to clarify that the Application has been dismissed at this stage however after the evidence has been led if it is found that the Respondent's belongings are with the Petitioner-husband, necessary relief can be granted to the Respondent-wife.

9. Petition stands allowed.

[Sharmila U. Deshmukh, J.]