

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4222 OF 2024

Prachi Hemant Kale

.. Petitioner

Versus

Hemant Popat Kale

.. Respondent

-
- Ms. Priyanka Gupta i/by Mr. Rupesh Zade for Petitioner
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 05, 2024

P. C.:

1. Heard Ms. Gupta, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 07.08.2023 passed by the learned Trial Court in Marriage Petition No. 1155 of 2022 whereby the learned Trial Court has observed that since the Petitioner has not complied with the order dated 13.06.2023 passed in Application below Exh. 11 filed by her and since she and her Advocate are absent on that date, the said order dated 13.06.2023 stands vacated and permission is given to proceed with the suit without Written Statement of the Defendant who is the Petitioner before me.
3. Ms. Gupta would submit that Application filed below Exh. 11 is by Defendant (wife) seeking condonation of delay of 116 days in filing the Written Statement. That Application was allowed by the learned

Trial Court and the delay was condoned and Defendant was allowed to file the Written Statement subject to payment of costs.

4. She would submit that the order dated 13.06.2023 could not be communicated rather was not communicated to the Petitioner by her Advocate and in fact she was completely unaware about the same after it was passed. She would submit that it was only in the month of August 2023 when she personally visited the learned Trial Court that she realized about the passing of the order dated 13.06.2023 and also the subsequent orders dated 25.07.2023 and 07.08.2023 directing the Suit to proceed without her written statement. Being aggrieved, she has filed the present Writ Petition.

5. It is seen that the reasons enumerated in the Application filed seeking condonation of delay of 116 days are critical. Defendant had stated that her minor son was suffering with medical ailment due to which it was not possible for her to remain present and give instructions to her Advocate resulting in the delay of 116 days. The reason for not complying with the order passed by the learned Trial Court in the Application below Exh. 11 is enumerated in the grounds pleaded in the present Writ Petition and after perusing the same along with learned Advocate, I have no reason to disbelieve the same. To allow the suit to proceed without Written Statement of the Defendant would amount to denial of a substantive right of the Defendant to

defend the Suit proceedings. Needless to state that the present Suit proceedings pertain to dissolution of marriage between the parties. Hence, I am inclined to allow the present Writ Petition and set aside the twin orders dated 25.07.2023 and 07.08.2023.

6. In view of the above observations and findings, both the orders dated 25.07.2023 and 07.08.2023 are quashed and set aside.

7. Ms. Gupta would submit that the Written Statement of the Defendant is ready. She has placed the draft Written Statement before me. She would submit that in so far as the order passed in Application below Exh. 11 imposing payment of costs of Rs. 300/- is concerned, Defendant shall also comply with the same within a period of four weeks from today. Learned Trial Court is directed that on producing a server copy of this order on record, it shall allow the Defendant to pay costs of Rs. 300/- as also permit the Defendant to file her written statement and accept the same in compliance with the order passed in Application below Exh. 11.

8. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date: 2024.04.05
19:21:26
+0530