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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 403 OF 2023

Taskeen Daanish Shaikh

Applicant

.. (Orig. Defendant)

Versus

Daanish Abdul Gani Shaikh and Anr.

Respondents

.. (Orig. Plaintiff)

-
- Mr. Narayan G. Rokade, Advocate for Applicant.
 - Mr. Shivang Jani a/w. Mr. Mritunjai Srivastav, Advocates for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 28, 2024.

P.C.:

1. Heard Mr. Rokade, learned Advocate for Applicant and Mr. Jani, learned Advocate for Respondents.

2. Today, Applicant – Taskeen Daanish Shaikh, father of Applicant – Masood Patel; brother of Applicant – Shabih Hasan Patel; father of Respondent No.1 – Gani Ahmed Shaikh and mother of Respondent No.1 – Zeenat Abdul Gani Shaikh are present before me in Chamber for interaction and hearing.

3. I have interacted with the family members of the parties in Chamber and their respective Advocates for about 21 minutes and heard them for considering the issue involved and to ascertain if any reconciliation is possible. After hearing the parties and their grievances *qua* each other, it is seen that there are several other proceedings

pending in other Courts between the parties including this Court. Civil Revision Application is filed before me by the Applicant – wife to challenge the order dated 30.01.2023 and it was mentioned before me for the first time on 08.01.2024. Thereafter this Court is seized with the matter. The impugned order is passed rejecting the Application filed by the Defendant for challenging the maintainability of the Suit before the Trial Court. It is seen that this Application was filed on 28.04.2022. In the typed copy of the Application on record which is at Exhibit “L”, date of Application is incorrectly shown as 28.04.2023.

4. By order dated 30.01.2023, Application is rejected solely on the ground that the learned Trial Court has stated that it shall decide the issue of maintainability of the Suit after taking the evidence on record.

5. Both the learned Advocates appearing for the parties have made a joint request in view of the order dated 30.01.2023 to this Court to determine the issue of maintainability in view of the peculiar facts and circumstances of the present case. The facts and circumstances of the present case have been discussed and deliberately before me today by the parties without prejudice to their rights and contentions. However after perusing the impugned order, I decline to accede to their request because the learned Trial Court is yet to decide the issue on merits.

6. I have perused the order dated 30.01.2023. Unnumbered paragraph No.2 of the order states that the maintainability of the Suit shall be decided after taking evidence on record.

7. Both the learned Advocates informed the Court that issues have already been framed. In view of the exigency mentioned by the Applicant before me and considering the timeline involved in the present matter, she has been at the suffering end for the last four years. I am inclined to consider the request made on her behalf and direct the learned Trial Court to decide the issue of maintainability as a preliminary issue as the same is the issue of jurisdiction which goes to the root of the proceedings by fast tracking the same after taking evidence from both the parties, if they so desire to lead.

8. I am informed by the learned Advocates that issues have already been framed. However the issue on maintainability of the Petition shall be tried as a preliminary issue by the Trial Court by giving adequate opportunity to both parties to lead their oral and/or documentary evidence. The learned Trial Court shall give adequate time to both the parties, I am making it clear that both the parties shall not take any unnecessary adjournments before the learned Trial Court. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless if it is utmost necessary due to any emergency / exigency.

9. In view of the above directions, learned Trial Court is directed by this Court to decide the preliminary issue of maintainability of the Suit proceedings as expeditiously as possible and in any event within a period of eight (8) weeks from today.

10. Both the parties are directed to appear before the learned Trial Court with an authenticated copy of this order on 01st March, 2024 at 10:30 a.m.

11. After this order is dictated, Applicant in-person once again renews her request that this Court should decide the issue of maintainability and not remand the case to the Trial Court. It is clarified that this Court does not act on the emotions of the parties. Once this Court finds from the impugned order dated 30.01.2023 that the learned Trial Court is infact seized with deciding the issue of maintainability of the Petition and has also directed that the said issue of maintainability shall be decided after taking evidence on record and has also framed issues thereon, I am not inclined to accept the request made by Applicant. I reject that request outrightly in the above facts.

12. Needless to state that all contentions of the Applicant on the issue of maintainability, including the issue of representation by the C.A. on behalf of the Respondent by his Power of Attorney are expressly kept open for decision on the same alongwith the issue of maintainability to be decided by the learned Trial Court as preliminary issues.

13. With the above directions without disturbing the impugned order, Civil Revision Application is disposed.

[MILIND N. JADHAV, J.]

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2024.02.29
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