

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.374 OF 2024

Kunika Rajesh Patil

...Petitioner

Versus

Rajesh Panditrao Patil

... Respondent

Mr. Satyajeet P. Dighe for the Petitioner.

Mr. Jayendra D. Khairnar for the Respondent (Through V.C.)

CORAM : RAJESH S. PATIL, J.

DATED : 18 APRIL 2024

P.C.:

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The present Petition filed by the wife challenges an order dated 16 August 2023, passed below Exhibit-33.
3. The husband has filed divorce Petition in the year 2016. Thereafter, the matter was sent to mediation however, the mediation is failed. Thereafter, the matter was again to send for mediation. Thereafter, by a mediation report dated 23 February 2022, the mediator has informed the Court that mediation was successful. However, since

there was no compliance therefore, on 6 July 2022 an order of No-WS was passed by the Family Court Nashik. Since thereafter the application preferred by the wife for setting aside the No-WS order. The said application seeking setting aside the No-WS order was rejected on 16 August 2023 by the Family Court at Nashik. Against, the said order rejecting the application for setting aside No-WS order, the present writ petition is filed under Article 227 of the Constitution of India.

4. Mr. Dighe submitted that the wife was under the bona fide belief that since mediation had succeeded the husband will not proceed with any application in the divorce proceedings filed by him in the Family Court at Nashik. However, to her surprise the husband proceeded with the divorce proceedings. Hence, according to her, the impugned order was passed by the Family Court at Nashik. He submits that the liberal view should be taken by this Court. The present Writ Petition requires to be allowed and the impugned order should be quashed and set aside. He submits that his client would file written statement within a period of two weeks from today before the Family Court at Nashik.

5. Mr. Ansari, learned counsel appearing for the respondent submits that the petitioner- wife has been purposely respectively not

attending the proceeding before the Family Court from the year 2017. He submits that even on the earlier occasion the mediation process started however, due non-cooperative behavior of the wife, the mediation failed. Thereafter, again mediation process started and the said mediation was successful, as per the report of the mediator dated 23 February 2022. However, again due to non-cooperative behavior of the petitioner's wife, as she did not any steps further, the mediation failed. He submits that thereafter again the wife has show non-cooperative attitude. He submits that the writ petition is to be dismissed with substantial costs.

6. I have heard both the sides. It is matter of record that as per the mediation report dated 23 February 2022 the mediation was successful. However, within a period of less than five months the Family Court at Nashik passed an order of "No-WS". The said order of "No-WS" was challenged by the wife by filing application for setting aside the same. However, the Family Court by an order dated 16 August 2023 rejected the application.

7. According to me, a case is made out to quash and set aside the order dated 16 August 2023. The impugned order dated 16 August 2023 passed by the Family Court, Nashik in order below Exhibit-33 is hereby quashed and set aside.

8. The Petitioner wife is granted two weeks period to file her written statement before the Family Court, by taking the matter on board before the Family Court at Nashik.

9. The Family Court at Nashik should take on record the written statement of the wife, if filed within a period of two weeks and thereafter proceed with the matter as per the provisions of law.

10. The Writ Petition is disposed of. No cost.

(RAJESH S. PATIL, J.)