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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1935 OF 2024

Madhuri Suryakant Chotalia

.....Petitioner

Vs.

Mayur Rathod S/o Dhiraj Rathod

.....Respondent

Mr. Upadhyay Tribhuwan Narayan for the petitioner
Ms. Purvi Shah for respondents (On VC)

CORAM : GAURI GODSE, J.

DATE : 8th AUGUST 2024

ORDER:

1. Heard learned counsel for the parties. This petition challenges the order dated 19th December 2023 rejecting the petitioner's application for an adjournment on the ground that she wanted to apply for transfer of the petition from the Family Court at Mumbai.

2. Learned counsel for the petitioner-wife submits that the petitioner is residing at Ahmedabad alongwith her eight year old daughter. She submits that the petitioner is dependent on her parents and has no independent source of income. He therefore submits that the petitioner

intended to file an application for transfer of the petition filed by the husband at Family Court at Bandra to the Family Court at Ahmedabad. He further submits that due to financial constraints and other difficulties, the petitioner was unable to take steps for filing an application for transfer. Learned counsel for the petitioner further submits that since the petitioner was unable to attend the Court at Bandra, the petition filed by the husband has proceeded ex-parte. He submits that the petition is now listed for passing Judgment on 19th September 2024. He further submits that though the petitioner had filed an application for an adjournment, the petitioner is ready with her written statement and she would file her written statement in the Family Court by making an application for setting aside ex-parte order.

3. He further submits that considering the aforesaid facts and the difficulties faced by the petitioner, the impugned order be set aside and the petitioner be permitted to apply for setting aside the ex-parte order and leave to file written statement. He further submits that the petitioner's written statement is ready and the same will be filed alongwith an application for setting aside the ex-parte order. He further submits that though the next date in the Family Court is 19th September 2024, the petitioner will file an application before the

Family Court for taking up the matter on board for permission to file application for setting aside the ex-parte order and permission to file written statement in the Family Court.

4. Learned counsel for respondent-husband opposes this petition on the ground that though the petitioner was served with notices, she has deliberately not attended the Family Court. She further submits that the petitioner pursued her application under section 125 of Code of Criminal Procedure, 1973 at Ahmedabad but refused to attend the Court at Bandra. She further submits that all the attempts made on behalf of the petitioner is only with an intention to delay the proceedings. She submits that respondent was always agreeable to bear the expenses for the child, however, the petitioner had refused his offer for an amicable settlement. She therefore submits that the petitioner has not made out any case for the reliefs for setting aside the ex-parte order.

5. I have considered the submissions made by both the parties. Perused the papers. It is not in dispute that there is an ex-parte order against the petitioner-wife. It is further also not in dispute that the petitioner is residing alongwith her eight year old daughter with her parents and presently she is at the mercy of her parents. Learned

counsel for the petitioner pointed out that in the application filed for maintenance under Section 125 of Cr.P.C. at Ahmedabad, there is an order passed directing the respondent to pay Rs. 2500/- monthly maintenance, and that is being paid by the respondent.

6. Without going into the controversy regarding the order of maintenance at this stage, I am inclined to accept the submissions made on behalf of the petitioner that the petitioner should be granted an opportunity of hearing on merits. Considering the undisputed facts that the petitioner is residing at Ahmedabad with her eight year old daughter and that she is dependent on her parents, I am satisfied that the petitioner has justifiable reasons for not able to attend the Family Court at Bandra and that she should get an opportunity of hearing on merits.

7. Hence, for the reasons recorded above, the petition is disposed of by passing following order:

ORDER

I. The impugned order dated 19th December 2023 passed below Exhibit 22 in Petition A. No. 396 of 2022 by the learned Judge, Family Court, Bandra is quashed and set

aside.

II. The petitioner is at liberty to make appropriate application before the Family Court for setting aside the ex-parte order and for permission to file her written statement.

III. Petitioner to keep her written statement ready and place it before the Family Court alongwith her application for setting aside ex-parte order.

IV. It is clarified that learned advocate for the petitioner shall serve copy of the application for setting aside the ex-parte order and the proposed written statement to the advocate for the respondent.

V. At the request of learned counsel for the petitioner, parties are permitted to attend the Family Court at Bandra on 20th August 2024, for filing application as stated above.

VI. Parties are directed to appear before concerned Family Court at Bandra on 20th August 2024 for requesting the Court for taking up the matter on board and permitting the petitioner to file an application for setting aside ex-parte order and leave to file written statement.

VII. If such an application is made, the same shall be considered favourably by the learned Judge of the Family Court by giving an opportunity of hearing to both parties.

VIII. In view of the aforesaid, it is clarified that no further notice would be required to the respondent for appearing on 20th August 2024.

7. Writ petition is disposed of in above terms.

[GAURI GODSE, J.]