

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.49 OF 2024

Pintu Virchand Darji

.. Applicant

Versus

Mansi Pintu Darji and Anr.

.. Respondents

.....

- None for Applicant.
- Ms. Ghazala Z. Khan a/w. Mr. Umar A. Siddiqui, Advocate for Respondent No.1.
- Mr. D. J. Haldankar, AGP for Respondent No.2 – State of Maharashtra.

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 19, 2024

P.C.:

1. Heard Ms. Khan, learned Advocate for Respondent No.1 and Mr. Haldankar, learned AGP for Respondent No.2 – State of Maharashtra. Applicant's Advocate & Applicant are absent.

2. Applicant is not present when the matter is called out. I am informed that he is appearing in person. Application is filed in January 2024. On 26.02.2024, notice was issued and on 28.06.2024, following order is passed:-

“ The Committee constituted to ascertain the fitness of the party to conduct the matter has submitted the report that the Petitioner is not fit to appear before the Court and conduct the matter.

2. Registry to ascertain whether any Advocate can be engaged in the matter on behalf of the Applicant, if the Applicant so desires.

3. It is clarified that this Court has not granted stay to the Lower Court proceedings.

4. List the matter on 23rd August, 2024.:

2.1. Matter is taken up for hearing in view of the orders delineated herein which infact render the Application infructuous.

3. It is seen that Applicant has prayed for transfer of RCR Petition A-3036 of 2017 to this Hon'ble Court i.e. the Bombay High Court from the subordinate Court under Section 24 of the Code of Civil Procedure, 1908 (for short '**CPC**'). As far as prayer clause (B) is concerned, it is not understood as to what relief is sought for by the Applicant.

4. Before delineating on any merits, Ms. Khan, learned Advocate for Respondent No. 1 has placed before me two orders passed by Family Court No.2, Bandra, Mumbai. The first order is dated 08.04.2022 below Exhibit-21 in Petition No.A-3036 of 2017. This Petition is sought to be transferred as stated in prayer clause (A) of the Miscellaneous Civil Application. Application below Exhibit-21 is filed by Respondent – wife. She has made a grievance to the Family Court that as on 08.01.2019, the outstanding amount of interim maintenance is Rs.1,85,000/-. Hence she has filed the said Application below Exhibit-21 requesting that the Petition for Divorce be dismissed under Order XXXIX Rule 11 of CPC for non-compliance of the order dated 16.10.2017 passed by the M.M. Court, Girgaon, Mumbai under the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**') pertaining to payment of maintenance. It is seen that

Respondent – wife is required to provide care and support for her two minor children (11 year and 9 year old).

5. In the operative part of that order, learned Family Court has observed that the Petition for Divorce is kept for dismissal on the next date unless the Petitioner – husband complies with the order dated 29.01.2022 of interim maintenance passed by the M.M. Court, Mumbai in the proceeding nomenclatured as 14/DV/2017. It is further concluded in the order that the counter claim of divorce by Respondent – wife will continue and it is stated that non-compliance of order dated 29.01.2022 will also result in striking off the defence of the Petitioner in the counter claim of the wife. Thereafter Court has stated about awaiting compliance of order dated 29.01.2022. The above order is passed on 08.04.2022.

6. The next order placed before me is a hand-written order dated 17.06.2022 passed by the learned Judge of the Family Court, Bandra, Mumbai wherein it is written by the Judge on the face of the Marriage Petition i.e. Petition under Section 9 of the Hindu Marriage Act, 1955 (for short '**the said Act**') i.e. Marriage Petition No.A-3036 of 2017 as informed by Ms. Khan. The hand-written order is produced verbatim and it states as follows:-

“Petition is dismissed for non-compliance of order dated 8/4/22 at Exh21. Defence in C.C. is also struck off.

Sd/-

Judge
17.06.2022.”

7. Once the aforesaid order is passed of dismissal of RCR Petition A-3036 of 2017 by the Family Court, the remedy of the Applicant lies in challenging the said order before the appropriate Court, if he is aggrieved with the said order. The said challenge can be maintained in the appropriate Court in accordance with law, if so desired by the Applicant. Rather it is seen that on 18.01.2024, Petitioner has filed the present Miscellaneous Civil Application wherein he has prayed for transfer of said dismissed RCR Petition A-3036 of 2017 from the said subordinate Court to this Court i.e. the Bombay High Court. Once the RCR Petition A-3036 of 2017 is already dismissed by the Family Court, the filing of the present Miscellaneous Civil Application in the year 2024 after a period of one and half year is not maintainable in law at all. Rather it is impermissible in law to seek such a relief of transfer of a dismissed Marriage Petition, which has been dismissed by the Family Court. Though dismissal is in non-compliance of the order passed by the Family Court, still dismissal of Petition means an imminent dismissal of the case and that order dated 17.06.2022 remains on the record and file of the Court unless it is set aside by the competent Appellate Court. In effect it means that the Petition stands dismissed. Once this is the position, then the principal relief prayed for in prayer clause (A) of the present Miscellaneous Civil

Application cannot be countenanced by this Court. Though, learned Advocate has also addressed on the scope and power of the High Court under Section 24 of the CPC and stated that the relief for transfer of the dismissed Marriage Petition to the High Court cannot be allowed, I need not deal with the same as the Marriage Petition itself has already stood dismissed and therefore considering the above, issue of transfer would only be of academic interest.

8. In view of the above observations and findings, expressly leaving the right of the Applicant in the Miscellaneous Civil Application to take appropriate steps in law as available to him to challenge the order of the Family Court dated 17.06.2022 regarding dismissal of his Marriage Petition and reserving that liberty, if so desired by him, the present Miscellaneous Civil Application is required to be dismissed.

9. In view of the above directions, Miscellaneous Civil Application is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

Digitally
signed by
HARSHADA
HANUMANT
SAWANT
Date:
2024.09.19
20:08:50
+0530