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Date: 2024.03.27
10:01:50 +0530IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1774 OF 2024

Sheetal Devang Shah

... Petitioner

*Versus*State of Maharashtra through the Public Prosecutor
and Anr

... Respondents

With

INTERIM APPLICATION NO. 7011 OF 2024

IN

WRIT PETITION NO. 1774 OF 2024

Nalini M. Shah

...Applicant

Versus

Sheetal Devang Shah

...Respondents

Ms. Sheetal Devang Shah, Petitioner in person.

Ms. Taubon F. Irani for the Intervenor-Devang Shah.

Mr. Vinod Chate, APP a/w. Ms. P.N. Diwan, AGP for State.

Mr. Ghanshyam Mishra for Applicant in IA/7011/24.

CORAM: G. S. KULKARNI &
GAURI GODSE, JJ.
DATED: 21st MARCH, 2024

P.C.

1. We have heard Ms. Sheetal Shah, petitioner-in-person. This petition is filed praying for the following relief:

“A) An Appropriate Officer be appointed for the execution of the pending Family Court Interim orders dated 3rd of September 2019 and the issued Distress Warrant orders dated 17th of October 2019 within 3 days time of these issued orders.”

2. This court had earlier heard this petition on more than three occasions. On 29th February 2024, after hearing the petitioner-in-person and learned Counsel for the intervenor, this court had passed the following order:

“We have heard Ms. Sheetal Shah, Petitioner-in person, Ms. Irani and Mr. Ghanshyam Mishra, learned Counsel who represent Petitioner’s husband Devang Shah and her mother-in-law – Mrs Nalini Shah, who intend to intervene in the present proceedings.

2 This Petition under Article 226 of the Constitution of India, is filed, praying for the following reliefs:-

“An appropriate Officer be appointed for the execution of the pending Family Court Interim orders dated 3rd September, 2019 and the issued Distress Warrant Orders dated 17th October, 2019 within 3 days time of these issued orders.”

3 The Petitioner-in-Person has made submission for quite some time. She has referred to several orders, many of which are not part of the record.

4 We would require the Petitioner to place on record a compilation of these orders, which she would intend to refer and in a proper sequence, as there is lot, which is being argued on such orders.

5 The intervention of Petitioner's husband - Devang Shah and mother-in-law can be considered on an application to that effect being filed.

6 We would hence adjourn the proceedings for one week.

7 At this stage, the Petitioner, who appears in person, states that she would be busy in some other proceedings before the Supreme Court as also in other Courts. She, therefore, requests that the proceedings be adjourned to 28th March, 2024.

8 Accordingly, at the request of the Petitioner, stand over to 28th March, 2024 at 4.40 p.m.

9 While parting, we would also request the Petitioner, to maintain decorum in the Court when she makes her submissions.”

3. Thereafter, on 7th March 2024, as there was a disagreement between the parties in regard to the orders passed by the Family Court on the proceedings filed by the petitioner, on execution of the Distress Warrant, we thought it appropriate to call for a report from concerned Judge of the Family Court, on the status of the said proceedings as also the orders passed on the execution proceedings. The said order reads thus:

“1. We have noted the reliefs as prayed for by the petitioner in our order dated 29 February, 2024. The issue as raised by the petitioner pertains to the execution of interim order dated 3 September, 2019 passed by the Family Court on which it is stated that a distress warrant has been issued. We may observe that earlier the petitioner had moved an application/letter dated 28 August, 2023 before the Hon'ble the Chief Justice on the administrative side, which was a relief also prayed for in the present petition. On such application, the learned Registrar (Judicial-1) by his letter dated 28 August, 2023 (Annexure E to the petition) addressed to the petitioner, has recorded that the petitioner was directed to approach the Family Court at Mumbai to execute the Distress Warrant in accordance with law. However, subsequent thereto, on 7 February, 2024, the present petition has been filed praying for the following relief:

“A) An Appropriate Officer be appointed for the execution of the pending Family Court Interim Orders dated 3rd of September, 2019 and the issued Distress Warrant Orders dated 17th of October 2019 within 3 days time of these issued orders.”

2. On the earlier occasion, we had heard oral submissions of Ms. Irani, learned counsel for the petitioner's husband-Mr. Devang and Mr. Mishra, who appears for the mother-in-law-Mrs. Nalini Shah. We had also recorded that these intervenors intend to file Interim Applications to intervene in the proceedings. We are informed that the Interim Applications are in the process of being filed. Let the same be filed within one week from today.

3. Considering the facts of the present case and the limited relief as sought for, in our opinion, it pertains to execution of the orders passed by the Family Court, which is completely within the jurisdiction of the Family Court/Executing Court, we are of the opinion that before we proceed to pass further appropriate orders on this petition, learned Judge of the Family Court, before whom the execution proceedings are pending, be directed to forward to the Registrar (Judicial) of this Court a complete status report in regard to the execution application filed by the petitioner and the orders passed thereon. Once such report of the learned Judge of Family Court is before this Court alongwith all the orders passed thereon, further appropriate orders on the present proceedings can be passed.

4. We are constrained to make the above directions considering the fact that even in respect of certain orders passed by the Family Court, there are serious

disputes between the parties on whether they are actually passed by the Family Court, as allegations are made by the petitioner that there is fabrication of the orders passed by the Family Court, which is seriously disputed on behalf of the intervenors.

*5. Thus, keeping open all contentions of the parties, list the proceedings on **20 March, 2024 (H.O.B.)**. Let the report be placed two days in advance prior to the adjourned date of hearing.*

6. Parties to act on the authenticated copy of this order.”

4. It is on such background, the proceedings are listed today. We have perused the report as forwarded by the learned Presiding Officer of the Family Court No.5, Mumbai as also the compilation of orders forwarded by the learned Judge. We find that the recovery warrant itself had been stayed by an order dated 12th February 2024, passed by the learned Judge of the Family Court. Thus, the remedy for the petitioner would be to make an application in the pending execution proceedings for vacating of the said order. The present petition hence would not be maintainable looked from any angle.

5. It appears that in pursuance to the interim order passed by the Family Court in the execution proceedings the intervenor's husband has also deposited an amount of Rs. 5,00,000/-. Despite the aforesaid position, the petitioner is insisting that the present proceedings nevertheless be adjudicated. We are of the opinion that the petitioner needs to apply before the Family Court for vacating of the stay granted by the Family Court to the distress warrant. However, the petitioner would nonetheless vehemently insist the proceeding be adjourned to 26th April 2024.

5. Ms. Irani, learned counsel for the Intervenor husband has a serious opposition to the maintainability of this writ petition and for adjournment of the present

proceedings, which according to her, is *ex-facie* not maintainable. She submitted that the petition in fact deserves to be dismissed with compensatory costs. She has submitted that the petitioner is habitual in repeatedly filing proceedings which are not maintainable, thereby causing harassment to her clients, as also wasting precious time of the Court, in adjudication of such untenable proceedings, and unnecessarily dragging the proceedings before this Court.

6. In the circumstances, considering what we have observed hereinabove, although we accept the petitioner's request to adjourn the proceeding to 26th April 2024, we are of the clear opinion, that in the event, we find that the petition is misconceived and the petitioner who appears in person has unwarrantedly wasted valuable judicial time, in pursuing these proceedings, we shall consider such contentions to impose costs on the petitioner.

7. The proceedings are accordingly adjourned to 26th April 2024 as requested by the petitioner.

(GAURI GODSE, J.)

(G. S. KULKARNI, J.)