
(2013) 07 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No. 604 of 2012

Bhimrao

APPELLANT

Vs

Sau. Kavita Bhimrao Jamnik and Another

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4041 : (2014) 1 DMC 555

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : Mahesh Rai, for the Appellant; T.H. Udeshi, Advocate for Respondent No. 1 and Mr. D.B. Patel, APP, for the Respondent

Final Decision : Allowed

Judgement

P.D. Kode, J.—Heard. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. The petitioner-husband/respondent No. 1 in an application u/s 12 of the Protection of Women from Domestic Violence Act, 2005 preferred by wife/respondent No. 1 herein, has challenged the order dated 04.08.2012 passed in said proceeding upon Application Exh. 66 rejecting his prayer for setting aside the order of no-cross order passed in the original proceeding and confirmed by the appellate Court by rejecting an appeal preferred by him against said order.

3. Mr. Mahesh Rai, learned counsel for the petitioner submitted that the petitioner since his appearance was contesting said proceeding taken by his wife/respondent No. 1 and the same is evident from her cross-examination made by him. It is submitted that unfortunately the petitioner was not able to remain present in the said proceeding when the matter was listed for further cross-examination of respondent No. 1 and the order of no-cross came to be passed against him. The petitioner submitted an application Exh. 66 for setting aside the said order. However, the trial Court rejected the same mainly on the count that he is delaying the proceedings. It is urged that the trial Court drew such

inference from the fact of meanwhile himself having deposited the maintenance amount in the Court. It is urged that the said order was maintained by the Appellate Court.

4. The learned counsel submitted that act of petitioner in cross-examining the respondent No. 1 is indicative that he was interested in contesting the matter on merits. It is urged that the same is also clear from the earlier application Exh. 29 made by him. It is submitted that in the said circumstances the matter would be decided against him in spite of himself not getting full opportunity to contest merits of the matter. It is urged that even assuming that there were some laches or non-diligence on his part, still allowing the matter to be decided without himself getting the full opportunity, would be injustice on him. It is urged that on the contrary no prejudice would be caused to the respondent No. 1 if he is given an opportunity to contest the matter on merits on terms and conditions as deemed fit and proper by the Court. It is urged that question of prejudice being caused to the respondent No. 1 can be avoided by imposing certain condition on him. It is submitted that the petitioner on his part undertakes this Court to clear all the arrears of interim maintenance up-till a date as stipulated by this Court and undertakes to co-operate for expeditious disposal of the proceeding before the trial Court.

5. It is submitted that the trial Court is fully empowered to exercise powers u/s 311 of the Code of Criminal Procedure for meeting the situation by recalling the respondent No. 1 for further cross-examination, for giving an opportunity to the petitioner for serving the ends of justice by having the necessary evidence for the just decision of the case.

6. The learned counsel for the respondent No. 1 opposed the aforesaid submissions by submitting that non-diligence on the part of the petitioner is spelt out from the reasons recorded in the orders passed by the appellate Court as well as the trial Court. The learned counsel by drawing the attention to the application Exh. 66 submitted that the vagueness of the averments in the said application itself gives an impression regarding the real intent of the petitioner being to prolong the proceedings. It is submitted that hardly any case is made for interfering the concurrent findings recorded by the trial Court and the appellate Court against the petitioner and if the Court is inclined to entertain the petition, then the petitioner be saddled with heavy costs and the necessary direction be given for ensuring that the proceedings before the trial Court are expeditiously disposed of.

7. After giving anxious consideration to the submissions made by both the parties and particularly perusing the application at Exh. 29 made by the petitioner, there is all the substance against the submissions canvassed that the same miserably suffer from the defect of vagueness. The learned counsel for the respondent No. 1 was very much right in submitting that considering the averments therein, no fault can be found out with the lower Court in coming to the conclusion of the petitioner was not diligent in proceeding with the matter

and being interested in prolonging the same. However, merely because of defective pleadings, the cause cannot be permitted to suffer. The record undoubtedly reveals that the petitioner had cross-examined the respondent No. 1. It also reveals that the petitioner was contesting the matter on merits. Similarly de hors the material regarding the dates on which matter was fixed for cross-examination of respondent No. 1 or regarding the dates on which petitioner attended for depositing interim maintenance, no legitimate inference of petitioner avoiding to attend the proceeding, as erroneously drawn by trial Court is permissible. In the said circumstances, the interest of justice demands giving an opportunity to petitioner as justice is not only to be made but must appear to have been made.

8. Resultantly, the petition is allowed. The orders rejecting the application for permitting the petitioner to cross-examine respondent No. 1 is hereby quashed and set aside and said application is allowed subject to the petitioner clearing all the arrears of maintenance on or before 31st of July, 2013 and additionally paying costs of Rs. 2000/- to the respondent No. 1. Upon such a compliance, the trial Court to permit the petitioner to cross-examine respondent No. 1 and thereafter to decide the proceeding as expeditiously as possible in accordance with law preferably within a period of three months from the date of this order. Both the parties shall cooperate for expeditious disposal of the said proceeding. On failure to make the compliance regarding the arrears of maintenance and the payment of costs, the application Exh. 66 shall stand dismissed. Rule made absolute in the aforesaid terms.