
(2003) 02 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 4219 of 2002

Chetana Harish Awari

APPELLANT

Vs

Harish Wamanrao Awari

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Family Courts Act, 1984 — Section 10(3)
Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2003) 4 ALLMR 675 : (2003) 6 BomCR 310

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : A.V. Bhide, for the Appellant; V.R. Mundra, for the Respondent

Final Decision : Dismissed

Judgement

R.G. Deshpande, J.—Rule returnable forthwith. Taken up for final hearing with the consent of the parties.

2. In spite of many chances, having been given to the petitioner-wife to put her defence through her written statement, the petitioner failed to make the most of the opportunities, and it is abundantly clear from the record that Exhibits 18, 19 and 20 were filed for seeking time to file written statement and time was granted, but no written statement came to be filed. Ultimately, last application, Exhibit 27, which was filed on July 1, 2002, also came to be rejected by the learned Judge of the trial Court specifically observing that: in view of the amended provisions of Order VIII, in any case written statement was supposed to be filed within 90 days. The petitioner hopelessly failed to make the most of the opportunities available to her.

3. It is also pertinent to observe that in the proceedings, initiated by the respondent-husband, u/s 13(1) of the Hindu Marriage Act, 1955, an application was moved by the petitioner-wife u/s 24 of the Act for maintenance which was allowed on 8th April, 2002. Since the amount of maintenance could not be

deposited by the respondent-husband, immediately an application was moved for taking an action against the respondent-husband. However, on April 30, 2002, since the amount was already deposited, the petitioner moved an application for withdrawal which was granted on 4th May, 2002. This clearly indicates that the petitioner was well aware of the proceedings going on against her and further that she was supposed to file her written statement as per the extended time granted on earlier occasion by the Court.

4. Shri Bhide, learned Advocate appearing on behalf of the petitioner-wife contended that the provisions of CPC will have to be read in consonance with the provisions of the Family Courts Act and also Hindu Marriage Act. Shri Bhide, learned Advocate, contended that sub-section (3) of section 10, of the Family Courts Act, 1984, states that : nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other, and thereby Shri Bhide wanted to suggest that the provisions of Order VIII, Rule 1 of the CPC could not be said to be strictly binding on the matters under this Act, and particularly the matters in which family disputes of the present nature are involved. Without going into the point as regards the applicability of the provisions of the Family Courts Act, 1984 to the present matter, in the opinion of this Court, reading of the provision of sub-section (3) of section 10 of the Family Courts Act, by Shri Bhide, learned Advocate, does not appear to be correct. Since the interpretation of that provision is not required to be done for the present in the matter, this Court does not wish to dilate on the same at this stage.

5. As against the argument of Shri Bhide, Shri Mundra, learned Counsel appearing on behalf of the respondent, contended that section 21 of the Hindu Marriage Act, 1955, specifically directs that; subject to the other provisions contained in this Act and to such Rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908. In the instant matter, the proceedings are initiated on the basis of the application moved by the present respondent-husband u/s 13(1)(b) of the Hindu Marriage Act, 1955, and, therefore, according to Shri Mundra, the matter has to be as far as possible dealt with in accordance with the procedure laid down by the Code of Civil Procedure.

6. Shri Mundra, learned Advocate, further contended that there was no scope for extension of time to file written statement by the petitioner-wife in view of the amended provisions of the Code of Civil Procedure. Shri Mundra, also invited my attention to the decision of the Supreme Court reported in Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, . No doubt, this matter pertained to the action under the Consumer Protection Act and Third Lordships of the Supreme Court, while dealing with the matter, read the provisions of Order VIII, Rule 1 of the CPC in the context of the provisions of that Act. However, fact remains that while dealing with Order VIII, Rule 1 of the Code of Civil Procedure, Their Lordships of

the Supreme Court also have specifically observed that : It is a mandate of the Court that the written statement is to be filed strictly in pursuance of the directions given in Order VII, Rule 1 of the CPC and further that the provisions so mandated are required to be strictly adhered to.

7. Shri Mundra, also invited my attention to the decision reported in Rajabhau Rahate Vs. Dinkar Ingole, . However, for the purposes of the present case, this Court need not go into the details thereof as suffice it is to observe here at this stage that the learned Judge of the trial Court was right in rejecting the application, Exhibit 27, filed by the petitioner. If the petitioner happened to be totally negligent in prosecuting the matter, then lack of diligence on the part of the petitioner cannot be allowed to be corrected at a later stage on any ground. In the instant matter, none of the grounds mentioned in the petition, in the opinion of this Court, could be said to be convincing ground for not filing written statement in time.

8. This Court is aware that, in ordinary course, the matters which are delicate in nature, are to be dealt with skilled hands so as to find out the possibility of settling the families instead of disturbing the same. That, however, would not mean that a person, who is not diligent in prosecuting his/her own rights can also be given a concession in such matters merely the matter relates to the family dispute. This Court is not inclined to interfere in the matter. No fault can be found with the order passed by the learned Judge of the trial Court, though the order appears to be cryptic one, however, the conclusion thereof does not appear to be incorrect.

9. In view of the aforesaid observations the petition stands dismissed with no order as to costs.