
(2011) 07 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 968 of 2011

Rajen @ Vipul Kantilal Mota	Vs	APPELLANT
Mrs. Sheetal Rajen @ Vipul Mota		RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1

Citation : (2011) 6 BomCR 3

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : R.R. Salvi and Ruchita Salvi, for the Appellant; Ashwin Singh, instructed by Yashashree Sutrale, for the Respondent

Judgement

Roshan Dalvi, J.—The Petitioner was the Respondent in the Petition filed by the Respondent in the Family Court for divorce and maintenance. The Petition was filed in 2010 by the Respondent wife. The Respondent has settled in Kuwait. The parties had at one time desired to settle their dispute and obtain divorce by mutual consent. The settlement failed. The husband was required to be represented by a new Advocate. This took some time. The written statement was not filed for more than 90 days after the Petition was served, though an unaffirmed copy of the written statement was served upon the Petitioner and shown to Court.

2. The learned Judge of the Family Court, Bandra, Mumbai refused to extend time and rejected the purshis in that behalf. The order of the learned Judge, which is impugned in this Petition dated 6th January 2011 shows that since 90 days time is over, it cannot be extended "for any reason". Consequently, the learned Judge fixed the Petition for hearing without the written statement of the Respondent.

3. The order of the learned Judge is too technical to be accepted specially of a Family Court. The very spirit and ethos of the Family Court is to see the dispute between the parties, to try to reconcile them as far as possible, and to proceed

on merits in which case all the rigours of the CPC are not even applicable, though followed. The Family Court is not even required to record the entire evidence of the parties, but only a memorandum thereof. The Family Court is entitled to rely upon documents as per the facts of the case even without strict proof of the documents as required under the Evidence Act. Within that spirit of the Family Court strict reliance upon Order 8 of the CPC is wholly misplaced.

4. Of course in a given case if the Writ Petition is unduly delayed without any bona fide reason or if it is not filed to defeat and delay the rights of the Petitioner or to prevent an order of the Court being passed in favour of the Petitioner, the Court would be well within its rights and powers to proceed without the written statement. Neither party can by its own act adversely effect the rights of the other. No Court would countenance such an act. However, if for bona fide reasons and for a short period a written statement is not filed, the decree passed by the Court without hearing both the parties on merits would be liable to be challenged as it would be against the spirit of the Family Court's Act.

5. The Petitioner's Advocate has relied upon a case of *Sau. Vanita Pravin Gaikwad Vs. Shri Pravin Pundlik Gaikwad*, in which it is held that Order 8 Rule 1 would not strictly apply to the proceeding under the Hindu Marriage Act.

6. Under the circumstances the delay of a few months, when in this case the parties initially tried to settle their dispute, the husband was to be represented by another Advocate and was settled in Kuwait where the written statement was to be affirmed and served and tendered an unaffirmed written statement to Court, must be condoned.

7. In fact in this case the bona fides of the husband is seen by virtue of the unaffirmed copy of the affidavit tendered to Court and earlier sent to the other side showing the case of the husband on merits.

8. The Family Courts would do well to put merits before the technicalities so that the Petitions can be disposed off on merits once and for all.

9. Since it is seen that even earlier such orders have been passed by Family Courts, a copy of this order shall be sent by the Registrar General of this Court to all the Judges in Family Courts of Maharashtra as also the other Civil Judges who take up Family Court matters.

10. By now the written statement of the Petitioner herein is already 4 WP.968.2011.sxw affirmed. It shall be accepted by the learned Judge. The learned Judge shall proceed on merits in accordance with the spirit of Family Law.

11. The Writ Petition is disposed off accordingly.