

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (ST.) NO. 22823 OF 2015
WITH
CIVIL APPLICATION NO. 292 OF 2015

Mrs.Nutan Rajvendra Pandey ... Appellant.
V/s.
Mr.Rajvendra Pandey ... Respondent.

A.R.Pitale for the appellant.

Vishal Kanade with Ranveer Shekhavat i/b. Raj Legal
for the respondent.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : 31st August 2015.

P.C.

We have heard learned counsel appearing for the parties quite for some time. We have perused the order 25th June 2014 passed by the Family Court on consent terms of divorce by mutual consent in Petition No.A-2555/2013.

2. The appellant preferred Civil Misc. Application (Review) No.90/2015 with the following substantive prayers:

“(i) That this Hon'ble Court be pleased to allow Review of judgment and decree dated 25th June 2014 passed in Petition No.A-2555 of 2013 to extent of allowing Applicant to stay at her present residence I-

901, Jasmine, Mayuresh Park, Lake Road, Bhandup (West), Mumbai- 78 for 6 months and to vacate residence by 31st December 2014;

(ii) That this Hon'ble Court be pleased to allow the Applicant to stay at her present residence I-901, Jasmine, Mayuresh Park, Lake Road, Bhandup (West), Mumbai- 78 until such time that she is remarried and can move out;

(iii) That this Hon'ble court be pleased to pass an order restraining the Respondent, his family members or representatives or any third party from entering the matrimonial home at I-901, Jasmine, Mayuresh Park, Lake Road, Bhandup (West), Mumbai- 78 and disturbing the peaceful occupation till the extension of time granted to the Applicant.

(iv) The Hon'ble Court may please direct the Respondent to pay society maintenance and other society charges for the said Flat, I-901, Jasmine, Mayuresh Park, Lake Road, Bhandup (West), Mumbai- 78 to enable peaceful occupation till the extension of time granted to the Applicant."

By an order dated 1st August 2015, passed below Exh.1, the Judge, Family Court No.3 rejected the said application.

3. In this appeal, the appellant has challenged both the judgment and decree dated 25th June 2014 in M.J. Petition as also the order dated 1st August 2015 passed in Review Petition No.90/2015.

4. The learned counsel appearing for the appellant submits that undue haste was shown in disposing of the petition based on consent

terms on 25th June 2014. The report of the Marriage Counselor was obtained on the same date. The consent terms were signed by the parties, and the order was passed by the trial Court on the same date i.e. 25th June 2015. It is the contention of the appellant that she was under pressure, mental trauma and was compelled to sign on the said consent terms for divorce by mutual consent. Earlier the appellant had initiated proceeding under section 13(1)(ia) and section 27 of the Hindu Marriage Act, 1955. The said petition got converted into Petition for Divorce by mutual consent. It is the grievance of the appellant that her signature on notice issued in execution of decree was forged. The trial Court did not inquire into the matter in accordance with the provisions of section 13(2) before passing the order on the consent terms.

5. The learned counsel appearing for the respondent has raised preliminary objection in respect of maintainability of this appeal. Reliance is placed on the provisions of section 13(2) of the Family Court Act. Learned counsel submits that the grounds raised before this Court, in respect of order passed by the Family Court on the consent terms, were not agitated before the Family Court. The main purpose of the review petition by the appellant was to seek extension of time for continuance of her occupation in the flat owned by the respondent. By order dated 18th June 2015, passed by learned single Judge (Mrs.Mridula Bhatkar, J.) in Writ Petition No.5399/2015, a statement made on behalf of respondent herein was recorded to the effect that he shall not execute the warrant of possession till 31st August 2015. Learned counsel submits that in view of the order the appellant is required to hand over the possession of the

subject flat to the respondent. The allegations made in respect of procedure followed by the trial Court and the signature being forged have been denied and disputed by learned counsel appearing for the respondent. Learned counsel submitted that efforts of the appellant seems to be just to prolong the matter so that she could continue to occupy the premises owned by the respondent.

6. On instructions, learned counsel appearing for the appellant submits that leave be granted to the appellant to withdraw this appeal with liberty to file fresh review petition before the trial Court raising all appropriate issues. Learned counsel submits that it seems that the the appellant was not properly advised, necessary grounds were not raised before the trial Court for its consideration. It is, therefore, submitted that it is a fit case where liberty is to be granted to the appellant to file a fresh review petition.

7. The appellant is an educated lady having passed M.B.A. Course. She is said to be in temporary service. The questions raised on facts before this Court need not be gone into by this Court at this stage. In view of leave sought and in the facts, we are of the view that liberty needs to be granted to the appellant to withdraw this appeal so that appropriate proceedings would be initiated before the trial Court in respect of several grievances of the appellant.

8. We observe that the review petition which was filed before the trial Court on 26th March 2015 i.e. Misc.Civil Application (Review)

No.90/15 shall be considered as application in M.J.Petition No.A-2555/2013 and not review petition.

O R D E R

- (i) The appellant is allowed to withdraw this appeal.
- (ii) The appellant is at liberty to file appropriate proceedings before the Family Court. Such proceedings may be initiated within ten days from today. In case the appellant files such proceedings, we direct the Family Court to dispose of the said proceedings on its own merits within eight weeks from the date of receipt of the same.
- (iii) The order passed by the Family Court on Civil Misc.Application (Review) No.90/2015 shall not come in the way of the Family Court to deal with the issues which will be raised by the appellant in the appropriate proceedings.
- (iv) All issues on merits are kept open. It is clarified that this Court has not expressed any opinion on the issues raised by the contesting parties.
- (v) Learned counsel for the respondent, on instructions, makes a statement that the warrant of possession shall not be executed till the trial Court decides the proceedings, in case filed by the appellant. The appellant would continue to occupy the said flat subject to further orders to be passed by the trial Court. It is clarified

that in case the appellant fails to file appropriate proceedings within ten days from today, the respondent would be at liberty to execute warrant of possession.

(vi) Both the parties undertake not to take unnecessary adjournments and co-operate with the Family Court for disposal of the proceedings.

(vii) With the aforesaid observations and directions, appeal is disposed of.

(viii) In view of disposal of appeal, civil application does not survive and the same is disposed of accordingly.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)

Sanjay Nanoskar, PS..