

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (Civil) Nos.17441-17442/2012
(From the judgment and order dated 19/04/2012 in WP No.4351/2012 and dated
23/04/2012 in WP No.4351/2012 of The HIGH COURT OF BOMBAY)

DEEPIKA AALOK SETHIA Petitioner(s)

VERSUS

AALOK CHHATARSINGH SETHIA Respondent(s)

(With appln(s) for permission to place on record subsequent facts and with
prayer for interim relief and office report)

Date: 05/03/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE M.Y. EQBAL

For Petitioner(s) Mr. T.V.S. Raghavendra Sreyas, Adv.
Ms. Pritha Srikumar Iyer, Adv.
Mr. Nikhil Nayyar, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

We have heard learned counsel for the petitioner at length.

The respondent was appearing in person. However, he is
unable to attend the hearing due to his ill health. He has,
therefore, sent an affidavit along with the covering letter
dated Nil to the Registrar as also copy to the learned

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counsel for the petitioner setting out the reasons as to why he
is unable to attend the hearing in Court. In the affidavit, he
has made a prayer that affidavit, dated 7th July, 2012, filed on
16th July, 2012, be treated as his written submission. We
accept the aforesaid prayer made by the respondent.

The impugned orders of the Bombay High Court, dated 19th
April, 2012 and 23rd April, 2012, have been challenged by the
petitioner - wife confirming the orders passed by the Family
Court, dated 27th March, 2012 and 3rd April, 2012, closing the
right of the petitioner to cross-examine the respondent -
husband

On 9th March, 2012, the family Court at Bandra, Mumbai had noticed that M.J. Petition No.A-503 of 2005 was more than five years old. It was also noticed that the reasons given in support of the application seeking adjournment for six months are not reasonable and proper.

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Hence, fifteen days' time was granted to the petitioner to complete the cross-examination of the respondent. It was also made clear that in case the petitioner failed to cross-examine the respondent, further orders would be passed in accordance with law since the matter was more than five years old. In spite of the aforesaid observation, the petitioner on 27th March, 2012 made an application for further adjournment. The family Court noticed the observations made in order, dated 9th March, 2012. It was specifically observed that the petitioner was not obeying the directions of the Court and trying to protract the matter. The respondent and his witnesses were present in Court for cross-examination. Considering the delay and inconvenience caused by the petitioner, the application was granted subject to payment of Rs.300/-. The matter was thereafter fixed for cross-examination of the respondent on 3rd April, 2012. It was again made clear that in case the petitioner failed to cross-examine the respondent on that date, necessary orders in accordance with law would be passed. When the matter came up for hearing on 3rd April, 2012, the respondent was again present

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in Court. The petitioner and her advocate were absent. Again, the mother of the petitioner filed an application for adjournment on the ground that the petitioner had filed the petition stamp No.9122/2012 in the High Court at Mumbai against orders, dated 9th March, 2012 and 27th March, 2012. The family Court thereafter took notice of the entire history of the proceedings in the Court and observed that in spite of repeated opportunities given, the petitioner had failed to cross-examine the respondent. The family Court observed that considering the age of the petition (i.e. more than six years old) and the delaying tactics played by the petitioner herein, it had no option except to dismiss the application. Therefore, the application for adjournment was dismissed.

The petitioner challenged the order, dated 3rd April, 2012, also by way of an appeal in the High Court.

Rejecting the appeals, filed by the petitioner, the High Court passed orders, dated 19th April, 2012 and 23rd April, 2012.

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We have heard Mr. T.V.S. Raghavendra Sreyas, learned counsel for the petitioner. He submits that the petitioner was precluded from cross-examining the respondent due to her being diagnosed as a patient of breast cancer. Therefore, she was unable to instruct the counsel for cross-examination of the respondent. Learned counsel further submitted that the applications for adjournment were rejected by the Family Court being unduly influenced by the fact that the matter is more than five years old. In fact, according to the learned counsel, the petitioner was not at all responsible for delay in proceedings upto 2010. It was respondent who had sought to amend the pleadings which necessitated the matter being prolonged in the Family Court.

Since the respondent is not present in Court, we have perused the affidavit, dated 7th July, 2012 filed on 16th July, 2012. In this affidavit, the respondent has set out the entire history of the litigation which is pending between the parties. He has mentioned that the respondent

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and his family members are also facing a criminal trial in a case registered under Section 498A, 406 read with Section 34 of the Indian Penal Code, 1860 (IPC) on the basis of First Information Report (FIR) dated 9th July, 1998. The respondent has given comprehensive details with regard to the criminal proceedings and also mentioned that the divorce petition was filed on 15th February, 2005. It is, however, not necessary to notice all the events narrated by the respondent. Suffice it to notice, that since 2005 the criminal proceedings and the proceedings in the divorce petition have continued simultaneously. It is also not necessary for us to notice all the details which have been mentioned about the alleged harassment of the respondent at the instance of the petitioner and her family. We must, however, notice that ultimately on 29th December, 2009, the respondent made an application for amendment and clubbing of the various cases, which was rejected on 5th January, 2010. Due to the developments, during the pendency of the divorce petition, the respondent sought amendment of the same on 19th October, 2010. Ultimately, the amendment was

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permitted by the High Court by order, dated 18th March, 2011. The petitioner filed additional written statement in amended petition on 13th April, 2011. During the interregnum, the petitioner had also filed Maintenance Application No.188 of 2007 seeking interim maintenance. The divorce petition was kept in abeyance as the Maintenance Petition was given priority. The maintenance application was disposed of by the family court by order, dated 7th May, 2011. On 27th February, 2012, the respondent filed an additional affidavit of evidence in lieu of

oral evidence and the matter was adjourned for cross-examination. From this time onward, as noticed earlier, the matter has been adjourned for cross-examination from 9th March, 2012 to 27th March, 2012 and to 3rd April, 2012, when the order was finally passed closing the cross-examination of the respondent.

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Taking note of the entire fact situation, the High Court by order, dated 19th April, 2012, has observed that the petitioner herein does not deserve any further latitude and, therefore, directed that the appeals filed by the petitioner against earlier orders, dated 9th March, 2012 and 27th March, 2012, had become infructuous by virtue of subsequent orders having been passed. By order, dated 23rd April, 2012, the High Court observed as under:

"Orders and directions have already been passed by this Court with regard to the attitude and conduct of the petitioner. Even despite the observations made earlier, Counsel on behalf of the petitioner again applies for time to obtain an adjournment in the Family Court on the same ground that the Petitioner is undergoing radiation. It has been observed earlier that this should not deter the Petitioner from instructing her counsel and must require the counsel to cross examine the respondent husband. Even despite that the application is not made to request the Court to allow her to cross examine. The application is made only for adjournment. The observations of the learned Judge that her attitude is only to bind time is seen even by this Court. There is nothing shown which merits any interference."

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Having considered the entire matter, we are of the opinion that the petitioner has abused the latitude granted to her by the Family Court for a very long period of time. In such circumstances, it would be in the interests of justice not to permit the petitioner to prolong the agony of the respondent any further. We see no reason to interfere with the orders passed by the High Court. The special leave petitions are dismissed accordingly.

| (VINOD LAKHINA)
| COURT MASTER

| | (INDU BALA KAPUR)
| | COURT MASTER

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