



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).9453 OF 2019
(Arising from SLP(C)No. 18971/2019)

ASHI KUMAR

APPELLANT(S)

VERSUS

ASEEM AGARWAL

RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal takes exception to the judgment and order dated 15.07.2019 passed by the High Court of Delhi at New Delhi in C.M.(M) No.1019 of 2019, whereby the High Court entertained the writ petition filed by the respondent herein, Assem Agarwal, under Article 227 of the Constitution of India challenging the order dated 01.12.2018 passed by the Family Court, Patiala House in H.M.A. No.33 of 2012 directing the respondent to produce the subject documents.
3. The High Court by the impugned order not only entertained the writ petition but stayed the trial before the Family Court, which is pending since 2011 (renumbered in 2012).

4. The necessity of producing the documents by the respondent relates back to Order dated 28.01.2014 passed by the Family Court, which reads thus:

"28/1/2014

Pr: Petitioner in person alongwith her father and Sh.N.K. Srivastava.
SPA Ms. Reena Jain for the respondent is also advocate for respondent.

Petitioner wants to file formal response to affidavit as referred in order dated 6/12/2013. On communication from the respondent along with the attested affidavit in original (copy already filed) has been filed by the Ld. SPA.

Adjourned for filing of response by the petitioner and for production of remaining original documents, if any and admission/denial of documents on 12/3/2014. Let the *attested copy of divorce petition and the judgment and decree passed by Family Court at Auckland in New Zealand* be filed by the respondent and advance copy be given to the other side."

(emphasis supplied in italics)

5. It is not in dispute that this order has been allowed to become final by the respondent. As a matter of fact, the respondent partly complied with this direction by only producing decree passed by the Family Court at Auckland in New Zealand and not the judgment and divorce petition. Resultantly, the appellant moved the Family Court for issuing necessary directions to the respondent, which application was allowed by the

Family Court vide order dated 01.12.2018.

6. Indisputably, directions were issued to the respondent to produce the stated documents which, however, remained uncomplied till 19.03.2019. On 29.03.2019 the respondent through counsel gave undertaking to the Family Court that he would file the documents on the next date of hearing. When the matter was again taken up on 03.04.2019, the Family Court was informed that the documents are in transit. Even on 21.05.2019, the respondent gave impression to the Family court that the documents were still in transit.

7. Instead of complying with the undertaking, the respondent chose to file writ petition to challenge the order dated 01.12.2018, which, as aforesaid, has been entertained by the High Court being oblivious of the fact that the respondent had given a solemn undertaking to the Family Court to produce the documents, through his counsel.

8. Counsel for the appellant contends that the undertaking to the Family Court was given not only by the counsel appearing for the respondent

but also by his Power of Attorney. The respondent, however, disputes the correctness of this submission. We are not required to go into this controversy.

9. Suffice it to note that the High Court was impressed by the specious argument of the respondent that the documents insisted upon are not relevant to decide the controversy in issue. On that basis, the High Court proceeded to stay the trial.

10. In our opinion, the respondent having given undertaking to the Family Court through counsel and/or Power of Attorney, as the case may be, was obliged to comply with the same unless absolved therefrom by the Family Court. The question of entertaining writ petition despite such undertaking to the Family Court cannot be countenanced. If the respondent is not relieved of the undertaking by the Family Court, he must take the consequences of the order passed by the Family Court directing production of the said documents. We are of the opinion that if this position was brought to the notice of the High Court on 15.07.2019, perhaps the writ petition

would not have been entertained by the High Court.

11. The counsel for the respondent submits that this argument was advanced before the High Court. If so, the High Court ought to have taken note of the same in the impugned judgment, which is conspicuously absent. Even for that reason, the impugned judgment cannot be sustained.

12. In view of the above, we set aside the impugned order as also dismiss the writ petition filed by the respondent before the High Court being C.M.(M) No.1019/2019, but give liberty to the respondent to approach the Family Court by way of appropriate application including to absolve the respondent from the undertaking given on his behalf or in the alternative to produce the documents referred to in the order of the Family Court dated 01.12.2018, as may be advised. If such application is filed, the same be considered by the Family Court on its own merits in accordance with law. If the respondent needs some more reasonable time to produce the document in question even that application can be made before the Family Court which be considered appropriately.

13. We further make it clear that it will be open to the Family Court to proceed with the proceedings pending before it on the basis of record/evidence to be produced by the parties.

14. Needless to observe that production of the stated documents by the respondent will not come in his way to contend that the same are not relevant for deciding the matter pending before the Family Court. That contention can be considered on its own merits by the Family Court in accordance with law.

15. The appeal and pending applications are accordingly disposed of in the above terms.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

NEW DELHI
DECEMBER 16, 2019.

ITEM NO.48

COURT NO.7

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 18971/2019

(Arising out of impugned final judgment and order dated 15-07-2019 in CMM No. 1019/2019 passed by the High Court Of Delhi At New Delhi)

ASHI KUMAR

Petitioner(s)

VERSUS

ASEEM AGARWAL

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 16-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr. Prabhjit Jauhar, Adv.
Ms. Aishwarya, Adv.
For Mr. S. S. Jauhar, AOR

For Respondent(s) Ms. Geeta Luthra, Sr. Adv.
Ms. Reema Jain Malhotra, Adv.
Mr. Chandan Kumar, AOR
Ms. Asmita Narula, Adv.

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

Leave granted.

The appeal and pending applications are
disposed of in terms of the signed order.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed order is placed on the file.)