

HIGH COURT OF GUJARAT

PUSHPKANT MOHANLAL BOHARA

Versus

STATE OF GUJARAT & 4

Date of Decision: 04 October 2016

Citation: 2016 LawSuit(Guj) 1520

Hon'ble Judges: [S G Shah](#)

Case Type: Criminal Revision Application (For Maintenance)

Case No: **378 of 2016**

Final Decision: Revision allowed

Advocates: [R C Jani & Associate](#), [Ankur Oza](#), [Prerak Oza](#), [Manan Mehta](#)

S G Shah, J.

[1] Heard learned advocate RC Jani for the applicant, learned APP Mr. Manan Mehta for respondent No. 1 State whereas learned advocate Mr. Ankur Oza with learned advocate Mr. Prerak Oza for respondent no. 2 to 5. The petitioner herein is original opponent and husband whereas respondent nos. 2 to 5 are original applicant amongst which respondent no. 2 is his wife and respondent nos. 3 to 5 are their minor children.

[2] The wife and children of the petitioner have preferred an application for maintenance before the Family Court at Surat being Maintenance Application No. 88 of 2013 in such proceeding by an order dated 28th January, 2015, the Family Court has directed the petitioner-husband to pay an amount of Rs.1500/- towards maintenance of wife whereas amount of Rs. 1100/- towards maintenance of each minor children i.e. total of Rs. 4800/- from the date of application i.e. 15th November,2014. Therefore, it can never be said that wife and children are without maintenance since the petitioner has also produced on record certain receipts of payment of maintenance of different amounts between Rs. 4800/- to Rs. 10,000/- on different dates.

[3] At present husband has challenged the impugned order dated 18th April,2016 below application at Exhibit. 43 by him praying Family Court to issue a witness summons to prove his income and salary. However, by cryptic and non-speaking order

the Family Court has rejected such application. The impugned order below an application for witness summons to prove the income reads as under:

"Rejected & additional evidence of the opponent Rights to be closed today."

[4] It is undisputed fact that petitioner herein has produced certificate regarding his income at Serial No. 8 with documentary list, produced on record on 10th December, 2015. It is undisputed fact that in his Affidavit he has deposed as examined in Chief at Ex. 36; Copy of which is produced on 10th December, 2015 i.e. on the same day; disclosing such fact that a certificate issued by his employer is produced on record. Therefore, now after his cross-examination when he has prayed to issue witness summons to such employee to prove the certificate, unfortunately the Family Court has rejected such application without assigning any reason.

[5] Whereas, it is submitted by respondent no. 2 herein that the petitioner is delaying such proceedings by applying for witness summons contending that when fact of such salary is very well discussed by him in his deposition now there is no need to examine such witness.

It is contended that when his cross -examination is concluded long back now such application is filed after couple of months and therefore revision is to be dismissed.

[6] It is settled legal position that all the parties before the Court should get ample and sufficient chance to prove their case and when petitioner herein has produced on record a certificate issued by a Government Office and when now petitioner wants to prove such certificate by examining the person who has issued such salary certificate there is no reason for the Family Court to deny such request to issue witness summons for any reason whatsoever. Whereas the only reason or defence put forward by the respondent herein is to the effect that by such application practically petitioner is delaying the process. There is no substance in such defence because delay would not help the petitioner anymore because otherwise also he is paying Rs. 4800/- towards interim maintenance whereas as per salary certificate his monthly salary is only Rs. 5300/- and therefore probably if such certificate is proved on record there may be change in order of monthly maintenance.

[7] During the argument respondent has been called upon to admit such certificate since it is from a public body but respondent did not opt to admit the document. Therefore, now petitioner needs to prove the same by examining the witness and hence denial of examining a witness by impugned order is certainly material irregularity which results into illegality and it would result into injustice to the petitioner and therefore there is no option but to interfere with the impugned order by allowing such petition.

[8] The respondent has in the alternative submitted that the Trial Court may be directed to expedite the hearing of the application and to vacate the stay which is granted by this Court by issuing Rule on 06.06.2016.

[9] Before parting with the matter one more thing needs to be recorded here that in such revision petition generally reply to revision petition are not warranted and therefore registry should not accept it however, learned advocate for the respondent submits that he has submitted an Affidavit in Reply to the office and therefore, petitioner was seeking time to file Affidavit in Rejoinder. However, considering the fact that such revisions are to be decided based upon material available before the Trial Court while passing impugned order and therefore there is no scope of permitting the litigant to file Affidavit in Reply and then Affidavit in Rejoinder etc, so as to disclose any other facts or details other than material available before the Trial Court. In view of the above facts the Affidavit in Reply by the respondent is refused to be taken on record.

[10] In view of the above facts and circumstances this revision petition is allowed whereby impugned order dated 18th April, 2016 below application at Exhibit 43 in Maintenance Application no. 88 of 2013 by the Family Court of Surat is hereby quashed and set aside thereby such application at Exhibit 43 has been allowed as prayed for. Therefore, Family Court has to issue witness summons as prayed for in such application. The petition therefore needs to be allowed with a direction to expedite the hearing of main petition and to decide it within three months from the date of receipt of writ of this judgment.

[11] Revision is therefore allowed in aforesaid terms. Rule is made absolute accordingly.