

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1798 OF 2016

Suchita Newal Gawte,
Age 27 years, Occ. Nil
Residing at A-1-4,
Kaliwal Classic,
Tapadia Nagar,
Aurangabad.

..Petitioner

Versus

Newal @ Vaibhav Namdeorao
Gawate, Age 30 Years,
Occupation Director of a
Private Limited Company,
R/o Plot No.22, Ulhas Nagar,
Manewada Road,
Nagpur 27.

..Respondent

...
Advocate for Petitioner : Shri Surve Hemant
Advocate for Respondent : Shri Lakhotiya Pawan K.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11/19, 2017
...

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. After hearing this matter and before commencing the dictation of this judgment in open Court, I informed the litigating sides about the view formed by me. I informed the learned Advocate for the petitioner that I would be considering the conduct of the petitioner as well as the conduct of the learned Advocate in these proceedings and there would be observations about the conduct of both of them. I, therefore, gave an opportunity to the learned Advocate Shri Surve to withdraw this petition. It is submitted that the petitioner as well as the learned Advocate would prefer to invite an order from this Court and do not desire to withdraw this petition.

5. The petitioner is aggrieved by the order dated 30.11.2015, by which, application Exhibit 72 filed by the petitioner / wife / original respondent in Petition No. A-323 of 2014 and in Petition No. C-18 of 2013 seeking liberty to withdraw the consent terms, has been rejected.

6. For the sake of brevity, the petitioner is referred to as the "Wife" and the respondent as the "Husband".

7. The submissions of the petitioner can be summarized as under:-

(a) Petition No. A-323 of 2014 is filed by the respondent /

husband.

(b) Petition C-18 of 2013 has been filed by the petitioner / wife herein.

(c) The marriage in between the husband and the wife was performed on 25.4.2013.

(d) Within 13 days from the marriage, both separated and started living apart from 8.5.2013.

(e) The petitioner / wife as well as the respondent / husband are qualified and hold the degrees of Bachelor of Engineering.

(f) Petition A-323 of 2014 has been filed by the husband seeking a divorce from the wife.

(g) Petition C-18 of 2013 has been filed by the wife claiming maintenance from the husband.

(h) Both the parties are represented by their Advocates before all Courts.

(i) On 8.6.2015, when the husband and wife were before the Counselor, they decided to settle their dispute by submitting the consent terms in Marathi duly signed by both the sides and identified by the Counselor.

(j) The petitioner / wife was fraudulently made to accept the compromise terms and was induced into signing the

consent terms.

(k) The conversion of petition A-323 of 2014 on 8.6.2015 was also fraudulently carried out so as to project a picture that the said petition was converted into a Deed of Divorce by Mutual Consent under Section 13-B of the Hindu Marriage Act, 1955.

(l) Being aggrieved, the wife moved an application Exhibit 72 in both the matters and indicated the fraud played upon her in inducing her to sign the consent terms.

(m) Since allegations were made against the learned Principal Judge, Family Court, Aurangabad, she developed prejudice against the petitioner / wife and rejected the application by the impugned order dated 30.11.2015.

(n) The learned Principal Judge used to threaten the petitioner / wife.

(o) The learned Principal Judge used to frown upon the Advocate of the petitioner Shri Surve.

(p) The learned Principal Judge was siding with the respondent / husband.

(q) The learned Principal Judge has played a fraud on the petitioner / wife.

(r) No affidavit is filed in support of the application Exhibit 72 by the wife.

(s) Shri Surve, Advocate was not allowed to sit along with the petitioner / wife before the Counselor and in the absence of his assistance, the compromise terms were written down.

(t) The application for conversion dated 8.6.2015 was signed by the litigating sides and Shri Surve was not allowed to assist the wife.

8. During the course of the submissions before this Court, learned Advocate Shri Surve started making verbal allegations against the learned Principal Judge, Family Court. I restrained him from making such allegations and directed him to restrict himself only to the contents of application Exhibit 72, which the petitioner / wife had preferred before the learned Principal Judge. He conceded that neither the petitioner / wife has tendered an affidavit before the learned Principal Judge nor has he filed such an affidavit personally to support his contention that the learned Principal Judge used to time and again frown upon Shri Surve. He still continued to make allegations against the Judge.

9. In these set of contentions, he prayed that the impugned order be quashed and set aside and the compromise terms dated 8.6.2015 being nullified.

10. Shri Lakhotiya, learned Advocate appearing on behalf of the

respondent / husband submits as under:-

(a) The Counselor normally keeps the couple present before him for conducting the counseling sessions.

(b) The couple had become incompatible within 13 days of the marriage.

(c) After the counseling occurred, the couple decided to prepare the compromise terms by way of a typed document in Marathi.

(d) It was specifically agreed in Clause 3 that the entire list of belongings submitted by the wife would be returned by the husband before the Court on 20.6.2015.

(e) In Clause 4 both agreed that the issue as regards valuables and permanent alimony, which is subject matter of Petition C-18 of 2014 would be left to the decision of the learned Principal Judge, Family Court.

(f) In Clause 5 it was agreed that the conversion of the application into a Divorce Petition by mutual consent would be placed on record.

(g) The said conversion document has deliberately not been placed on record by the petitioner wife and which has been brought on record by the respondent / husband.

(h) The conversion document dated 8.6.2015 converting the petition into a mutual consent for divorce under Section 13-B

was signed by both the husband and wife in the presence of their respective Advocates.

(i) A specific remark has been posted on Exhibit 64, which is the conversion application, that both the parties were present with their respective Advocates and the said application, for converting the petition into mutual consent for divorce, was allowed.

(j) Shri Surve has personally made an incorrect statement that this document was allowed by the Court in his absence.

(k) It is specifically noted on the compromise terms that both the parties admit the contents.

(l) The respondent / husband thereafter implemented the compromise terms and returned all the items mentioned in the list of belongings which runs into three pages.

(m) The learned Advocate for the petitioner / wife i.e. Shri Surve signed on the purshis along with the petitioner / wife before the learned Judicial Magistrate (F.C.), Aurangabad for withdrawing the domestic violence case bearing Criminal M.A. No. 2324 of 2013.

(n) The statement of the petitioner / wife that she had settled the dispute with the husband was recorded and verified and Criminal M.A. no.2324 of 2013 was disposed off as withdrawn.

(o) To the extent of a decision on the issue of the valuables

and alimony / maintenance, an affidavit in lieu of oral evidence was drafted and signed by the same Advocate Shri Surve along with the petitioner / wife and was filed before same learned Principal Judge, Family Court, Aurangabad in Petition C-18/2013.

(p) Nowhere in the said affidavit, which runs into 15 pages, has the petitioner wife ever stated that she was forced to sign the compromise terms.

(q) While conducting the further examination in chief, the wife's Advocate Shri Surve posed a question to her and the said question and answer have been recorded in the said document as follows:-

"24. The contents of affidavit are true and correct. It bears my signature.

Question : Are you aware that by consent terms you have withdrawn all allegations against each other?

Ans. : I agree that as per consent terms all allegations are withdrawn against each other.

Note : The parties have entered into the Consent terms dtd. 8.6.15 vide exh.65. By the said consent terms both parties have agreed to dissolve their marriage by mutual consent. As regards the issue of gold ornaments and the alimony and maintenance to be claimed by the Respondent to be decided by Court. It may be mentioned that the Respondent has filed a petition for

maintenance under Hindu Adoption and Maintenance Act being P.C. 18/14 and the Court has to decide the maintenance in the said proceedings.

In view of these consent terms, the allegations alleged against the husband by the wife Suchita in her affidavit at Exh.64 becomes redundant and irrelevant since the Court only has to decide the quantum of maintenance. The husband was also cross examined only on the issue of maintenance and not on the allegations alleged. Accordingly the cross is recorded only on the said issue of maintenance and not on the allegations as alleged.”

(r) In the cross examination of the wife before the learned Principal Judge, she did not whisper that the compromise terms were forced upon her or that the learned Principal Judge coerced her to sign the compromise terms.

(s) Reliance is placed upon the observations of this Court in paragraph Nos.9 to 12 in the matter of Rakesh Harsukhbhai Parekh Vs. State of Maharashtra and others [2011 AIR Bom 34].

11. I have considered the submissions of the learned Advocates as have been recorded herein above.

12. I find from the record and the submissions of the respective sides that the compromise terms dated 8.6.2015 have been signed by both of them and which are reduced into writing in Marathi. These

terms are said to be signed in presence of the Counselor. There are no allegations against the Counselor by the petitioner / wife. Pursuant to the signing of the compromise terms, an application by way of a joint statement for converting the Petition No. A-323 of 2014 into a mutual consent Divorce Deed under Section 13-B has been placed on record in a typed form. The couple has signed the said document.

13. The order of allowing the said application passed by the learned Principal Judge reads as under:-

*“ Both parties present with their respective Advocates.
Allowed.*

Sd/- 8.6.2015”

The above order would indicate that the petitioner / wife as well as Advocate Shri Surve were present in the Court. No affidavit has been filed by either of them stating that the said observation is untrue.

14. The application filed before the learned Judicial Magistrate (F.C.) for withdrawing Criminal M.A.No. 2324 of 2013 is signed by the petitioner / wife and Advocate Y.K.Kanade on behalf of Advocate

Shri Surve. Shri Surve has stated in the open Court that the said Advocate has signed on his instructions and he represented Shri Surve. This application for withdrawing the domestic violence case has been filed after the husband returned all the belongings as per the list of the wife, which is mentioned in the compromise terms. This is yet another indicator that neither the petitioner / wife nor Shri Surve had any grievance about the settlement terms, about receiving all the belongings and then completing her part of the settlement obligation by withdrawing the domestic violence case.

15. Thereafter, a 15 pages affidavit in lieu of oral evidence in Marathi has been filed on 14.10.2015 in the pending petition C-18 of 2013 by the wife and identified by Shri Surve. In the further examination in chief, the petitioner wife did not contend that the consent terms are obtained after the learned Principal Judge played a fraud on the petitioner, as can be seen from the reproduced portion as above. Even in cross-examination there is no contention about any fraud.

16. The contention of Shri Lakhotiya, learned Advocate for the husband appears to have force that he could draw certain answers from the wife in her cross-examination indicating that she was earning a salary. Probably after the cross-examination was over on 19.10.2015, the petitioner / wife realized about her weakness in the

case and she filed the application Exhibit 72 on 18.11.2015 making a baseless allegations against the learned Principal Judge.

17. For the sake of clarity, the allegations set out by the wife in the said application are re-produced as under:-

“..... The said consent is also given by the undersigned due to unwarranted pressure exerted by this Honourable Court. As this Honourable Court is time and again frowning on the undersigned and her advocate, as well as siding the respondent - husband, the undersigned reasonably apprehends the neutrality expected from an adjudicator, and thus, does not desire at all to continue with the consent already given. As the consent obtained by this Honourable Court is nothing short of fraud played on the undersigned, the undersigned be permitted to withdraw the consent given at Exh.65.”

18. During the course of the submissions today, Shri Surve, quite vehemently and boldly continued to make allegations against the learned Principal Judge, stating that the learned Judge used to time and again frown upon him personally and has played a fraud on his client petitioner / wife. Despite cautioning him, it hardly had any effect.

19. It is crystallized law, in the light of the catena of judgments of the Honourable Apex Court that allegations being made against the

Judge of the Court, which are baseless and aimed at overbearing the authority of the Court amount to browbeating and are contemptuous. Shri Surve, while making submissions even went to the extent of saying that he would file his personal affidavit against the learned Principal Judge. I did not entertain the said request for obvious reasons.

20. It is, therefore, apparent that the petitioner has made vague and baseless allegations against the learned Principal Judge only for self serving purposes. It is appreciable that the learned Principal Judge, despite the above, did not initiate contempt of court proceedings against the petitioner and has also not referred any matter to this Court under the Contempt of Courts Act.

21. This Court in the matter of Prakash Alumal Kalandari vs. Mrs. Jahnvi Prakash Kalandari [2011 (4) Mah.L.J. 187], has noted in paragraph No.16 as under:-

“16. As aforesaid, if the Petition is filed “simplicitor under Section 13B of the Act” for divorce by mutual consent, the Court must satisfy itself that the consent given by the parties continues till the date of granting decree of divorce. Even if one party unilaterally withdraws his/her consent, the Court does not get jurisdiction to grant decree of divorce by mutual consent in view of the mandate of Section 13B of the Act.

However, the situation would be different if the parties in the first instance resort to Petition for relief under Section 9 or 13 of the Act and during the pendency of such Petition, they decide to invite decree for divorce by mutual consent. On the basis of agreed arrangement, if the parties were to execute Consent Terms and then file a formal Petition/Application to convert the pending Petition to be treated as having been filed under Section 13B of the Act to grant decree of divorce by mutual consent, then, in the latter proceedings, before the decree is passed, one party cannot be allowed to unilaterally withdraw the consent if the other party has already acted upon the Consent Terms either wholly or in part to his/her detriment. In other words, the Court will have to be satisfied that: (i) there is sufficient, good and just cause for allowing the party to withdraw his consent, lest, it results in permitting the party to approbate and reprobate; (ii) that the other party would not suffer prejudice which is irreversible, due to withdrawal of the consent. If this twin requirement is not satisfied, the Court should be loath to entertain the prayer to allow the party to unilaterally withdraw his/her consent.”

22. The Honourable Supreme Court in the matter of B.L. Sreedhar and Ors. vs. K.M. Munireddy (Dead) and Ors. [AIR 2003 SC 578], has observed in paragraph No.29 as under:-

“The essential factors giving rise to an estoppel are, I think-

”(a) A representation or conduct amounting to a representation intended to induce a course of

conduct on the part of the person to whom the representation was made.

"(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made.

"(c) Detriment to such person as a consequence of the act or omission were silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, Greenwood v. Martins Bank . See also Thompson v. Palmer ; Grundt v. Great Boulder , ; Central Newbury Car Auctions v. Unity Finance SD.MN"

23. In Rakesh's case (supra), this Court concluded that if the parties are agreeable for a divorce by mutual consent and the petition is pending for more than six months in the family Court, the same can be converted into a Deed of Divorce by mutual consent. Paragraph Nos.10 to 12 of the said judgment read as under:-

"10. The learned AGP appearing for Respondent No. 1 - State tenders a judgment in the case of Anil Kumar Jain v. Maya Jain : II (2009) DMC 449 (SC) in which the Supreme Court allowed such a Petition to be granted under its powers under

Article [142](#) of the Constitution of India. The order of the Family Court has not been challenged on the ground that it could be passed under Article [142](#) of the Constitution of India. Even this Court cannot and is not passing an order under Article [142](#) of the Constitution of India. However, upon a harmonious construction of the aforesaid provisions of the Family Courts Act, the CPC and the Hindu Marriage Act, 1955, it can be seen that the period of respite is not required to be waived. It is the period which has passed when the Petition was pending under Section [13](#) of the Hindu Marriage Act. It is only upon conversion of that Petition under Section [13B](#) of the Hindu Marriage Act that the Petition filed on the grounds of cruelty making allegations of cruelty is converted into a Petition where the allegations stand withdrawn upon the parties having settled their disputes.

11. The parties, who settle their dispute, are not required to be penalised for settling their disputes. They have gone through the process of divorce in the Court for more than 6 months when the Petition remained pending. They have only modified their views upon settlement of the dispute. Hence such a Petition, though for divorce by mutual consent which would be granted to both parties and not for divorce upon the grounds under Section [13](#) of the Hindu Marriage Act, has lived through 6 months period in the Family Court already. Consequently, that period of 6 months, which the law requires the parties to undergo while the Petition remains pending, is undergone; only the acrimonious allegations are withdrawn so that the divorce can be granted amicably to both rather than to one of the spouses.

12. *It may be appreciated that any Petition, which is filed in Court, may or may not be contested. If it is uncontested, an ex-parte decree may be passed under Order IX of the CPC, which applies to Family Courts as Civil Courts. A decree of divorce could be passed under that provision also. That can be passed within less than 6 months of filing the Petition. That, of course, would be based upon the allegations made in the Petition which are not controverted by the Respondent therein. That enables the Petitioner to obtain a decree of divorce. If those allegations came to be withdrawn, as in this case, and as is desirable under the reconciliatory mode in which Family Courts are expected to function, the parties who withdraw the allegations must both be entitled to a decree of divorce without the burden and restraint which is cast by Section [13B\(2\)](#) for parties who appear initially in the Court together by way of a Petition for divorce by mutual consent."*

24. In the light of the above, I do not find that the impugned order dated 30.11.2015 passed by the Family Court could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

25. In the case of Leila David Vs. State of Maharashtra [(2009) 10 SCC 337], the Honourable Apex Court in paragraph Nos.26 and 32 has held as under:-

"26. As far as the first batch of writ petitions filed by the

contemnors are concerned, the very nature of the pleadings and the prayers made therein, require the same to be dismissed in limine. Despite the above, we had given an opportunity to the writ petitioners / contemnors to redeem themselves, which opportunity they deliberately spurned and proceeded to file a fresh writ petition, which, as indicated hereinabove was replete with the earlier scandalous remarks and fresh expletives.

"32. In Nand Lal Balwani : (1999) 2 SCC 743, it was held that where an Advocate shouted slogans and hurled a shoe towards the Court causing interference with judicial proceedings and did not even tender an apology, he would be liable for contempt in the face of the Court. It was observed by the Bench of three Judges which heard the matter that

"4. law does not give a lawyer, unsatisfied with the result of any litigation, licence to permit himself the liberty of causing disrespect to the Court or attempting, in any manner, to lower the dignity of the Court. "

26. In the case of Haridas Das Vs. Usha Rani Banik [(2007) 14 SCC 1], it has been held by the Honourable Apex Court as under:-

"1. "Judge bashing" and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalize and lower the authority of the Courts and can not be permitted because, for functioning of democracy, an independent

judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against the public interest.

"2. *Judiciary should not be reduced to the position of flies in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive criticism.*

"12. *There is guarantee of the Constitution of India that there will be freedom of speech and writing, but reasonable restriction can be imposed. It will be of relevance to compare the various suggestions as prevalent in America and India. It is worthwhile to note that all utterances against a Judge or concerning a pending case do not in America amount to contempt of Court. In Article 19 the expression "reasonable restrictions" is used which is almost at par with the American phraseology "inherent tendency" or "reasonable tendency". The Supreme Court of America in Bridges v California said: What finally emerges from the clear and present danger cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely serious and the degree of imminence extremely high before utterances can be punished.*

The vehemence of the language used is not alone the measure of the power to punish for contempt of Court. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are,

therefore required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. To similar effect were the observations of Lord Morris in *Attorney General v. Times Newspapers* [1974 AC 273 : (1973) 3 WLR 298 : (1973) 3 ALL ER 54(HL)]. It was observed that when unjustifiable interference is suppressed it is not because those charged with the responsibilities of administration of justice are concerned for their own dignity, it is because the very structure of ordered life is at risk if the recognised Courts of the Land are so flouted and their authority wanes and is supplanted.

13. There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. No Court can claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves to be in possession of all truth to hold that wherever others differ from them are in error. No one is more conscious of his limitations and fallibility than a Judge. But because of his training and the assistance he gets from learned Counsel he is apt to avoid mistakes more than others. While fair and temperate criticism of the Court even if strong, may not be actionable, but attributing improper motives or tending to bring Judges or Courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must be and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in

their criticism by indulging in vilification of the institution of Court, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. To similar effect were the observations of Hidayatullah, C.J., (as the learned judge was then) in R.C. Cooper v. Union of India : [1971] 1 SCR 512.

"28. Judiciary is the bed rock and handmaid of democracy. If people lose faith in justice parted by a Court of law, the entire democratic set up would crumble down. In this background, observations of Lord Denning M.R. in Metropolitan Properties Ltd. v. Lennon are relevant: "Justice must be rooted in confidence, and confidence is destroyed when right minded people go away thinking - the Judge is biased.

"30. Majesty of Law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel the law Courts will absorb anything and every thing, including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength. It generally ignores irresponsible statements which are anything but legitimate criticism. It is to be noted that what is permissible is legitimate criticism and not illegitimate insinuation. No Court can brook with equanimity something which may have tendency to interfere with the administration of justice. Some people find judiciary a soft target because it has neither the power of the purse nor the sword, which other wings of democracy possess. It needs no reiteration that on judiciary millions pin their hopes, for protecting their life,

liberty, property and the like. Judges do not have an easy job. They repeatedly do what rest of us (the people) seek to avoid, make decisions, said David Panicky in his book "Judges". Judges are mere mortals, but they are asked to perform a function which is truly divine.

"34. There can be no quarrel with the proposition that anyone who intends to tarnish the image of judiciary should not be allowed to go unpunished. By attacking the reputation of Judges, the ultimate victim is the institution. The day the consumers of justice loose faith in the institution that would be the darkest day for mankind. The importance of judiciary needs no reiteration."

27. In the case of M/s Chetak Construction Ltd. Vs. Om Prakash [AIR 1998 SC 1855], the Honourable Apex Court has held as under:-

"19. Indeed, no lawyer or litigant can be permitted to brow beat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot, be allowed to "terrorize" or "intimidate" judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go "forum shopping". A litigant cannot be

permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand.

"20. At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. Public confidence in the judiciary rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. Judges must always ensure that they do not allow the credibility of the institution to be eroded. We must always remember that justice must not only be done but it must also be seen to be done."

28. In the case of Subrata Roy Sahara Versus Union of India and others [(2014) 8 SCC 470], the Honourable Apex Court has held as under:-

"44. The bona fides of the above submission, are difficult to fathom. It seems to us, that rather than the Petitioner tendering his explanation to this Court, for not complying

with the orders passed by it, the Petitioner's counsel were posing a question to this Court to explain to them, the legitimacy of the procedure adopted by the Court. In our understanding, learned Counsel who represented the Petitioner, were surely insincere to the cause of justice, when they drummed their assertions, without blinking an eye; since they were aware, that the factual position was otherwise. For learned Counsel for the Petitioner, to advance such submissions, to state the least, was unimaginable. Both Mr. Ram Jethmalani and Dr. Rajeev Dhawan, were lead counsel representing the contemnors in the contempt proceedings. They surely ought to have known better, because they had appeared in the contempt proceedings, in the defence of the contemnors. It is not for a Court, to tender any explanation to any litigant, or to his counsel. Accordingly, it should never be considered as obligatory, on the part of this Court, to tender any such explanation. Undoubtedly, it is open to a party to seek review, of an order passed by this Court, under Article 137 of the Constitution of India. Or to file a curative petition, after a review petition had been rejected, as laid down by this Court in Rupa Ashok Hurra's case [(2002) 4 SCC 388], if it is felt that a serious mistake had been committed. Just for this case, in order to depict the position in its correct perspective, we shall narrate in the succeeding paragraphs, the long rope which was extended to the Petitioner (as also, to the other contemnors) to comply with the directions issued by this Court (on 31.8.2012 and 5.12.2012), before the order dated 4.3.2014 was passed."

29. Considering the conduct of the petitioner / wife, I find this to

be a fit case for imposing costs of Rs.25,000/- (Rs. Twenty Five Thousand only/-) for having resorted to acts which amount to abuse of process of law and are contemptuous. The said amount shall be deposited by the petitioner / wife before the Family Court on/or before 10.2.2017, failing which, the Family Court would be at liberty to strike off the defense of the petitioner / wife in the pending proceedings.

30. I find it appropriate to record my dissatisfaction and disappointment at the conduct of Shri Surve, learned Advocate for the petitioner. Despite he being party to all the proceedings on behalf of the petitioner / wife and having been a signatory to the implementation of the compromise terms and having assisted the petitioner in withdrawing the domestic violence case, should have visualized his responsibility, role and position and should have refrained from identifying with the petitioner in a manner unbecoming a Lawyer. This was a fit case to be considered for disciplinary action by referring it to the Bar Council of Maharashtra and Goa. However, I am parting with this matter with the above observations only with the hope that the learned Advocate Shri Surve would refrain from committing any such act in future.

31. Rule is discharged.

...

Dated : January 19, 2017

32. Yesterday, i.e. on January 18, 2017, following order was passed in this matter:-

1. *After the text of the oral judgment was dictated in open court on 11/01/2017, before I could sign the judgment, a motion was moved on 13/01/2017 by the learned Advocate for the petitioner praying for leave to withdraw this petition. As the oral judgment was dictated in open court, circulation was granted for 17/01/2017. The matter is on board today.*

2. *Learned Advocate for the petitioner has tendered a memorandum of withdrawal of accusations/imputations against the Principal Judge, Family Court at Aurangabad. Same is duly signed and sworn on oath by the petitioner/wife.*

3. *Learned Advocate for the respondent/husband prays for time till tomorrow to take instructions as to whether the respondent/ husband would grant his no objection for permitting the petitioner to withdraw this petition in view of the affidavit dated 17/01/2017 filed by the petitioner/wife.*

4. *Stand over to 19/01/2017 for "passing orders".*

33. Today, Shri Lakhotiya learned Advocate, on instructions, submits that his client is not willing to concede to the request of the

petitioner, seeking withdrawal of this petition.

34. As the oral judgment of this Court was dictated in open Court on 11.1.2007 and since the petitioner has made a request for leave to withdraw this petition by filing an affidavit for withdrawal of accusations / imputations against the learned Principal Judge, Family Court, Aurangabad and in the light of the apology tendered, I deem it proper to permit the petitioner / wife to withdraw this petition. Same is, therefore, dismissed as withdrawn.

35. The memorandum of withdrawal of accusations, filed by the petitioner / wife on 17.1.2017, is taken on record and marked as Exhibit "X". So also, the petitioner / wife shall file such a memorandum before the learned Principal Judge, Family Court, Aurangabad, within three weeks, thereby, stating that all allegations against the learned Principal Judge have been withdrawn. Only after such affidavit is filed, the learned Court may consider the defence of the wife in the pending proceedings.

(RAVINDRA V. GHUGE, J.)

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akl/d